

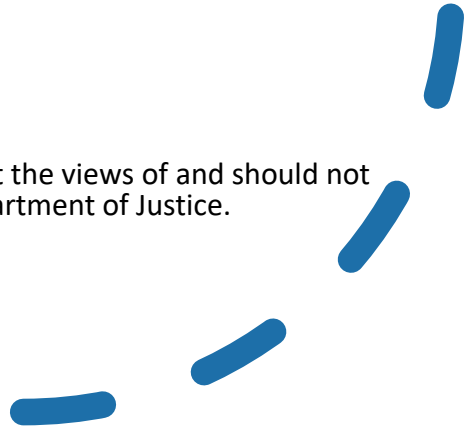
SOUTHERN DISTRICT OF TEXAS BANKRUPTCY BENCH BAR
CONFERENCE 2022

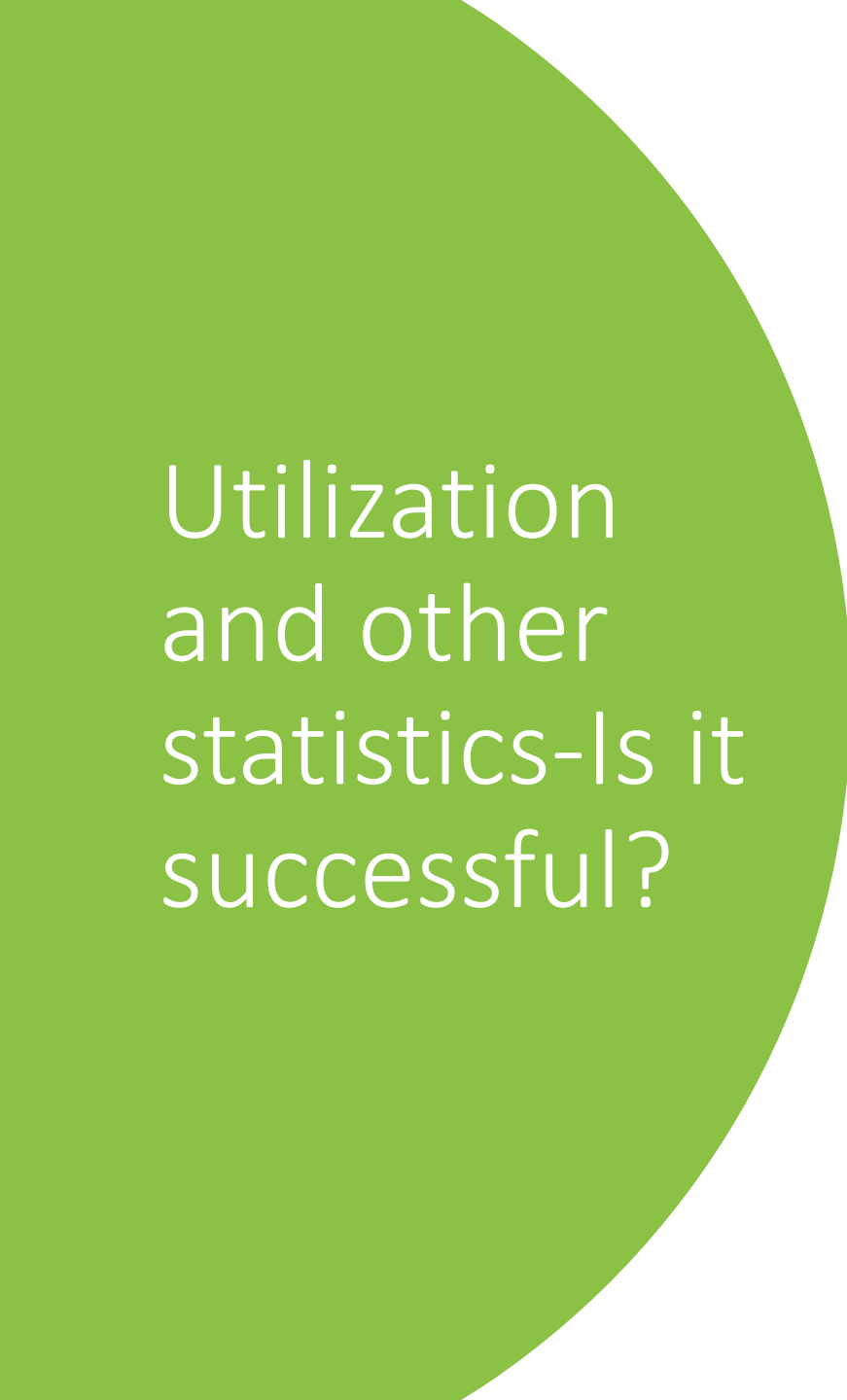
A Deep Dive
into
Subchapter V

April 20, 2022

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*Any views expressed are those of the speaker and do not necessarily represent the views of and should not be attributable to the United States Trustee Program or the U.S. Department of Justice.



