**A View from the Bench:**

**Practical Insights on Small Business, Real Estate, and Subchapter V proceedings.**

**Presented by:**

**U.S. Bankruptcy Judge Lisa Beckerman, U.S. Bankruptcy Court Southern District of New York**

**U.S. Bankruptcy Judge Elizabeth Stong, U.S. Bankruptcy Court Eastern District of New York**

**Moderator:**

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**Small Business, Subchapter V and Real Estate Issues - Materials Prepared by: Wanda Borges, Esq.,**

**Eligibility to Proceed Under Subchapter V Based on Debt Amounts**

Do contingent lease liabilities and Lease Rejection Damage Claims count toward the Subchapter V debt limit? The courts are divided. These cases have discussed this issue.

**In Re Parking Management, Inc., 620 B.R. 544 (Bankr. MD 2020)**

This case involved not only lease rejection damage claims but a PPP loan. The lease rejection damages amounted to $1.7 million for the rejection of 12 parking lot leases. Because the leases were rejected post-petition, the court determined that the damage claim was contingent, did not exist as of the petition date and should not be included in the calculation of the amount of debt in determining eligibility for Subchapter V. The court also found the PPP loan for $1.8 million to be an unliquidated claim. Accordingly, the debtor was eligible to proceed under Subchapter V.

**In re: Macedon Consulting, Inc., 652 B.R. 480 (Bankr. E.D. VA 2023)**

Macedon is an information technology solutions provider. As of the date of the petition, Macedon was the tenant in two commercial leases for office space. Simultaneously with the filing of the petition on February 28, 2023, Macedon filed a motion to reject both commercial leases. In response to that motion, the landlords filed a motion to dismiss, arguing that Macedon is ineligible to be a Subchapter V because the lease rejection claims amounted to $14,390,820. The Court granted Macedon’s rejection motion and denied the Landlord’s motion to dismiss, finding there was neither bad faith nor objective futility. However, the court determined that the leases were noncontingent and liquidated. The debt to the landlords arose pre-petition and the debt amount exceeded the Subchapter V eligibility limit. The court revoked the Subchapter V designation and converted this case into a regular chapter 11 case.

**In re Zhang Medical P.C. d/b/a New Hope Fertility Clinic, 655 B.R. 403 (Bankr S.D.NY 2023)**

This court disagreed with the Macedon decision but found the debtor to be ineligible to proceed as a Subchapter V because the pre-petition debts (without any consideration of rejection damage claims) exceeded the $7.5 million limit which was then in effect. In addressing the Macedon issue, the court concluded that “contrary to *Macedon Consulting*, a debtor’s future payment obligations under its unexpired leases and executory contracts should rarely, if ever, be counted toward the Subchapter V debt cap.” In declining to follow the *Macedon* decision, the court said, “In the Court's view, that decision overlooks the distinctive nature of a debtor's obligations under its executory contracts and unexpired leases, which differ in key respects from other debtor obligations.”

**In Re Burdock and Associations, Inc., 662 B.R. 16 (Bankr M.D.FL 2024)**

Burdock is an international safety and regulatory compliance consulting firm. Paydirt, a creditor had sued Burdock for an excess of $14 million claiming damages for breach of contract resulting in loss of “expected revenue”. The California District Court determined that Paydirt could not recover “expected revenue” but was entitled to “lost profits” under Florida law, where Burdock was located. Burdock filed its Subchapter V petition listing Paydirt’s claim in an “unknown” amount and stating that the Paydirt claim was unliquidated and contingent. Paydirt filed a proof of claim (the “Claim”) seeking a total of $14,010,742 in damages for “expected revenue”. Burdock objected to the claim and filed its Subchapter V Plan proposing to pay creditors, including Paydirt, with proceeds anticipated to be received from Burdock’s claim against its insurance carrier. Paydirt moved for summary judgment on the issue of Burdock’s eligibility to proceed with its Subchapter V case based on Paydirt’s claim of $14,010,742. Paydirt insisted that its claim is liquidated because it is contractual and readily calculated despite Burdock’s objection thereto. The Bankruptcy Judge opined on the question of “liquidated” claim noting that while a contractual claim can be readily ascertained, Paydirt’s claim was in the nature of a tort claim and “Tort claims, on the other hand, are generally unliquidated because they involve “the future exercise of discretion, not restricted by specific criteria.” *Citing Verdum 89 F.3d at 802.* Having found Paydirt’s claim to be unliquidated, it Court denied Paydirt’s motion for summary judgment. Therefore, Burdock met the eligibility requirements of Subchapter V. The Court also determined that Burdock met all the confirmation requirements of §1191(d).

