



SMALL BUSINESS
REORGANIZATION ACT OF 2019

SBA Statistics: A Critical Part of the US Economy

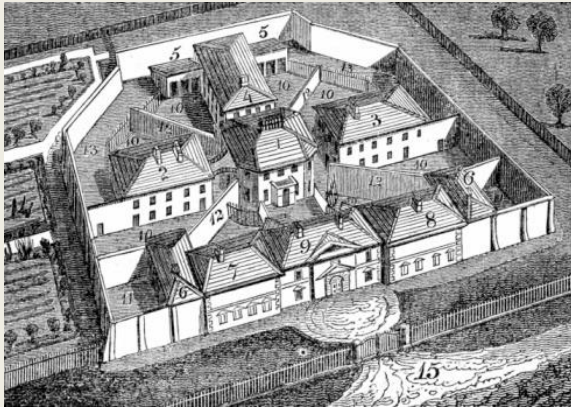
- 49.2% of Private Sector Employees Work for a Small Business
- Small Businesses account for 64% of net new job creation
- 33% of exports by value

Small Business have a High Rate of Failure

- 50% of small businesses will fail in the first 5 years
- Only 1/3 of small businesses last 10 years
- Remarkably similar rates of failure across industries
- Not really contingent upon macroeconomic conditions

Historical Perspectives: Juggling Risk vs. Reward

Debtor's Prisons



Joint Stock Ventures



Legislative History

Small Business Reorganization Act of 2019



COMMISSION TO STUDY THE REFORM OF CHAPTER 11

2012~2014

FINAL REPORT AND RECOMMENDATIONS

SPONSORED BY THE ANTHONY H.N. SCHNELLING ENDOWMENT FUND

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ABI Commission Interviews: Does Ch 11 “work” for Small Business?

- Ch 11 is Cost Prohibitive for Small Business
- Huge failure rate: only 27% of Small Business Debtors confirm Ch 11 plans
- Perceived Increase in Use and Speed of Asset Sales under 363
- Perceived Decrease in True Reorganizations
- Absolute Priority Rule & Loss of Ownership

Typical Small Business & Traditional Ch 11 Confirmation Standard

- One big loan and a Blanket Lien
- 11 USC 506(a): Bifurcation of Secured Claim
- Example:
 - *Debtor owns and operates a “dive bar”*
 - *Local Bank loaned Debtor \$250k and took a lien in substantially all assets*
 - *Collateral is mostly used kitchen equipment, furniture, perishable food, etc.*
 - *Liquidation value of collateral is now only \$50k*
 - *Bank has a secured claim for \$50k and unsecured claim for \$200k*

UST Fees in CH 11:Dive Bar Example

\$18k/Quarter = \$54k/Case

TOTAL QUARTERLY DISBURSEMENTS	QUARTERLY FEE
\$0 to \$62,624	\$250
\$62,625 to \$999,999	0.4% of quarterly disbursements
\$1,000,000 to \$31,249,937	0.8% of quarterly disbursements
\$31,249,938 or more	\$250,000

