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November 18, 2021 12:00 pm – 1:00 pm

Subchapter V – Small Business Reorganization:

Practice Pointers and Strategies Part II (CLE 2108906N)

## What We Covered in Part I

- Goal of Subchapter V
- Key Considerations before filing Subchapter V Case
- Qualifications to make for Subchapter V Election
- Administration of a Subchapter V Case

## Creditor considerations during the early stages of a Subchapter V case

- Objection to Subchapter V Election --  
Fed. R. Bank. P. 1020
- Removal of a Debtor in Possession--  
11 U.S.C. § 1185

**LIQUIDATION ANALYSIS IN CONNECTION WITH PLAN OF REORGANIZATION FOR PLUMBING PROFESSIONALS OF FLORIDA, INC.**

**Statement of Assets**

	Chapter 11 Plan Value	Liquidation Value	Notes
Cash in Bank Accounts	\$94,000.00	\$94,000.00	1
Warehouse Security Deposit	\$1,667.00	\$0.00	
Accounts Receivable	\$160,000.00	\$80,000.00	2
Office Equipment	\$1,500.00	\$0.00	3
Vehicles and Equipment	\$363,682.00	\$181,841.00	4
Inventory	\$10,000.00	\$5,000.00	5
<b>Total Assets</b>	<b>\$630,849.00</b>	<b>\$360,841.00</b>	

**Statement of Liabilities**

**Administrative Expense Claims**

	Amount		
Debtor's Professional Fees	\$25,000.00	\$25,000.00	6
Subchapter V Trustee Fees	\$5,000.00	\$5,000.00	7
Estimated Liquidation Costs	\$0.00	\$3,000.00	8, 9
<b>Total Administrative Expense Claims</b>	<b>\$30,000.00</b>	<b>\$33,000.00</b>	

**Secured Claims**

	Amount		
Swift Financial, LLC	\$27,232.26	\$27,232.26	
Mulligan Funding, LLC	\$64,124.98	\$64,124.98	
Kabbage	\$3,243.00	\$3,243.00	
Ford Motor Credit Company, LLC	\$227,872.00	\$227,872.00	
Kalamata Capital Group, LLC	\$112,641.20	\$112,641.20	
Western Equipment Finance	\$124,000.00	\$124,000.00	
Small Business Administration/Cross River Bank (PPP Loan)	\$111,000.00	\$111,000.00	
<b>Total Secured Claims</b>	<b>\$670,113.44</b>	<b>\$670,113.44</b>	10

<b>Priority Claims</b>	\$0.00	\$0.00	11
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<b>General Unsecured Claims</b>	\$602,000.00	\$602,000.00	12
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AMOUNT PAYABLE TO UNSECURED CREDITORS IN CHAPTER 11: \$64,000.00

AMOUNT PAYABLE TO UNSECURED CREDITORS IN CHAPTER 7: \$0.00


# Contents of a Subchapter V plan

	Jan20	Feb20	Mar20	Apr20	May20	June20	2020 TOTAL	POR PLAN TOTAL
<b>Beginning Cash</b>	2,326	2,579	2,332	2,585	2,338	2,091		
<b>Total Gross Revenue</b>	128,810	128,810	128,810	128,810	128,810	128,810	772,860	7,475,185
<b>Operating Expenses</b>								
Payroll	67,349	67,349	67,349	67,349	67,349	67,349	404,094	3,908,451
Auto Insurance	4,417	4,417	4,417	4,417	4,417	4,417	26,502	256,296
Workers Comp Insurance	4,417	4,417	4,417	4,417	4,417	4,417	26,502	256,296
General Liability Insurance	5,682	5,682	5,682	5,682	5,682	5,682	34,085	328,755
Benefits	4,117	4,117	4,117	4,117	4,117	4,117	24,702	254,496
Supplies/Materials	18,562	18,562	18,562	18,562	18,562	18,562	99,372	963,099
Misc. Operating Expenses	14,905	14,905	14,905	14,905	14,905	14,905	89,430	864,965
<b>Total Operating Expenses</b>	117,449	117,449	117,449	117,449	117,449	117,449	704,697	6,125,682
<b>Plan Payments</b>								
Administrative Expense Claims								
Subchapter V Trustee	-	-	-	-	-	-	-	5,000
Scholar, Riedel, Blain & Postier, P.A.	-	-	-	-	-	-	-	25,000
Priority Tax Claims	-	-	-	-	-	-	-	-
<b>Secured Claims</b>								
Class 1 - Priority Claims								
Class 2 - Swift Financial, LLC	351	351	351	351	351	351	2,104	33,875
Class 3 - Mulligan Funding	826	826	826	826	826	826	4,955	75,044
Class 4 - Kabbage								3,243
Class 5 - Ford Motor Credit	4,197	4,197	4,197	4,197	4,197	4,197	25,180	251,797
Class 6 - Kalamata Capital	1,451	1,451	1,451	1,451	1,451	1,451	8,705	130,575
Class 7 - Western Equipment Finance	2,284	2,284	2,284	2,284	2,284	2,284	13,702	137,019
Class 8 - SBA (PPP)								-
<b>Total Administrative, Priority Tax, Priority, and Secured Claims</b>	9,108	9,108	9,108	9,108	9,108	9,108	54,646	525,067
<b>Funds Available</b>	4,579	4,832	4,585	4,838	4,591	4,344	13,518	829,436
<b>Class 9- Unsecured Creditors</b>	2,000	2,500	2,000	2,500	2,500	2,000	13,500	64,094
<b>Ending Cash</b>	2,579	2,332	2,585	2,338	2,091	2,344		

