

The Bankruptcy Unwave: The Ongoing Impact of COVID-19 on all Things Legal

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American Rescue Plan Act of 2021

▶ Became Law on 3/11/2021 provides/provided additional relief to address the continued impact of COVID-19 on the economy, public health, state and local governments, individuals, and businesses

▶ Sec. 1001

▶ FY 2021 funding to the Dept of Agriculture

▶ Grants and loans for small or mid-sized food processors or distributor, seafood processing facilities and processing vessels, farmers markets, producers

▶ To respond to COVID-19 Foreclosure

▶ Provide grants, loans and other assistance to

▶ Maintain and Improve food and agricultural supplier

American Rescue Plan Act of 2021

▶ Sec. 1004

▶ Funding through FY 2022 to the Office of the Inspector General of USDA

- ▶ Audits, investigations

- ▶ Other oversight activities of projects and activities related to the COVID-19 pandemic

American Rescue Plan Act of 2021

▶ Sec. 1005

- ▶ Funding for USDA to pay off outstanding farm loan debts of socially disadvantaged farmers and ranchers.
- ▶ Requires USDA to use specified amounts of the funding to
 - ▶ Conduct animal surveillance and monitoring related to COVID-19
 - ▶ Reduce overtime inspection costs borne by federally inspected small and very small meat, poultry or egg processors

American Rescue Plan Act of 2021

▶ Sec. 9651

▶ Allows employers whose businesses were affected by the COVID-19 pandemic and who experienced a reduction of gross receipts due to the pandemic a payroll tax credit for 70% of employee wages in a calendar quarter

▶ Credit may not exceed \$50,000 for startup businesses and the amount of employee wages taken into account for purposes of the credit

▶ May not exceed \$10,000 in any calendar quarter

▶ Applies to wages paid after June 30, 2021 and before January 1, 2022

Commercial Eviction and Foreclosure Proceedings

- ▶ Temporary rules promulgated by many states to protect commercial businesses from eviction and foreclosure proceedings.
- ▶ New York “COVID-19 Emergency Protect our Small Businesses Act of 2021. No longer effective as of January 16, 2022.
- ▶ California “Tenant, Homeowner and Small Landlord Relief and Stabilization Act of 2020. Ended on September 30, 2021
- ▶ Governor Executive Orders placed temporary moratorium on these actions. Most have now been lifted.

Commercial Eviction and Foreclosure Proceedings

- ▶ Will Single Asset Real Estate Filings become necessary to protect
 - ▶ landlords
 - ▶ Restaurants
 - ▶ others?
- ▶ Have *force majeure* clauses hurt or helped businesses - a debate?

The Snowball Effect

- ▶ One Chapter 11 may lead to others
- ▶ H.H. Gregg shuttered many retail locations
- ▶ Washington Place Indiana (a landlord of H.H. Gregg) put into Receivership and compelled to file Chapter 11
 - ▶ Is this a single asset real estate filing?
- ▶ Will Single Asset Real Estate Filings become necessary to protect
 - ▶ landlords
 - ▶ Restaurants
 - ▶ others?
- ▶ Have *force majeure* clauses hurt or helped businesses - a debate?

Small Business Reorganization Act (Sub-Chapter V)

- ▶ COVID-19 Bankruptcy Relief Extension Act, extended the increased debt limit to \$7.5 million

 - ▶ Expired on March 31, 2022

 - ▶ Sub-Chapter V debt limits now reverted to \$2,725,625

- ▶ Bankruptcy Threshold Adjustment and Technical Corrections Act [S.3823]

 - ▶ Introduced to make the \$7,500,000 threshold permanent

 - ▶ Amended to extend for two more years to March 31, 2024

 - ▶ Extension will be retroactive to March 31, 2022

 - ▶ Passed by the U.S. Senate on April 7, 2022

 - ▶ Awaiting House Passage and Signature by the President

- ▶ Will Sub-Chapter V filings increase or decrease if the limit is extended - a debate?

Chapter 11 Filings in 2022

- ▶ Commercial Chapter 11 filings in January and February 2022 were less than one-half the number of filings for those months in 2021
- ▶ 1,805 total commercial filings in March represented a 26 percent increase from the 1,428 total commercial filings during the previous month.
 - ▶ Commercial chapter 11 filings increased 38 percent in March to 292 from the 203 commercial chapter 11 filings in February.
 - ▶ Small business filings, captured as subchapter V elections within chapter 11, increased 51 percent to 178 in March from 118 in February.
- ▶ The 81 subchapter V elections filed during the week of March 21 represented the highest weekly total ever, eclipsing the previous record of 71 filed during the same week last year.

The Effect of Supply Chain Issues on Bankruptcy Filings

- ▶ **Which came first?**
 - ▶ Did inflation cause the supply chain issues?
 - ▶ Did the supply chain issues cause inflation?
- ▶ **Inflation increases**
 - ▶ Will they continue
 - ▶ How has the U.S. Economy been impacted by the war in Ukraine

Does a Personal Guarantor Qualify as a Small Business under the SBRA?

- ▶ A personal guarantor may be deemed to be
 - ▶ Engaged in commercial or business activities
 - ▶ An affiliate of A small business corporation or LLC
 - ▶ Some filings by individuals have been contested

Increases in Chapter 11 Proceedings with NO New PPP or Stimulus Programs in Sight

- ▶ Paycheck Protection Program helped many small and large businesses keep their doors open during the pandemic
 - ▶ A look at how the Bankruptcy Courts viewed PPP loans and eligibility for chapter 11 debtors
 - ▶ Will there be an increase in chapter 11 filings now that there are no new PPP loans in sight?

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