

Subchapter V vs. Chapter 13

Moderator: Judge Christopher M. Lopez*

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Judge, N.D. Ga.

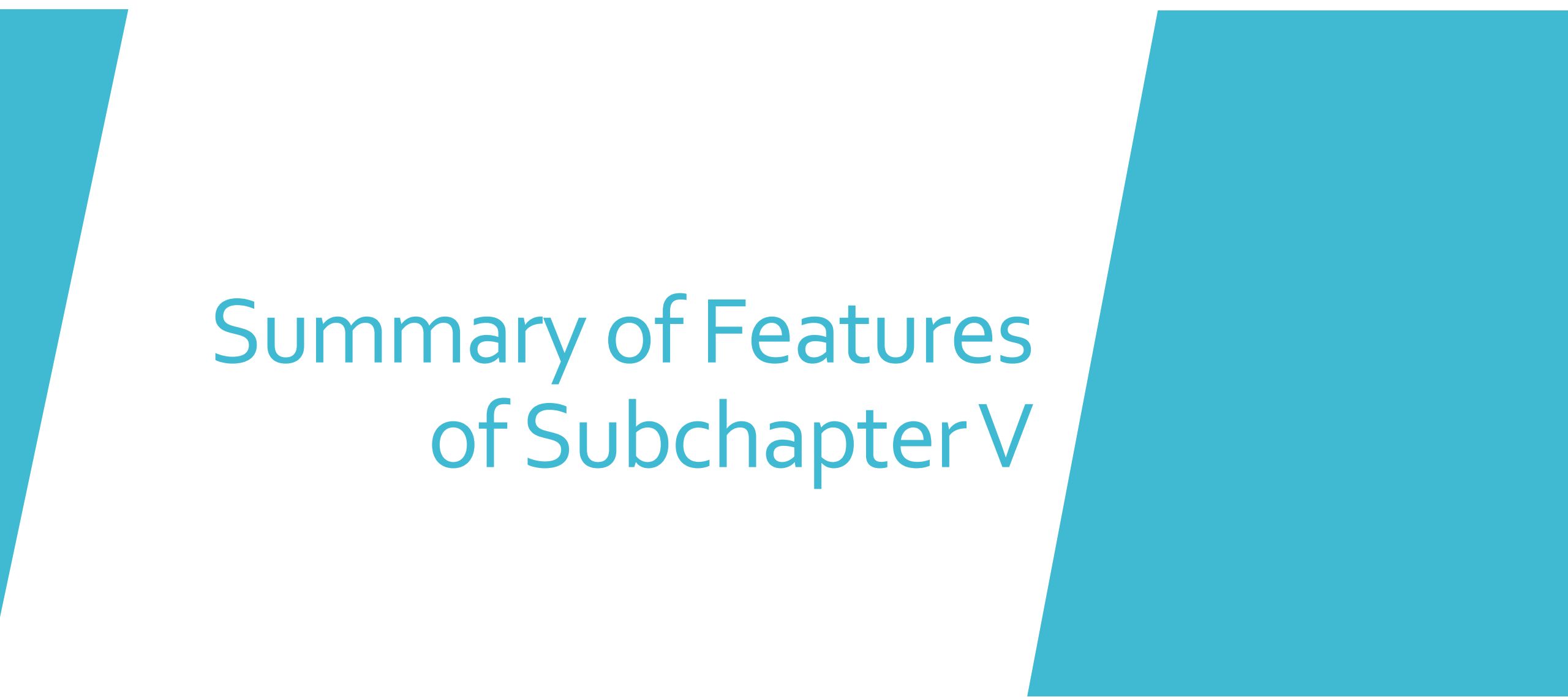
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Overview of Subchapter V

It's still a Chapter 11 case.

- “First day” motions, including use of cash collateral, cash management, payment of prepetition employee wages, payment of insurance, adequate assurance for utilities
- Chapter 11 confirmation rules apply with some modifications
- Creditors vote on the plan
- No co-debtor stay
- Eligible debtor must elect Subchapter V on the voluntary petition




Summary of Features of Subchapter V

Eligibility Requirements

- Definition in § 1182(1) until June 20, 2024; thereafter, definition is §101(51D) (“small business debtor”)
- Debt Limit of \$ 7.5 million until June 20, 2024; \$ 3,024,725 thereafter
- Must be engaged in “commercial or business activities”
- At least 50% of debt must arise from such activities
- Can be engaged in real estate business, but not a SARE debtor

Appointment of Subchapter V Trustee

- Subchapter V Trustee appointed in every case
- Debtor remains in possession of assets (unless removed)
- Subchapter V Trustee has the duty to “facilitate the development of a consensual plan of reorganization”



Unless otherwise
ordered, no
Committee of
Unsecured
Creditors

No U.S. Trustee
Fees.



