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John T. Laney III

Nicholas Greer

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Bankruptcy

by **Honorable John T. Laney, III*** and **Nicholas Greer****

This year's Bankruptcy Law Article surveys both opinions and recent legislation that will have an impact on the practice of bankruptcy law in the United States Court of Appeals for the Eleventh Circuit.¹ The decisions in this article come from the Supreme Court of the United States, the United States Court of Appeals for the Eleventh Circuit, the United States District Courts located in the Eleventh Circuit, as well as the United States Bankruptcy Courts located in the Eleventh Circuit. Throughout the survey period, January 1, 2019 to December 31, 2019, countless decisions related to bankruptcy law have been handed down by these courts; this article will focus on and address those decisions found in the Eleventh Circuit and the Supreme Court that the authors feel will have the greatest impact on bankruptcy law.

Additionally, this year saw new bankruptcy legislation passed by Congress and enacted into law. This Article will discuss the most impactful of the new legislation: a new subchapter of Chapter 11 that establishes what many believe will be a quicker and more efficient process for qualifying small business debtors and their reorganization plans.

*United States Bankruptcy Judge for the Middle District of Georgia. Mercer University (A.B., 1964); Mercer University School of Law (J.D., magna cum laude, 1966). Member, Mercer Law Review (1964–1966); Co-Editor in Chief (1965–1966). Member, State Bar of Georgia.

**Law Clerk to The Honorable John T. Laney, III. Kennesaw State University (B.S., 2016); Mercer University School of Law (J.D., 2019). Member, Mercer Law Review (2017–2019); Member, State Bar of Georgia.

1. For a discussion on opinions from 2018 that impacted bankruptcy law, see Hon. John T. Laney, III & William J. Diehl, *Bankruptcy, Eleventh Circuit Survey*, 70 MERCER L. REV. 865 (2019).

I. CASES

A. Taggart and the "objectively reasonable basis" for civil contempt

Perhaps the most important bankruptcy case from the survey period, *Taggart v. Lorenzen*,² comes from the Supreme Court of the United States. *Taggart* considers the standard a court should follow when determining whether "a court may hold a creditor in civil contempt for attempting to collect a debt that a discharge order has immunized from collection."³ *Taggart* centered on a Chapter 7⁴ debtor, Bradley Taggart. Taggart owned an interest in a company, Sherwood, and liquidated the interest at some point prior to filing for bankruptcy under Chapter 7 of the Bankruptcy Code. This resulted in Sherwood bringing claims against Taggart for violation of their operating agreement.⁵ After Taggart received a discharge under § 727,⁶ Sherwood sought to recover for Taggart's violation of the operating agreement in an Oregon state court. The Sherwood defendants received a verdict in state court and then sought a new claim for attorney's fees.⁷ Under the United States Court of Appeals for the Ninth Circuit precedent, a former debtor who has received a discharge order would be protected from post-petition attorney's fees for prepetition litigation "unless the discharged debtor 'returned to the fray' after filing for bankruptcy."⁸ The Oregon state court determined that Taggart had indeed returned to the fray and, as a result, awarded nearly \$45,000 in attorney's fees to Sherwood.⁹ Taggart, with his bankruptcy discharge in hand, returned to the United States Bankruptcy Court for the District of Oregon to seek damages against the Sherwood defendants for contempt for violating Taggart's discharge injunction, believing that his actions did not constitute "returning to the fray."¹⁰ The bankruptcy court agreed with the state trial court, concluding that there was no violation by Sherwood of Taggart's discharge and that Taggart had returned to the fray and, therefore, was liable for the attorney's fees.¹¹

2. 139 S. Ct. 1795 (2019).

3. *Id.* at 1799.

4. 11 U.S.C. ch. 7 (2019).

5. *Taggart*, 139 S. Ct. at 1799.

6. 11 U.S.C. § 727 (2019).

7. *Taggart*, 139 S. Ct. at 1800.