**Revocation of Subchapter V and/or Small Business Designations**

**In re Wilson, 666 B.R. 828 (Bankr M.D. BA 2024)**

The Debtor, Christopher Mark Wilson is an individual who filed a bankruptcy petition and elected to proceed under Subchapter V of Chapter 11. At the time of the bankruptcy filing, Wilson had been involved in a hotly contested lawsuit pending in the U.S. District Court for the Middle District of North Carolina and had assumed responsibility for legal fees in excess of $300K. Wilson filed his chapter 11 proceeding because of the mounting costs of the litigation and to “secure [creditors] some sort of payback.” Creditor McGriff filed its Motion to Dismiss the Subchapter V Chapter 11 arguing that the Subchapter V case was not filed in good faith and that the Debtor “is ineligible to qualify as a debtor under subchapter V because 1) he was not engaged in commercial or business activities on the petition date, 2) he has not shown that not less than 50 percent of his debts arise from commercial or business activities and, 3) his debts did not arise from his commercial or business activities.” 11 U.S.C. § 101(51D)(A)

defines a small business debtor as “a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning single asset real estate) that has 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 $3,024,725 (excluding debts owed to 1 or more affiliates or insiders) not less than 50 percent of which arose from the commercial or business activities of the debtor.” The Bankruptcy Court found that Wilson was engaged in commercial or business activities. However, the Court also found that Wilson’s debts arose, primarily from the McGriff litigation which was a two-party dispute. Therefore, Wilson could not meet the 50 percent debt provision and was ineligible to remain a Subchapter V debtor. Wilson was permitted to remain in bankruptcy as a traditional chapter 11.

**In re National Small Business Alliance, Inc., 642 B.R. 345 (Bankr D.C. 2022)**

This was a case of first impression decided by Judge Elizabeth I. Gunn in 2022. Noting that the purpose of Subchapter V was “to streamline the process by which small business debtors reorganize and rehabilitate their financial affairs” H.R. Rep.No. 116-71, at 1 (2019) Judge Gunn found this case to have been “anything but streamlined.” The case was filed on January 31, 2021, and the Debtor was to have submitted a Plan by May 1, 2021. That didn’t happen. The Debtor operated a membership-based business that provides referrals, marketing assistance, and other

support services to its member small businesses (the “Members”). At all times during this case, the Debtor has had between 700 and 750 Members. The Debtor was dispossessed in April 2021 and by April 2022 had filed five plans, none of which were confirmable. On April 18, 2022, the Court issued an Order revoking the Subchapter V election. The case was converted to a traditional chapter 11 proceeding, and a chapter 11 trustee was appointed.

**Plan Confirmation Issues**

**In re Premier Glass Services, LLC, 664 B.R. 465 (Bankr N.D. IL 2024)**

The Debtor, a commercial glass repair business sought confirmation of its non-consensual Subchapter V plan over the objection of a competitor/creditor. Bankruptcy Code §1191 requires a non-consensual Subchapter V plan to be “fair and equitable”. To satisfy that provision, it is required “that the Plan adequately commits all disposable income to making payments for the life of the plan.” c*iting In re Channel Clarity Holdings, LLC.,*  No. 21-07972, 2022 WL3710602, at 15\* (Bankr N.D. Ill. July 19, 2022). §1191(d) defines “disposable income” as “the income that is received by the debtor and that is not reasonably necessary to be expended… for the payment of expenditures necessary for the continuation, preservation, or operation of the business of the debtor.”

**In Re Burdock and Associations, Inc., 662 B.R. 16 (Bankr M.D.FL 2024)**

*SEE SUMMARY ABOVE*

While Paydirt filed its motion for summary judgment on the eligibility issue, Burdock filed a motion to cramdown its plan over the objection of Paydirt, its creditor. Simultaneously with denial Paydirt’s motion for summary judgment as to eligibility, the Court granted Burdock’s motion and approved confirmation.