Subchapter V Debtor has the Same Reporting Requirements as a Small Business Debtor

- § 1187 requires a Subchapter V debtor to comply with the duties and reporting requirements applicable to a small business debtor under §1116.
- Rule 2015(b) requires debtor(s) to file periodic reports (MORs and PCRs)
- Court must hold a status conference within 60 days of the Petition Date and debtor must file report not later than 14 days before the status conference

Subchapter V Plan

- Unless otherwise ordered, a Disclosure Statement is not required
- Debtor must file a chapter 11 plan within 90 days
- Plan must contain:
 - Brief history of the business operations of the debtor
 - Liquidation analysis
 - Projections with regard to ability of the debtor to make payments
- **Plan may modify certain mortgages on a principal residence**
- § 1191(e) permits payment of administrative expenses under the plan if cramdown confirmation occurs

Subchapter V Plan – Confirmation Standards

Consensual Confirmation

- Court shall confirm plan if it meets all requirements of §1129(a), except (a)(15)
- Debtor makes payments under the plan

Non-Consensual Confirmation

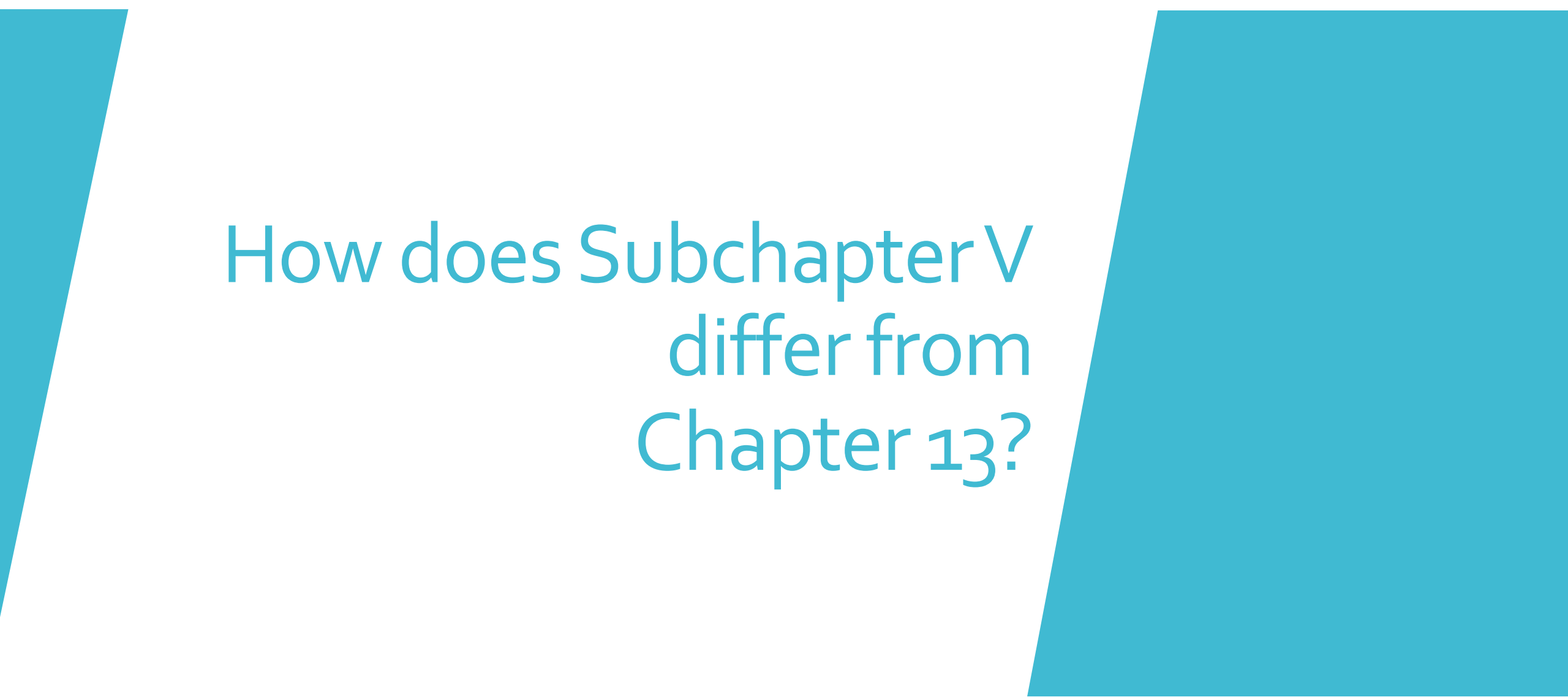
- No absolute priority rule
- No requirement that any creditor accept
- Debtor must pay projected disposable income for 3 to 5 year period, as fixed by the court
- Cramdown rules for secured creditors are unchanged
- Trustee makes plan payments, unless plan or confirmation order provides otherwise