- History of business operations
- Liquidation analysis
- Plan projections

- Consensual Confirmation
  - What requirements must be met for consensual confirmation?
  - What if no impaired creditors vote to accept?
    - *In re Robinson*, 2021 WL 3713850 (Bankr. D. Kan. Aug. 2021)
  - Role of Sub V Trustee in facilitating a consensual confirmation
    - (*In re: 218 Jackson, LLC*, 631 B.R. 937 (Bankr. M.D. Fla. 2021))

## Benefits of a Consensual Plan

- Benefits of a consensual confirmation (from debtor perspective)
    - Discharge upon confirmation
    - Control over plan payments
    - Sub V trustee is discharged of his/her duties
    - Case is closed
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## How does the debtor confirm a plan?


- Nonconsensual Confirmation
  - As to secured creditors, must satisfy § 1129(b)(2)(A)
  - As to unsecured creditors, if it is fair and equitable
    - Distributes projected disposable income for the first 3 or 5 years of the plan
  - Benefits of nonconsensual confirmation (from creditor perspective)
    - Sub V trustee's duties continue
    - Sub V trustee administers plan payments unless the plan provides otherwise and court approves it
    - Plan must provide for default remedies
    - No discharge until all plan payments are made

## Post-Confirmation Modifications


- Can you convert a non-consensual plan to a consensual plan by modifying it post-confirmation
  - *In re North Tampa Anesthesia Consultants, P.A.*



## Practice Pointers for Debtor's Counsel

- File before large claims are liquidated
  - Don't let the debtor sell/transfer substantially all assets prepetition
  - Look for lien stripping opportunities in individual cases
  - Include reporting requirements for projected disposable income plan
  - Object to claims prior to confirmation
  - Communicate with Sub V Trustee
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## Practice Pointers for Creditor's Counsel

- Don't wait on eligibility issues. Start analysis early
  - Consider use of Sec. 1111(b)
  - Negotiate specific plan default remedies in exchange for consensual plan treatment
  - Consider 523(a) exceptions to discharge in corporate cramdown cases
  - Negotiate timing of discharge in consensual case
  - Communicate with Sub V Trustee
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## Comparison of Chapter 11 Options

Traditional Chapter 11	Small Business Chapter 11 (Non-Sub-V)	Subchapter V Chapter 11
No eligibility restriction	Applies to all "small business debtors" that do not elect Subchapter V	Most debtors with less than \$7.5 million in non-contingent, liquidated debt are eligible
No independent trustee	No independent trustee	Subchapter V trustee appointed
U.S. Trustee fees required	U.S. Trustee fees required	
Committee can be appointed by US Trustee	Committee can be appointed by US Trustee	No committee appointment unless ordered by court
No hard plan filing deadline (but exclusivity may terminate)	Deadline to file plan: 300 days after petition	Deadline to file plan: 90 days after petition
Disclosure statement required	Disclosure statement required	No disclosure statement required
Confirmation of plan requires at least one impaired accepting class	Confirmation of plan requires at least one impaired accepting class	Plan can be confirmed even if all classes reject it
Discharge occurs at confirmation	Discharge occurs at confirmation	Discharge occurs at end of plan payments in non-consensual plans

## QUESTIONS?

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