



**The University of Texas School of Law's 5<sup>th</sup> Annual Consumer Bankruptcy Practice**

**Supplemental Handout for "Individual and Small Business Debtors in Chapter 11"**

Key Statutes:

1. § 101(51)(C) – “small business case”
2. § 101(51)(D) – “small business debtor”
3. § 308 – Small Business Debtor reporting requirements
4. § 1112(b)(2)(A) – no dismissal/conversion of SBD case if reasonable likelihood of timely plan confirmation
5. § 1116(1)-(7) – Small Business Debtor duties
6. § 1121(e) – SBD plan exclusivity, plan filing, and plan confirmation deadlines and extensions (order to be entered before deadline expiry)
7. § 1125(f) – SBD disclosure statement may not be necessary, may be standard form, or may be conditionally approved for solicitation with approval combined with confirmation hearing
8. § 1129(e) – SBD confirmation to be within 45 days after plan filing

Key Rules:

1. FRBP 1020 –
  - (a) SBD's designation is binding unless and until court enters an order finding the SBD's statement is incorrect;
  - (b) UST or party in interest may object to designation until longer of 30 days from 341 or 30 days from amended designation;
  - (c) If Comm appointed, case proceeds as a SBC only after court determines (i) the Comm has not been sufficiently active and representative to provide effective oversight of the debtor, and (ii) debtor satisfies definition of a SBD
2. FRBP 3016(d) – SBD may use Official Forms 25A (SBD Plan) and 25B (SBD DS)
3. FRBP 3017.1 – Court may conditionally approve SBD's DS

Key Forms:

1. Petition
2. Balance Sheet
3. Statement of Operations
4. Cash-Flow Statement
5. Federal Income Tax Return
6. Alternatively, statement that these do not exist
7. Form 25C – SBD reduced form of MOR
8. “Periodic financial and other reports....”
9. Form 25A – SBD Plan
10. Form 25B – SBD DS

### Key Cases:

1. *In re Franmar, Inc.*, 361 B.R. 202 (Bankr. D. Co. 2006) –generally on § 1116 duties to append reports to petitions and dismissal possibilities for failures
2. *In re Florida Coastal Airlines, Inc.*, 361 B.R. 286 (Bankr. S.D. Fl. 2007) – on non-applicability of § 1121(e)(2) plan-filing deadline to creditors
3. *In re AMAP Sales & Collision, Inc.*, 403 B.R. 244 (Bankr. E.D. NY 2009) – § 1121(e)(3) extension of time on plan exclusivity, plan filing, and plan confirmation do not require a mini trial; also citing Congressional mistrust and lack of faith in SBDs (e.g., “provisions intended to heighten administrative scrutiny and judicial oversight of small business bankruptcy cases, which often are least likely to reorganize successfully”)
4. *In re Safeguard-RX, Inc.*, Slip Copy, 2009 WL 249767 (Bankr. S.D. Tex.) – § 1121(e)(3) extension denied for failure to address issues in plan and show financial planning in disclosure statement (this debtor appears to have abused the UST’s and Court’s considerable patience)
5. *In re Fall*, Slip Copy, 2009 WL 1586542 (Bankr. N.D. Ohio) – § 1112(b) dismissal for many reasons, including debtor failing to file plan within § 1121(e) exclusivity period and offering no more than “vague promises of future improvements”
6. *In re J.D. Manufacturing, Inc.*, 2008 WL 4533690 (Bankr. S.D. Tex) – converting case to chapter 7 due to SBD’s inability to confirm a plan under § 1121(e)(2) and 1129(e)
7. *In re Luther*, 2007 WL 1063008 (Bankr. D. Md.) – convoluted pro se case where court was forced to, sua sponte, schedule a hearing for extension of confirmation deadline under § 1121(e)(3) and § 1129(e), and, subsequently, entering a show cause order for dismissal/conversion
8. *In re Save Our Springs (S.O.S.) Alliance, Inc.*, 388 B.R. 202 (Bankr. W.D. Tex. 2008) – extensive analysis (and denial) of requested extension of time to confirm under § 1129(e) due to failure of debtor to produce sufficient evidence that confirmation is more likely than note; court also agrees with reasoning of *Florida Coastal* in relating subsequently filed plans back to prior-filed plans if amendments are not substantially different
9. *In re Caring Heart Home Health Corp.*, 380 B.R. 908 (Bankr. S.D. Fla. 2008) – court lacked power to extend § 1129(e) 45-day deadline for confirmation if outside such time, even under Rule 9006 (court also not impressed with the new SBD provisions: “curious drafting” and “legislation which is replete with odd provisions-including a number of traps for the unwary”)
10. *In re Navin R. Johnson d/b/a Optigrab*, to come??