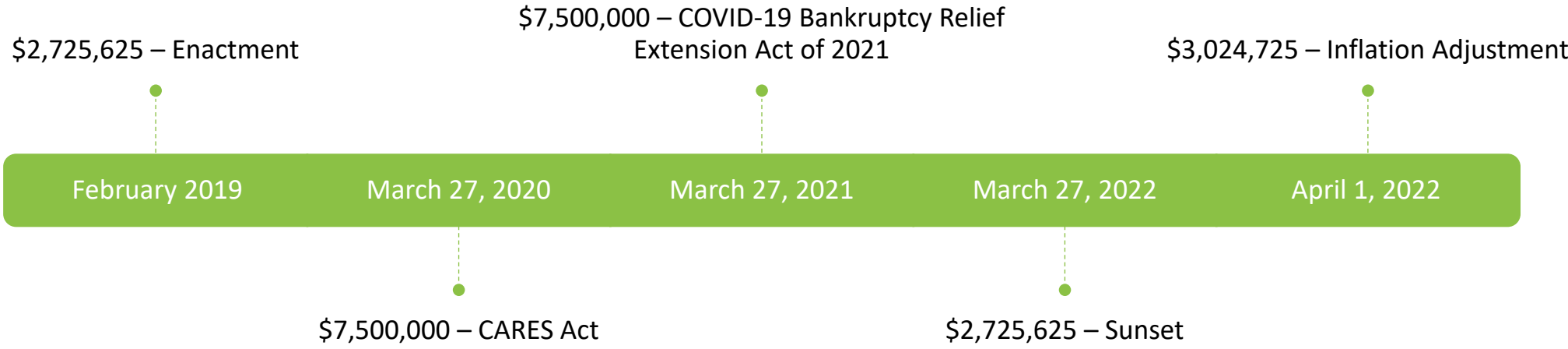
A large green circle on the left side of the slide, partially cut off by the edge.

Utilization
and other
statistics-Is it
successful?

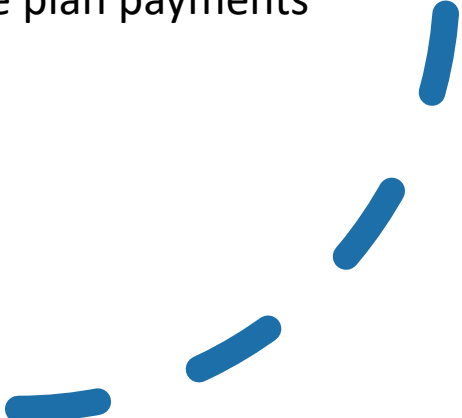
- Statistics for Southern District of Texas
(2/19/2020–2/19/2022)



Maximum Debt Limit



Pending Legislation

- “Bankruptcy Threshold Adjustment and Technical Corrections Act.”
 - Passed Senate April 7, 2022 – bi partisan
 - Currently pending in the House
 - \$7.5 M debt limit for Subchapter V becomes permanent
 - Inflation index adjustments beginning April 1, 2025
 - Clarifies that Sub V Trustee is authorized to operate the debtor’s business if the debtor is removed as DIP
 - Retains disqualification where affiliate filers have debts exceeding \$7,500,000
 - § 1191(c)(3) – the paragraph is reorganized to eliminate the requirement that the plan include “appropriate remedies” if the court finds the Debtor will be able to make the plan payments
 - Also raises Ch 13 debt limit to \$2,750,000
- 

Invoking the Complex Case Rules in a Sub V case

Limited service list

Would a standing order benefit case
administration? (hearing dates, confirmation
deadlines)

See Rule 2002

See Local Rule 9013-1(d)



Cash Collateral
Carve-Outs for the
Sub V Trustee's Fees



Cram Down Plan –
Monitoring and
Enforcement

Post-
confirmation
fee issues §
1191(a) &
(b)

Sub V Trustee

Debtor's counsel

Special counsel

Role of the Subchapter V Trustee under § 1183

- *In re Ozcelebi*, Case 20-70295, Memorandum Opinion, Doc 356, pp. 14-17 (TXSB 04/01/22, Judge Rodriguez)
- Trustee's role prior to and after plan confirmation