Can a Subchapter V plan include chapter 11 consensual releases in ballots and exculpations in a plan?

Timing and Scope of Discharge

- Consensual Confirmation – debtor receives discharge upon confirmation under § 1141(d), except that § 1141(d)(5) does not apply so individual receives discharge immediately
- Non-consensual Confirmation - Discharge deferred until completion of payments for three to five years, as court determines
- No hardship discharge
- **Corporate Subchapter V debtors are subject to the exceptions to discharge under § 523 in the 5th Circuit. See *Avion Funding, L.L.C. v. GFS Indus., L.L.C. (In re GFS Indus., L.L.C., No. 23-50237, 2024 WL 1644229 (5th Cir. 2024)***

Prepetition claim of professional of less than \$10,000 does not disqualify professional from representing debtor



How does Subchapter V
differ from
Chapter 13?

Different Confirmation Consequences

- Discharge
- Property of the estate – post-petition assets and earnings
- Post-confirmation modification
- Role of trustee

Projected Disposable Income

Chapter 13 – § 1325(b)

- Applies if trustee or unsecured creditor objects
- “Means test” standards apply to above-median debtor
- “Applicable commitment period” is five years for above-median debtor
- Calculate PDI and pay it, usually monthly fixed payments, sometimes with a “step-up”

Subchapter V – § 1191(c)

- Applies only if *class* of creditors objects to confirmation
- Two alternatives:
 1. The plan provides that all of the PDI to be received [during the 3 - 5 year period] will be applied to make payments under the plan
 2. Value of the PDI to be distributed during 3 – 5 year period is not less than the PDI of the debtor.
 - It permits a “cash-out” of PDI in a lump sum, something that chapter 13 does not permit
- “Disposable Income” for an individual debtor is defined in § 1191(d)

Modification of Secured Claims

Chapter 13

- “Hanging paragraph” requires treatment of some claims secured by PMSI in personal property as fully secured
- Equal monthly payments required
- Cannot modify residential mortgage

Subchapter V

- No hanging paragraph; PMSI claims can be bifurcated
- No requirement for equal monthly payments
- Residential mortgage can be modified in some circumstances, see § 1190(3)

Payment of administrative expenses and priority claims under the plan

Chapter 13

- Debtor may pay administrative and priority claims (including DSO) through plan payments; no interest on tax claims

Subchapter V

- Administrative and priority claims must be paid in full on the effective date, except taxes that may be paid, with interest, over a five-year period beginning on date of filing petition, with interest at governmental rate under § 1129(a)(9)(C)
- § 1191(e) permits payment of administrative expenses under the plan if cramdown confirmation occurs

Post-petition Assets and Earnings

Chapter 13 – §§ 1306(a), 1327(b)

- Property of the estate includes post-petition assets and earnings
- Confirmation vests property of estate in debtor unless plan or confirmation order provides otherwise – § 1327(b)

Subchapter V – § 1186(a)

- Post-petition assets and earnings are property of estate only after cramdown confirmation – § 1115(a) does not apply (§ 1181(a))
- Confirmation vests property of the estate in the debtor unless plan or confirmation order provides otherwise – § 1141(b)

Post-confirmation Modification of Plan

Chapter 13 – § 1329(a)

- Debtor, trustee, or unsecured creditor may modify plan

Subchapter V – § 1193(b), (c)

- Only the debtor may modify plan
- No post-confirmation modification of consensual plan after “substantial consummation”



Questions?