8. *Id.* (quoting *In re Ybarra*, 424 F. 3d. 1018, 1027 (9th. Cir. 2005)).

9. *Id.*

10. *In re Taggart*, 2011 Bankr. LEXIS 4850 (Bankr. D. Or. Dec. 9, 2011).

11. *Taggart*, 139 S. Ct. at 1800.

Upon appeal, the United States District Court for the District of Oregon agreed with Taggart and remanded the case back to the bankruptcy court. The bankruptcy court held Sherwood in civil contempt by applying a "strict liability" standard, finding that Sherwood "had been 'aware of the discharge'" and "'intended the actions which violate[d] it."¹² On appeal, both the Bankruptcy Appellate Panel for the Ninth Circuit and the United States Court of Appeals for the Ninth Circuit vacated the decision of the bankruptcy court.¹³ The Ninth Circuit utilized a different standard for contempt, holding that "a 'creditor's good faith belief' that the discharge order 'does not apply to the creditor's claim precludes a finding of contempt, even if the creditor's belief is unreasonable.'"¹⁴ Using this standard, Sherwood's "good faith belief" that Taggart's discharge "did not apply" to Sherwood's claims invalidated the civil contempt sanctions and thus, the Ninth Circuit affirmed the vacation by the Bankruptcy Appellate Panel.¹⁵ At this point, Taggart filed a petition for certiorari to ask the Supreme Court whether "a creditor's good-faith belief that the discharge injunction does not apply precludes a finding of civil contempt."¹⁶

The Supreme Court decided to hear the case and sought to determine the "legal standard for holding a creditor in civil contempt when the creditor attempts to collect a debt in violation of a bankruptcy discharge order."¹⁷ The Court then looked to § 524¹⁸ and § 105,¹⁹ two separate provisions of the bankruptcy code, for direction.²⁰ Section 524 states that a "discharge order 'operates as an injunction against the commencement or continuation of an action . . . or an act, to collect, recover or offset' a discharged debt."²¹ When the Supreme Court reconciled that provision with § 105, which authorizes a court to issue orders and judgments necessary to carry out the Bankruptcy Code, the Court determined that a bankruptcy court does indeed have the authority to impose civil contempt sanctions "when there is no

12. *Id.* (quoting *In re Taggart*, 522 B.R. 627, 632 (Bankr. D. Or. Dec. 16, 2014)).

13. *Id.* at 1800–01.

14. *Id.* (quoting *In re Taggart*, 888 F.3d 438, 444 (9th Cir. 2018)).

15. *Id.* at 1801.

16. *Id.*

17. *Id.*

18. 11 U.S.C. § 524 (2019).

19. 11 U.S.C. § 105 (2019).

20. *Taggart*, 139 S. Ct. at 1801.

21. *Id.* (quoting 11 U.S.C. § 524(a)(2)).

objectively reasonable basis for concluding that the creditor's conduct might be lawful under the discharge order."²²

The Supreme Court also employed a "long-standing interpretative principle" by considering that "when a statutory term is 'obviously transplanted from another legal source,' it 'brings the old soil with it.'"²³ Looking at historical context, the Court held that the language found in the aforementioned provisions such as "operates as an injunction" or to "carry out" brings the "old soil" that is the "potent weapon" of civil contempt.²⁴ That "old soil" represents the traditional use of civil contempt as a means to control the conduct of parties before the court.²⁵ Therefore, the Supreme Court reasoned that despite the Bankruptcy Code's not explicitly granting unlimited authority to hold creditors in civil contempt, the use of such language incorporates the "old soil" that is the traditional use of civil contempt.²⁶ Justice Breyer then considered Taggart's argument: that a finding of civil contempt would be proper when the creditor was aware of the discharge order and still chose to act in a manner that violated the order.²⁷ The Court ultimately determined that such a standard was too close to strict liability as it would employ foregoing a creditor's subjective beliefs about the discharge order and disregard the potential existence of a reasonable basis for the creditor's conduct.²⁸