Proposed Federal Interim Rules

- No post-effective date quarterly reports
- What if its in the plan that you will? Default?
- Plan should say all "required" reports will be filed



BEST PRACTICES


- Neither the plan nor the confirmation order should terminate the trustee's services/duties
 - Debtor's notice of substantial consummation is the discharging instrument. § 1183(c)(1)
 - post-confirmation reports
 - debt cap
 - No form plans without a spreadsheet that shows the plan payments!
 - Must include disposable income analysis
 - Why not at least try for consensual confirmation in your plan?
- 

Exhibit A

Suggested “Disbursement and Post-Confirmation Procedures Order” Language for this Case

Quarterly Financial Reporting. The Reorganized Debtor shall file with the Court and provide to the Subchapter V Trustee no later than 21 days after the end of each quarter, post-confirmation quarterly financial reports (the “Quarterly Reports”) for each quarter (or portion thereof) of the Plan term. The Subchapter V Trustee shall utilize the Quarterly Reports in evaluating and collecting from the Debtor the amount of Disposable Income subject to Distribution in accordance with the Plan. The Quarterly Reports shall: (i) be generated by the Debtor’s management company or an accounting or finance professional retained by the Debtor; (ii) detail the Debtor’s actual Disposable Income for each calendar quarter (which shall be calculated using a cash basis method of accounting and reported in accordance with Generally Accepted Accounting Principles (GAAP)); and (iii) be certified by the Debtor’s board of directors or an authorized representative of the Debtor’s board of directors. To the extent Subchapter V Trustee or any party in interest (as such term is defined at 11 U.S.C. § 1109) disagrees with the Debtor’s calculation of Disposable Income in the Quarterly Reports, such party shall be entitled to seek appropriate relief from the Court which retains jurisdiction to, among other things, enforce the terms of the Plan by filing an objection within seven (7) days after the applicable Quarterly Report is filed.

Tax Returns. During the term of the Plan, Debtor shall timely file all tax returns and make all tax payments and deposits, if any, when due. If the Debtor is not required to file tax returns for any period during the Plan term, the Reorganized Debtor shall provide the Subchapter V Trustee with a statement to that effect. For each tax return that becomes due after entry of this Order, Debtor shall, within fourteen (14) days of filing the return, provide the Subchapter V Trustee with a complete copy of the tax return, including all schedules and attachments.

Reorganized Debtor’s Remittance. Within seven (7) business days of filing each Quarterly Report, the Reorganized Debtor shall remit the applicable Disposable Income to the Subchapter V Trustee. Payments by the Reorganized Debtor under this Plan to Class 1 Claimholders shall be made to the **Subchapter V Trustee, Allison D. Byman, 7924 Broadway, Suite 104, Pearland, TX 77581** in a manner that is mutually agreeable by and between the Debtor and Subchapter V Trustee. The Reorganized Debtor shall promptly contact the Subchapter V Trustee regarding the disposition of any checks by Reorganized Debtor made payable to the Subchapter V Trustee but not negotiated.

Distributions to Creditors by Subchapter V Trustee. Distributions will be made in accordance with the payment calculations provided by the Debtor. The Trustee is not responsible for calculating or correcting the payment amounts due under the Plan. Within seven (7) business days of the expiration of objection period applicable to a Quarterly Report, the Subchapter V Trustee shall disburse such funds received from the Reorganized Debtor according to the Plan. Funds from any disbursement check written by the Subchapter V Trustee, where the check remains unnegotiated for more than 60 days, may be redistributed *pro rata* to other Class 1 unsecured creditors, as provided for under the Plan, or may be placed with this Court’s

unclaimed funds register pursuant to 28 U.S.C. 2042, at the discretion of the Subchapter V Trustee. In the event the Subchapter V Trustee has insufficient funds to make any distribution under the Plan approved by this Order, Plan Payments may be adjusted during the life of the Plan without further order of the Court to account for any Plan Payment adjustments. Any disbursements made by the Subchapter V Trustee following entry of this Order on account of a claim which is a satisfaction of claim are deemed authorized disbursements, and the Subchapter V Trustee shall have no liability for these disbursements. The Reorganized Debtor will pursue the recovery of any disbursements made on account of a claim which is subsequently withdrawn and/or satisfied.