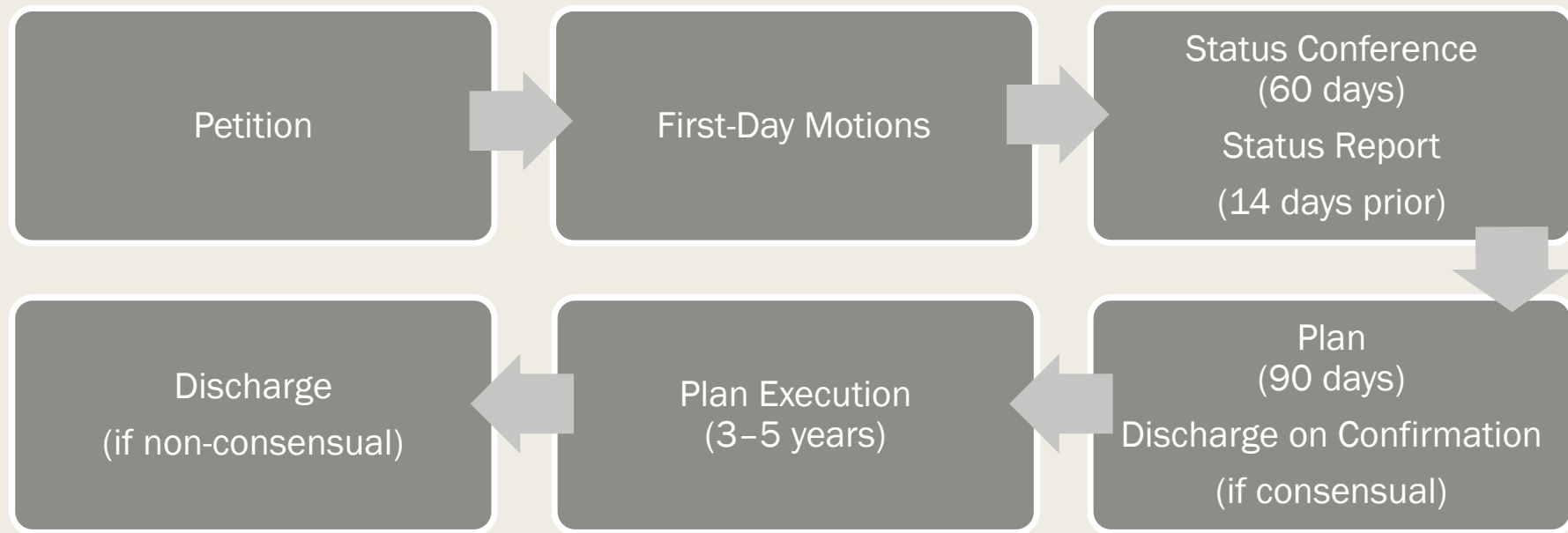
ABI Report: Recommended Changes

- Eliminate UST Fees
- Eliminate Need for an Impaired Accepting Class to Cram Down
- Modify the Absolute Priority Rule
- Appoint an Estate Neutral to Facilitate Resolution
- Make Small Business Bankruptcy Faster and More Cost-Effective

Key Changes to the Code

- 11 U.S.C. §§ 1181–95 “Subchapter V of Chapter 11”
- No Quarterly UST Fees
- No Creditor Committee (“For Cause” Only)
- Created a New Sub V Trustee Role
- No Disclosure Statement (“For Cause” Only)
- Changed Confirmation Standard
 - No Impaired Accepting Class Requirement
 - No Absolute Priority Rule

SubV Timeline: Faster Ch 11 Cases



Who Qualifies?

11 U.S.C. § 1182(1) & 11 U.S.C. § 101(51D)(A):
SubV is for “small business debtors”

- **A person engaged in commercial or business activities**
- Aggregate *noncontingent liquidated secured and unsecured* debts as of the date of the filing of the petition or the date of the order for relief in an amount not more than \$7,500,000 (excluding debts owed to 1 or more affiliates or insiders)
- Not less than 50 percent of debt arose from the commercial or business activities of the debtor
- Excludes SARE's & 34 Act Companies

Temporary “Debt Cap” Adjustment:

- Original debt limit: \$2,725,625
- Current debt limit: \$7,500,000 sunsets June 21, 2024
- Future debt limit: ???

Powers of Debtors in SubV

- All the same powers as DIP in Chapter 11 case, including:
 - Sell/lease/use property under Section 363
 - Obtain credit under Section 364
 - Assume/reject contracts under Section 365
 - Pursue preferences, fraudulent transfers, post-petition transfers under Section 547, 548, and 549
 - Hire professionals
- Note: A SubV Debtor has exclusive right to file a plan.

Section 1190: Contents of a SubV Plan

- A brief history of the business operations of the debtor
- A liquidation analysis
- Feasibility projections
- Debtor must commit future earnings as needed to make plan payments
- Debtor may modify secured claims against homestead
 - If the debt was not used to purchase the property; and
 - If HELOC proceeds were used for Debtor's small business

Section 1191: How did SBRA change the Confirmation Standard?

- Absolute priority rule d/n bar retention of equity by business owner
- Confirmable w/o Impaired Accepting Class
- To be fair and equitable, debtor commits 3-5 years of “projected disposable income” to fund the plan.
- If creditors consent, then debtor gets a discharge upon confirmation
- If creditors do not consent, then debtor gets a discharge after completion of payment obligations under the plan.

Section 1191(d): “Disposable Income” in SubV

- Projected vs. Actual
- DISPOSABLE INCOME.—For purposes of this section, the term ‘disposable income’ means the income that is received by the debtor and that is not reasonably necessary to be expended—
 - (1) for—
 - (A) the maintenance or support of the debtor or a dependent of the debtor; or
 - (B) a domestic support obligation that first becomes payable after the date of the filing of the petition; or
 - (2) for the payment of expenditures necessary for the continuation, preservation, or operation of the business of the debtor.

New ABI Task Force to Review SubV

- Subchapter V has improved access for Small Business Debtors
- Minnesota, 51% of business debtors have elected to utilize Subchapter V
- Increased confirmation rates (SubV exceeds traditional Ch 11)
- Decreased costs of administration
- Lower median time to confirmation
- Subvtaskforce.abi.org

Questions and Discussion