The Court concluded the opinion by stating that the Ninth Circuit "erred in applying a subjective standard for civil contempt" and then ruling that "a court may hold a creditor in civil contempt for violating a discharge order where there is not a 'fair ground of doubt' as to whether the creditor's conduct might be lawful under the discharge order."²⁹ Thus, the Supreme Court rejected the strict liability standard for civil contempt and instead announced a standard that considers whether there was an objectively reasonable rationale for creditor's conduct in terms of violating a discharge order.³⁰

22. *Id.*

23. *Id.* (quoting *Hall v. Hall*, 138 S. Ct. 1118, 1128 (2018)).

24. *Id.* (quoting *Int'l Longshoremen's Ass'n v. Philadelphia Marine Trade Ass'n*, 389 U.S. 64, 76 (1967)).

25. *Id.*

26. *Id.*

27. *Id.* at 1803.

28. *Id.*

29. *Id.* at 1804.

30. *Id.* at 1799.

B. In re Thompson and the "lack-of-knowledge" requirement

One important case in the Eleventh Circuit during the Survey period, *Thompson v. Gargula*,³¹ featured the United States Trustee's seeking revocation of a discharge after learning that the Debtor had failed to report the acquisition of estate property.³² The United States Court of Appeals for the Eleventh Circuit essentially whittled the case down to one question: "whether a 'lack-of-knowledge' requirement that is explicitly contained in one subsection of the bankruptcy statute, 11 U.S.C. § 727(d)(1),³³ can be read into the adjacent subsection of the same statute, 11 U.S.C. § 727(d)(2),³⁴ thereby barring revocation."³⁵ Choosing not to rewrite the bankruptcy code, the Eleventh Circuit instead affirmed the decisions of both the United States Bankruptcy Court for the Northern District of Georgia and the United States District Court for the Northern District of Georgia and did not read the "lack-of-knowledge" requirement into a subsection that did not already include such language.³⁶

The Debtors initially filed a Chapter 13³⁷ petition, then five months later voluntarily converted their case to Chapter 11,³⁸ then almost two years later voluntarily converted their case to a Chapter 7. While the case was making its way through the judicial process, a former employee of the Thompsons "submitted a fraud referral to the Trustee" that alleged the "stockpiling" of cash, trips, and plastic surgeries.³⁹ Just over a year after receiving a discharge, the Trustee filed an adversary proceeding against the Debtors requesting the revocation of their discharge as a result of her investigation into the fraud referral. The Trustee asserted that the financial reports filed by the Debtors were "incomplete, inaccurate, or erroneous."⁴⁰ The Debtors, however, moved for summary judgment on the matter arguing that the "Trustee was on notice of the alleged fraud before the bankruptcy court entered the discharge, barring the Trustee's claim for revocation."⁴¹ Using § 727(d),

31. 939 F.3d 1279 (11th Cir. 2019).

32. *Id.* at 1281.

33. 11 U.S.C. § 727(d)(1) (2020).

34. 11 U.S.C. § 727(d)(2) (2020).

35. *Thompson*, 939 F.3d at 1281.

36. *Id.*

37. 11 U.S.C. Ch. 13 (2020).

38. 11 U.S.C. Ch. 11 (2020).

39. *Thompson*, 939 F.3d at 1281.

40. *Id.* at 1281–82.

41. *Id.* at 1282.