**Discharge and Dischargeability Issues**

**Benshot LLC v. 2 Monkey Trading LLC (In re 2 Monkey Trading, LLC) 2025 WL 1892380 (11th Cir. 2025).**

In a Sub Chapter V case 11 U.S.C. 1192 deals with discharge of debts. Among those debts that are discharged are those debts listed in 11 U.S.C. 523, which are normally non-dischargeable in a Chapter 7 case. However, 11 U.S.C. 523 only lists debts that are nondischargeable for an individual. That makes sense because in Chapter 7, only an individual can get a discharge. Individuals refer only to living people and not legal fictions.

Notwithstanding this language, subchapter 11 debtors’ bar has been relentless in their claim that corporations in non-consensual plans are entitled to a discharge of the debts listed in 11 U.S.C. 523, and many bankruptcy courts have agreed.

On July 9, 2025, the Court of Appeals for the 11th Circuit became the third court of appeals to hold that corporations in subchapter V seeking to confirm a non-consensual plan are not entitled to discharge of the types of debts listed in 11 U.S.C. 523.

The Court sided with the specific language and the context of the statute. To interpret 11 U.S.C. 523 otherwise would violate the cannons of surplusage and would conflict with 11 U.S.C. 1141.

This is still a close question because there was a strong dissent in this case. However, three may be the charm. The Court of Appeals for the 11th Circuit does reach the same conclusion as the Courts of Appeals for both the 4th and 5th Circuits. *Cantwell-Cleary Co. v. Cleary Packaging LLC (In re Cleary Package, LLC)* 36 F. 4th 509 (4th Cir. 2022) and *Avion Funding, LLC v. GFS Indus LLC* (*In re GFS Indus. LLC)* 99 F.4th 223 (5th Cir. 2024). (Synopsis contributed by Ron Peterson and reprinted from CLLA CLW Issue 3 – 2025)

**Appointment of Creditors’ Committee in Subchapter V Cases**

**In re Cinemex Holdings USA, Inc., CMX Cinemas, LLC and CB Theater Experience LLC., (2025 WL 2489585, S.D. FL August 28, 2025)**

This is a Subchapter V proceeding filed by Cinemex *etal* following a successful confirmation of a chapter 11 Plan filed by the same debtors. That case resulted in an Asset Sale of Cinemex Holdings’ new common stock to Wine and Roses, S.A. de C.V. (“Wine & Roses”), which was, at the time, an affiliate of the Debtors because both Wine & Roses and the Debtors were affiliates of Entretenimiento GM de Mexico S.A. de C.V. (“Entretenimiento”). The Plan went effective on December 18, 2020 (Case No. 20-14695-LMI, ECF #973). On June 25, 2025, the Debtors filed the current Subchapter V bankruptcy. The Debtors operate 28 movie theaters in eight different states, leasing each of those 28 premises. As of the petition date, the Debtors claim total non-contingent, liquidated, non-affiliate obligations of approximately $1.9 million and a $50 million secured claim held by the parent company, Wine and Roses. MN Theaters, a creditor, has filed a Motion for the Appointment of a Creditors Committee, arguing that “strong cause” exists because “(1) there is a question of the Debtors’ eligibility for Subchapter V3; (2) unsecured creditors have no unified voice or representation in the absence of an official committee; and (3) the $50 million secured claim of the Debtors’ parent (Wine & Roses) should be investigated by a committee because that debt may be recharacterized as equity.” Judge Isicoff acknowledged that a determination of “cause” is within the discretion of the court, *See In re Wildwood Villages, LLC*, 2021 WL 1784408, at \*4 (Bankr. M.D. Fla. 2021). The one case cited by MN Theaters had 10,000 members who had no voice in the case. This is contrasted to the instant case where there are a few hundred creditors and a Subchapter V trustee has been appointed who can investigate the Wine and Roses claim. The court examined a non-exclusive list of factors to be considered –

(a) the size and complexity of the case (whether the case is one which more closely resembles a traditional chapter 11 case);

(b) the number of creditors involved in the case and the nature of their debt;

(c) the nature of the debtor’s assets;

(d) the nature of the debtor’s business and how it is regulated;

(e) the amount of secured debt, the number of secured creditors, and the nature of the collateral in which such creditors assert a lien;

(f) whether and to what extent any other creditor or other party in interest supports the relief requested;

(g) whether there are any other factors present in the case which, notwithstanding section 1183(b)(2), would interfere with the ability of the Subchapter V trustee to perform his or her normal statutory duties effectively.

