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April 6, 2020

MEMORANDUM

TO: Honorable David G. Campbell, Chair
Standing Committee on Rules of Practice and Procedure

FROM: Honorable Dennis R. Dow, Chair Dennis R. Dow
Advisory Committee on Bankruptcy Rules

RE: ISSUANCE OF INTERIM BANKRUPTCY RULE IN RESPONSE TO THE CARES ACT

On March 27, Congress passed and the President signed into law the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). Section 1113 of that legislation made several changes to the Bankruptcy Code, most of them temporary, to provide financial assistance during the coronavirus crisis.

The enactment of the CARES Act requires amendments to be made to one bankruptcy rule and five official forms to account for a new definition of "debtor" applicable to subchapter V of chapter 11 and a new exclusion from the definitions of "current monthly income" and "disposable income." Because the Act took effect immediately upon enactment and its bankruptcy provisions are of limited duration, the Advisory Committee seeks to propose an interim local Rule 1020 that can be adopted by each judicial district. The Advisory Committee also has exercised the authority delegated to it by the Judicial Conference to make conforming technical changes to five bankruptcy forms (Official Forms 101, 122A-1, 122B, 122C-1, and 201). Because the CARES Act is already in effect, those forms have been posted on the judiciary's public website (uscourts.gov) for

immediate use, and will be presented to the Standing Committee for review and approval at its June meeting.

The CARES Act modifies the definition of "debtor" for determining eligibility to proceed under subchapter V of chapter 11. Previously, § 1182(1) defined "debtor" under subchapter V as "a small business debtor." A "small business debtor" is defined in § 101(51D) and requires that the prospective debtor have "aggregate noncontingent liquidated secured and unsecured debts . . . in an amount not more than $2,725,625" (a figure subject to adjustment every three years under § 104). Under the CARES Act, § 1182(1) was amended to include a separate definition of "debtor" for subchapter V purposes that is identical to the definition of "small business debtor" in all respects except that the debt limitation is $7,500,000. The CARES Act also amended § 103(i) to provide that subchapter V of chapter 11 applies to a "debtor (as defined in section 1182(1))" who elects such treatment, rather than a "small business debtor" who so elects. The definition of "debtor" in § 1182(1) will revert to its prior version one year after the effective date of the CARES Act.

Bankruptcy Rule 1020 provides procedural rules for "small business chapter 11 reorganization cases." In response to the enactment of the Small Business Reorganization Act of 2019, which took effect in February, and after review and approval by the Advisory Committee, Standing Committee, and the Judicial Conference Executive Committee, all districts have adopted an interim Rule 1020 that reflects the new option for a small business debtor of proceeding under subchapter V of chapter 11. Now, in response to the CARES Act, that interim rule must be modified for one year to include references to "a debtor as defined in § 1182(1) of the Code." Although a small business debtor (debts not more than $2,725,625) will always satisfy the definition of debtor in § 1182(1) (debts not more than $7,500,000), a debtor's status as a small business debtor must still be designated because special provisions of the Code apply to such debtors who do not elect to proceed under subchapter V of chapter 11. The text of the proposed interim rule is attached to this report.

Action Item: The Advisory Committee recommends that amendments to the existing interim Rule 1020 be approved as set out in the attachment to this report and that the Standing Committee request approval from the Executive Committee of the Judicial Conference to distribute the amended interim rule to the district and bankruptcy courts for adoption.

Attachment

Rule 1020. Chapter 11 Reorganization Case for Small Business Debtors or Debtors Under Subchapter V

(a) ~~SMALL BUSINESS~~ DEBTOR DESIGNATION. In a voluntary chapter 11 case, the debtor shall state in the petition whether the debtor is a small business debtor or a debtor as defined in § 1182(1) of the Code and, if the latter ~~so~~, whether the debtor elects to have subchapter V of chapter 11 apply. In an involuntary chapter 11 case, the debtor shall file within 14 days after entry of the order for relief a statement as to whether the debtor is a small business debtor or a debtor as defined in § 1182(1) of the Code and, if the latter ~~so~~, whether the debtor elects to have subchapter V of chapter 11 apply. The status of the case as a small business case or a case under subchapter V of chapter 11 shall be in accordance with the debtor's statement under this subdivision, unless and until the court enters an order finding that the debtor's statement is incorrect.

(b) OBJECTING TO DESIGNATION. The United States trustee or a party in interest may file an objection to the debtor's statement under subdivision (a) no later than 30 days after the conclusion of the meeting of creditors held

under § 341(a) of the Code, or within 30 days after any amendment to the statement, whichever is later.

(c) PROCEDURE FOR OBJECTION OR DETERMINATION. Any objection or request for a determination under this rule shall be governed by Rule 9014 and served on: the debtor; the debtor's attorney; the United States trustee; the trustee; the creditors included on the list filed under Rule 1007(d) or, if a committee has been appointed under § 1102(a)(3), the committee or its authorized agent; and any other entity as the court directs.

Committee Note

The interim rule is amended in response to the enactment of the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), Pub. L. No. 116-136, 134 Stat. 281. That law provides a new definition of "debtor" for determining eligibility to proceed under subchapter V of chapter 11. Subdivision (a) of the rule is amended to reflect that change. This amendment to the Code will terminate one year after the date of enactment of the CARES Act.