⁴² the bankruptcy court denied in part and granted in part the Debtor's motion for summary judgment.⁴³ Section 727(d) states that a court "shall revoke a discharge . . . if—"

(1) such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge; [or]

(2) the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee.⁴⁴

According to subsection (d)(1), a bankruptcy court has the power to revoke the discharge when the requesting party, the Trustee, "did not know of such fraud until after the granting of such discharge."⁴⁵ Here, the Trustee was aware of the potential fraud prior to the granting of the discharge and therefore, subsection (d)(1) was not applicable. This language is what is considered as the "lack-of-knowledge" requirement; when a party moving for revocation of a discharge lacked the knowledge of fraudulent conduct by the Debtor, § 727(d)(1) allows for the expedient grant of such revocation.⁴⁶

With that said, § 727(d)(2) does not contain language that would amount to a "lack-of-knowledge" clause. Instead, this subsection has a list of criteria that the bankruptcy court determined matched the Debtor's conduct in this case.⁴⁷ After the bankruptcy court revoked the discharge and the district court affirmed, the Eleventh Circuit, sitting "as a second court of review and thus examin[ing] independently the factual and legal determinations of the bankruptcy court and employ[ing] the same standard of review as the district court," reviewed the bankruptcy court's decision.⁴⁸

The appellate court began its analysis in much the same way as the bankruptcy court: by reviewing § 727(d)(1) and § 727(d)(2). To circumvent the "lack-of-knowledge" requirement in (d)(2), the Debtors argued that in order for (d)(2) to apply, the Trustee must still prove that

42. 11 U.S.C. § 727(d) (2020).

43. *Thompson*, 939 F.3d at 1282.

44. 11 U.S.C. § 727(d)(1)–(2) (2020).

45. *Thompson*, 939 F.3d at 1282.

46. *Id.* at 1282.

47. *Id.* at 1282–83.

48. *Id.* at 1282 (quoting *Yerian v. Webber (In re Yerian)*, 927 F.3d 1223, 1227 (11th Cir. 2019)).

she lacked knowledge of the alleged fraud by using the same standard spelled out in (d)(1). To accompany this position, the Debtors also argued that the legislative history of the bankruptcy code and, more specifically, the subsection in question implemented a lack of knowledge requirement into (d)(2).⁴⁹ The Eleventh Circuit, however, held that these arguments were "unavailing" and that "[t]he statutory text and *statutory*—not legislative—history are dispositive."⁵⁰ Thus, the court turned to statutory interpretation to further consider the Debtors argument: "Where Congress includes particular language in one section of a statute but omits it in another, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."⁵¹ With this in mind, the Eleventh Circuit determined that despite Debtors' argument involving legislative history and necessitating an inquiry into the potential existence of laches, the Supreme Court had made clear that courts must "refrain from reading a phrase into the statute when Congress has left it out."⁵²

Next, the Debtors argued that the disclosure requirements placed on a Trustee in § 704(a)⁵³ create a lack of knowledge requirement in (d)(2).⁵⁴ The court swiftly shut this argument down, writing that even if a Trustee is expected to disclose knowledge of fraud in such statements, the disclosure would not serve to disallow a later revocation.⁵⁵

In conclusion, the Eleventh Circuit agreed with the bankruptcy court and the district court and, after a statutory analysis, found that because Congress included a "lack-of-knowledge" clause in the first part of the subsection, (d)(1), and not in the second part of the subsection, (d)(2), it was improper to read such a clause into the subsequent subsection.⁵⁶ Doing so would impair Congress's intent when drafting the statute. As a result, the Eleventh Circuit chose not to create new law and instead provided an unambiguous holding for an unambiguous subsection.⁵⁷

49. *Id.* at 1283.

50. *Id.* at 1284 (emphasis in original).

51. *Id.* (quoting *Keene Corp. v. United States*, 508 U.S. 200, 208 (1993)).

52. *Id.*

53. 11 U.S.C. § 704(a) (2020).

54. *Thompson*, 939 F.3d at 1285.