Subchapter V. Trustee Disbursement Reports. The Subchapter V Trustee shall provide all required reports to the United States Trustee for review, during the period in which the Subchapter V Trustee continues to make plan payments. Upon completion of all plan payments, the Subchapter V Trustee should submit the final report and final account of the administration of the estate to the United States Trustee for review pursuant to section 1183(b)(1). After review, the final report and account will be filed with the Court.

Notices from Subchapter V Trustee. The Subchapter V Trustee may limit notice of any and all reports, document, pleading or other filing related to this case to those parties directly affected and to those interested parties which have filed a notice of appearance or proofs of claim, as necessary. The Subchapter V Trustee shall be under no obligation to serve parties which are neither affected by any report, document, pleading or other filing or have made no appearance whatsoever before this Court

Post-Confirmation Fees and Expenses of the Subchapter V Trustee. The Subchapter V Trustee will be required to obtain Court approval to pay such fees which approval may be obtained utilizing the Court's negative notice procedures upon fourteen (14) days' notice to the Reorganized Debtor, the Office of the United States Trustee, and all Class 1 Claimholders.

Payments and Distributions by the Subchapter V Trustee on Disputed Claims. Except as otherwise provided in the Plan, no partial Plan Payments and no partial Distributions will be made with respect to a Disputed Claim until the resolution of such dispute by settlement or Final Order. For purposes of clarity, each class's claimants will not be entitled to a distribution until all claims within the applicable class are final. Unless otherwise agreed to by the Reorganized Debtor or as otherwise specifically provided in the Plan, a Creditor who holds both an Allowed Claim and a Disputed Claim will not receive a distribution until such dispute is resolved by settlement or Final Order. The provisions of this section are not intended to restrict payment of any unclassified claims which are not disputed.

Subchapter V Trustee Obligations.

(a) Obligations Related to the Pursuit of Causes of Action. The Subchapter V Trustee shall not have any obligations to pursue and/or manage the Reorganized Debtor's pursuit of Causes of Action. Rather, the pursuit and management of Causes of Action shall be coordinated by and among the Reorganized Debtor's board of directors and the attorney retained by the Reorganized Debtor to pursue Causes of Action.

(b) Administration of the Estate. The Subchapter V Trustee shall file all reports required by the United States Trustee in the manner prescribed by the United States Trustee Program. Upon the completion of the Plan term, the Subchapter V Trustee shall file his final report and seek a discharge of his duties as Subchapter V Trustee.

Retention of Jurisdiction. The Court retains jurisdiction for any and all matters that may come before the Court in the administration of the Plan and pursuant to the Order of Confirmation, specifically including, but not limited to, the jurisdiction to determine all objections that have heretofore been or may be filed to claims of creditors; to fix and award all compensation to parties who may be so entitled; to hear and determine all questions concerning the assets or property of the debtors, including any questions relating to any sums of money, services, or property due to the debtor; and determine all matters of any nature or type necessary or appropriate to carry out the Plan.

Holzer's suggested "Disbursement and Post-Confirmation Procedures" language for inclusion in
cram-down plans

Financial Reporting. Debtor shall provide to the Subchapter V Trustee within 14 days of receipt (1) all its bank statements, and (2) financial reports as and when it prepares them for itself in the ordinary course of its business.

Tax Returns. Debtor shall timely file all tax returns and make all tax payments and deposits, if any, when due, and within fourteen (14) days of filing the return, provide them to the Subchapter V Trustee.

Reorganized Debtor's Remittance. The Reorganized Debtor shall calculate its Disposable Income no less frequently than called for under the plan, and shall provide such calculations, along with payment to the Subchapter V Trustee, within 21 days after the end of the reporting period.

Distributions to Creditors by Subchapter V Trustee. Distributions will be made in accordance with the plan and payment calculations provided by the Debtor. The Trustee is not responsible for calculating or correcting the payment amounts due under the Plan. The Subchapter V Trustee shall disburse such funds received from the Reorganized Debtor according to the Plan.

Subchapter V Trustee Disbursement Reports. The Subchapter V Trustee shall maintain records of all receipts and disbursements and upon completion of all plan payments, will submit a final report and final account of the administration of the estate to the United States Trustee for review pursuant to section 1183(b)(1). After review, the final report and account will be filed with the Court, and the Subchapter V Trustee shall seek a discharge of his duties as Subchapter V Trustee.

Post-Confirmation Fees and Expenses of the Subchapter V Trustee. The Subchapter V Trustee will be required to obtain Court approval to pay such fees which approval may be obtained utilizing the Court's negative notice procedures upon fourteen (14) days' notice to the Reorganized Debtor and the Office of the United States Trustee.