Applying these factors, and the fact that no other creditor joined in the motion, the court found that MN had not established sufficient cause for the appointment of creditors’ committee.

**Must Subchapter V Debtors “True Up” Their Disposable Income?**

**In re Packet Construction, LLC. , (2024 WL 1926345 W.D. TX, 2024)**

This case discussed the question of whether or not a Subchapter V debtor should be required to true up their plan payments if actual income exceeds disposable income.The trustee initially objected to Plan Confirmation on several bases but most of those were resolved, the objection to the proposed plan payments stated: “**Projections v. Actual Disposable Income**: Debtor should be directed to pay actual income to creditors to the extent projected disposable income as stated in the Plan exceeds projected income. *See, In re Staples*, 2023 W.L. 11943 (M.D. Fla. Jan. 6,

2023). Upon confirmation, the Court should require Debtor to “true up” actual disposable income – to reflect any increase above the projected disposable income and make actual net disposable income available to creditors. Debtor should be required to provide semi-annual or annual financials to the Sub V Trustee if the Plan is confirmed under § 1191(b), whereupon the Sub V Trustee will recommend increase of disposable income payments if financials reflect an increase in disposable income over Projections. If Debtor disagrees, the issue can then be

presented to the Court for resolution.” The Court discussed the requirement for the debtor’s **projected** “disposable income” to be distributed under the Plan and said that to require a “true up” would remove the “future-looking element indicated by the word ‘projected’.” There is only one reported case on this topic (see below). The court found no special circumstances in this case which would require a “true up”. The court noted specifically that only the debtor can modify the Plan in the future. Therefore, finding no basis, the court denied the trustee’s objection to the Plan and did not mandate a “true-up”.

**In re Staples, 2023 WL 119431 (M.D. Fl. 2023)**

The Debtor in this case had confirmed a Subchapter V Plan. Thereafter, the Bankruptcy Court issued a “Corrective Order” requiring the debtor to prepare quarterly reports on a post-confirmation basis and required that “[T]he distributions to Class 7 unsecured creditors

will be based upon the Debtor's actual disposable income as reflected on the quarterly operating reports.” Instead of based on projected disposable income. The Debtor appealed and said that these requirements conflict with 11 U.S.C. §§ 1191(d), 1191(c)(2)(a), and 1191(c)(2)(b), and that the Bankruptcy Court had no legal authority to impose the requirements. The District Court did not discuss the reasons behind the Bankruptcy Court’s decision but opined on the authority of the Bankruptcy Court to issue such a ruling. The District Court found that the Bankruptcy Court has authority under 11 U.S.C. §105 and the “All Writs Act” [The All Writs Act provides:

“The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. § 1651(a).] The District Court found that the challenged provisions in the “Corrective Order” “were clearly necessary and appropriate under the facts of this case.”

**Discharge does not equal Extinguishment**

**In re Dynamic Offshore Resources NS, L.L.C., 2025 WL 1651901 (5 CA 6/11/2025)**

**QuarterNorth Energy (QuarterNorth)—which was substituted for Fieldwood** Energy (Fieldwood) as the plaintiff in the underlying litigation—sought a declaration that Fieldwood's Chapter 11 reorganization plan extinguished statutory privileges held by Atlantic Maritime Services (Atlantic) over non-debtor property.1 The bankruptcy court entered judgment in favor of QuarterNorth, declaring that Atlantic's privileges “were extinguished by the ‘satisfaction’ and ‘settlement’ language in Fieldwood's Plan.” Atlantic appealed. The 5th Circuit Court of Appeals reversed the Bankruptcy Court’s judgment and remanded for further decision. The Court examined the terms “satisfaction” and “settlement” and held that “the terms ‘satisfaction’ and ‘settlement’ do nothing more than discharge the debtor's liability.” The Circuit Court said further that “the bankruptcy court was correct in its initial ruling when it concluded that the terms “satisfaction and settlement” were “colloquial terms dealing with a discharge.”

Finally, the Circuit Court stated that the “reorganization plan clearly does not render Fieldwood's obligation to Atlantic extinct; it merely discharges Fieldwood's liability for the debt.”