55. *Id.*

56. *Id.*

57. *Id.*

C. Roth and § 524's effect on "Information Statements"

In *Roth v. Nationstar Mortgage*,⁵⁸ the Eleventh Circuit considered a case that originated from the United States Bankruptcy Court for the Middle District of Florida which, for seemingly the first time, allowed the federal appeals court to implement *Taggart's* earlier ruling.⁵⁹ The Eleventh Circuit considered whether Nationstar violated the court ordered discharge in an attempt to collect a debt; additionally, the court considered whether to apply the Fair Debt Collection Practices Act (FDCPA) standard,⁶⁰ the "least sophisticated consumer."⁶¹

The case began like most other bankruptcy cases. The Roths filed for bankruptcy under Chapter 13 and received a discharge; this discharge included a mortgage which had been transferred to Nationstar and Nationstar was notified of the discharge.⁶² The discharge order granted to the Roths was standard and contained language such as

the discharge prohibits any attempt to collect from the debtor a debt that has been discharged. For example, a creditor is not permitted to contact a debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor.⁶³

The discharge order also included language that allowed a Debtor to voluntarily pay a discharged debt, as well as language that would allow a creditor to still have a right to enforce a lien on the property in question "if that lien was not avoided or eliminated in the bankruptcy case."⁶⁴

Shortly after the Roths received a discharge order from the bankruptcy court, Nationstar began sending monthly statements referencing the mortgage—despite the mortgage having been discharged less than six months earlier. These monthly statements stated that the letter was not an attempt at collecting a debt but the statement itself still included information such as amount due, due date, and directions to provide Nationstar with the payment. After filing for sanctions in the bankruptcy court alleging a violation of § 524, as well as a separate action alleging a violation of the FDCPA, Nationstar and the Debtors agreed to settle the claim. Nationstar,

58. 935 F.3d 1270 (11th Cir. 2019).

59. *Id.* at 1272–73.

60. 15 U.S.C. §§ 1692e–1692p (2020).

61. *Roth*, 935 F.3d at 1273.

62. *Id.*

63. *Id.*

64. *Id.*

however, continued to contact the Debtors.⁶⁵ Nationstar began sending "informational statements" with the same information as the previous statements and included a disclaimer stating that the statement was sent "for informational purposes only and [was] not intended as an attempt to collect, assess, or recover a discharged debt."⁶⁶

The Debtors then filed a suit against Nationstar in the United States District Court for the Middle District of Florida, alleging that Nationstar's conduct violated the FDCPA. Nationstar argued that the informational statement was not sent for the purpose of debt collections which the district court, after applying the FDCPA's "least sophisticated consumer" standard, denied. The parties then reached a settlement for the FDCPA claim. The Debtors also, however, filed a second motion for sanctions in the bankruptcy court, again alleging Nationstar violated the discharge order.⁶⁷ The bankruptcy court disagreed with the debtors, finding "the 'informational statement' was not a debt collection attempt, and therefore was not in violation of the § 524 injunction."⁶⁸ The Debtors appealed the bankruptcy court's decision to the district court, which affirmed the decision of the bankruptcy court, and then appealed the decision to the Eleventh Circuit.⁶⁹

The Debtors' contention on appeal, *inter alia*, was that the bankruptcy court incorrectly denied the second motion for sanctions against Nationstar because of differing interpretations of § 524.⁷⁰ The appellate court began its opinion by looking at the utilization of § 105 to punish violations of § 524: "[t]ogether, sections 524(a)(2) and 105(a) 'authorize a court to impose civil contempt sanctions [for attempting to collect a discharged debt] when there is no objectively reasonable basis for concluding that the creditor's conduct might be lawful under the discharge order.'"⁷¹ Continuing with explaining the standard with which to determine potential violations of discharges and subsequent sanctions, the Eleventh Circuit again quoted *Taggart*: "[i]n this way, 'a court may hold a creditor in civil contempt for violating a discharge

65. *Id.*

66. *Id.* at 1273–74.

67. *Id.* at 1274.

68. *Id.*

69. *Id.*

70. The Roths also argued that the bankruptcy court's decision not to allow an evidentiary hearing was improper and raised that issue on appeal as well. *Id.*

71. *Id.* at 1275 (quoting *Taggart*, 139 S. Ct. at 1801).

order if there is *no fair ground of doubt* as to whether the order barred the creditor's conduct."⁷²

With this newly minted standard in mind, the Eleventh Circuit sought to determine whether Nationstar's letters amounted to a prohibited attempt at a debt collection by considering "whether the objective effect of the creditor's action is to pressure a debtor to repay a discharged debt."⁷³ Looking to the communication sent to the Debtors by Nationstar, the court held that there are "several bases" for determining that "the objective effect" of the communication was not "to pressure [Roth] to repay a discharged debt."⁷⁴ The informational statement sent by Nationstar contained a disclaimer, printed in bold and on the first page, stating that the communication was for informational purposes only.⁷⁵ The disclaimer then states if the account "has been discharged in a bankruptcy proceeding" the communication is "for informational purposes only" and "is not an attempt to collect a debt."⁷⁶ Reasoning that because § 524 contained a provision which allowed a debtor to voluntarily pay back a discharged debt, the court determined that inclusion of details such as "amount due" and "due date," along with balance information, did not "diminish the effect of the prominent, clear, and broadly worded disclaimer."⁷⁷ If such informational statement were prohibited, the court reasoned, there would not be any other way for Nationstar to inform the Debtor of how to reacquire its collateral.⁷⁸ Therefore, because the informational statement sent by Nationstar contained an obvious disclaimer that removed the potential for such communication's being an attempt at collecting a debt, the Eleventh Circuit held the informational statement was "not designed to have the 'objective effect' of 'pressur[ing] the debtor to pay a discharged debt.'"⁷⁹

The Debtors then asked the court to incorporate the "least sophisticated consumer" standard from the FDCPA into § 524 for purposes of discharge violations.⁸⁰ The appellate court rejected this suggestion despite Debtors' argument that the mechanics of both sections are "designed to protect the same vulnerable parties from the

72. *Id.* (quoting *Taggart*, 139 S. Ct. at 1799) (emphasis in original).

73. *Id.* at 1276 (quoting *In re McLean*, 794 F.3d 1313, 1322 (11th Cir. 2015)).

74. *Id.* (quoting *In re McLean*, 794 F.3d at 1322).

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.* (quoting *In re McLean*, 794 F.3d at 1322).

80. *Id.* at 1276–77.

same improper conduct."⁸¹ Determining that there is a difference between the FDCPA and the bankruptcy code, the court held that the functions of the two laws are different; the FDCPA "seeks to help consumers" while the bankruptcy code "by way of contrast, creates and maintains what we have called the delicate balance of a debtor's protections and obligations."⁸² After concluding that neither statute suggests the employment of such standard in a § 524 context, the Eleventh Circuit rejected the Debtor's argument to do so.⁸³ In conclusion, because the court held that the informational statements were not attempts at debt collection under § 524, the court had no need to determine whether the newfound *Taggart* standard for § 105 applied to the case at hand.⁸⁴

II. LEGISLATION

A. *Small Business Reorganization Act of 2019*

Signed into law in August 2019, the Small Business Reorganization Act of 2019 (SBRA)⁸⁵ sent shockwaves across the bankruptcy industry—at last, an avenue carved out for small business owners to seek the potential benefits a reorganization plan may bring without having to journey into a "one-size-fits-all" approach that Chapter 11 had previously been viewed as. Unlike the other three bankruptcy bills signed into law on the same day,⁸⁶ the SBRA included an enactment clause that delayed the new law from taking effect until February 19, 2020. This new law seeks to expedite the process of Chapter 11 plans for small business debtors, resulting in quicker resolution and lower attorneys' fees.⁸⁷

81. *Id.* at 1277.

82. *Id.* (quoting *Midland Funding, LLC v. Johnson*, 137 S. Ct. 1407, 1414–415 (2017)).

83. *Id.* at 1277–78.

84. *Id.* at 1278.

85. Small Business Reorganization Act of 2019, Pub. L. No. 116-54, Aug. 23, 2019, 133 Stat. 1079, § 5 (2020).

86. The other three bills signed into law were: (1) the National Guard and Reservists Debt Relief Extension Act of 2019, which extended an exemption for an additional four years from the means-test presumption of abuse for qualifying members of the Armed Forces and National Guard called to active duty after September 11, 2001 for not less than 90 days. H.R. 3304. (2) The Honoring American Veterans in Extreme Need (HAVEN) Act of 2019, which excludes certain benefits earned by veterans from being considered as current monthly income under 11 U.S.C. § 101(10A). H.R. 2938. (3) The Family Farmer Relief Act of 2019, which increased the aggregate debt limit for filers who may be considered "family farmers" under 11 U.S.C. § 101(18) to \$10,000,000. H.R. 2336.

87. Pub. L. No. 116-54.

The Act adds new language, now subchapter V,⁸⁸ and begins by requiring a debtor who wishes to qualify as a "small business debtor" for the purposes of filing under the new subchapter V to make such election at the time of filing the petition.⁸⁹ Upon electing to be a subchapter V debtor, the debtor faces an accelerated timeline including: filing a pre-conference status report at least fourteen days prior to a mandatory status conference which must be no later than sixty days after entry for relief.⁹⁰ Additionally, no later than ninety days after the order for relief, the debtor must file a plan and then there must be twenty-eight days' notice to allow for creditors to determine whether to accept or reject and file objections to the proposed plan.⁹¹

Interestingly, subchapter V does not contain provisions for creditors' committees or require disclosure statements; additionally, if there are no objections to confirmation, a trustee only serves until the plan has been substantially consummated.⁹² A trustee shall be appointed by the United States Trustee and, according to the statute, will be compensated under 28 U.S.C. § 586,⁹³ the same statute that outlines how current Chapter 12 and Chapter 13 trustees are paid.⁹⁴ Overall, it appears that a trustee operating under subchapter V cases will work similarly to that of their Chapter 12 and 13 counterparts—to facilitate the reorganization process and represent the interests of the United States Trustee.⁹⁵

In conclusion, as stated previously, subchapter V was created to accelerate reorganization plans for small business debtors who qualify. A small business debtor under the plan is one who has at least 50% of debt arising from commercial or business activities and whose debts do not exceed the maximum amount found in § 101(51D),⁹⁶ currently \$2,725,625 with other exclusions.⁹⁷ The Act seems like it will make the bankruptcy process more accessible for small business debtors—there

88. Small Business Reorganization Act of 2019 §§ 1181–1195.

89. Small Business Reorganization Act of 2019 § 1187.

90. Small Business Reorganization Act of 2019 § 1188.

91. Small Business Reorganization Act of 2019 § 1189(b).

92. Small Business Reorganization Act of 2019 § 1183(c)(1). The United States Trustee still has the power to reappoint a trustee when necessary, such as for modification or when the debtor is removed from possession, despite the trustee's having been terminated due to substantial consummation.

93. 28 U.S.C. § 586 (2020).

94. 28 U.S.C. § 586(e)(1).

95. Small Business Reorganization Act of 2019 §§ 1181–1195.

96. 11 U.S.C. § 101(51D) (2020).

97. *Id.*; Small Business Reorganization Act of 2019, Pub. L. No. 116-54, Aug. 23, 2019, 133 Stat. 1079, §§ 101, ¶ 2 (2020).

are no disclosures, no committees, and no absolute priority rule to take into consideration. This new law can and likely will make filing such plans more cost efficient for small business debtors and allow them the opportunity to seek the fresh start that the bankruptcy code exists to offer. However, because it is a new law and as such, a new procedure unfamiliar to both judges and attorneys, there really is no way to truly understand how subchapter V will affect the bankruptcy bar until cases begin to be filed and the courts have an opportunity to hear arguments. Until then, we will simply appreciate the efforts made to streamline the bankruptcy code as well as the attempts to alleviate some of the potential difficulties faced by small business owners.

