

THE NUTS AND BOLTS OF SUBCHAPTER V

MODERATOR

THE HONORABLE CHIEF JUDGE EDUARDO V. RODRIGUEZ*
U.S. BANKRUPTCY COURT, SOUTHERN DISTRICT OF TEXAS

PANELISTS

LYNN BUTLER, HUSCH BLACKWELL LLP, AUSTIN, TX

BRENDON SINGH, TRAN SINGH LLP, HOUSTON, TX

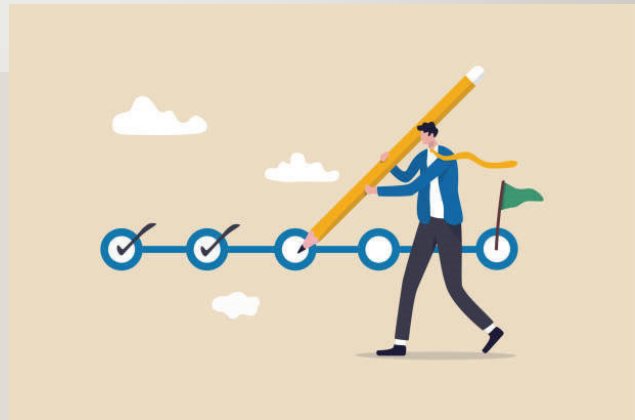
SHANE P. TOBIN, TRIAL ATTORNEY, OFFICE OF THE UNITED STATES TRUSTEE, AUSTIN, TX¹

* DISCLAIMER: This material does not constitute the official position of the author or of any court and should not be construed as an indication of future rulings involving the Small Business Reorganization Act of 2019.

¹ 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.

CASE FILED, NOW WHAT?

- Post filing.
- Pre confirmation.
- Post confirmation.



POST FILING

3

STATUS CONFERENCE

- Section 105(d), which permits a court to conduct a status conference in any chapter; does not apply in a subchapter V case. Instead, it is mandatory in a subchapter V case under section 1188(a).
- Code text: §1188 Status Conference
 - **(a) In General.** Except as provided in subsection (b), not later than 60 days after the entry of the order for relief under this chapter, the court shall hold a status conference to further the expeditious and economical resolution of a case under this subchapter.
 - **(b) Exception.** The court may extend the period of time for holding a status conference under subsection (a) if the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable.
 - **(c) Report.** Not later than 14 days before the date of the status conference under subsection (a), the debtor shall file with the court and serve on the trustee and all parties in interest a report that details the efforts the debtor has undertaken and will undertake to attain a consensual plan of reorganization.



4

WHAT §1188 DOES NOT SAY



How the court schedules the status conference.

Consult local rules for scheduling and noticing guidelines.



The contents of the debtor's report.

Only requires the report detail "the efforts of the debtor has undertaken and will undertake to attain a consensual plan of reorganization."

Consult local rules and local forms, as local jurisdictions may have additional requirements.

Read scheduling order in case it outlines additional specific items to include in the report.



Duties of court or creditors.

Court may ask about any matter related to the case at status conference.

Creditors may also ask questions.

TIMING IN FILING A PLAN

- 60 days for status conference, should formulate consensual plan structure.
- 90 days from the petition date to formulate a consensual plan structure.

EXTENSION OF TIME IN FILING PLAN

- *In re Excellence 2000 Inc.*, 636 B.R. 475 (Bankr. S.D.Tex. 2022) (Judge Rodriguez).
 - Court found it could consider a motion to extend time after the 90-day plan filing deadline.
 - It is the debtor's burden to establish cause.
- *In re Baker*, 625 B.R. 27, 33 (Bankr. S.D.Tex. 2020)(Judge Rodriguez).
 - "The court may extend the period if the need for the extension is attributable to circumstances for which the debtor should not justly be held accountable."
- Higher standard than for cause--four factors considered and debtor should address all four:
 - 1. Whether the circumstances raise by the debtor were within its control;
 - 2. Whether the debtor has made progress in drafting a plan;
 - 3. Whether the deficiencies preventing that draft from being filed are reasonable related to the identified circumstances; and
 - 4. Whether any party-in-interest has moved to dismiss or convert the debtor's case or otherwise objected to a deadline extension in any way.

WHAT SHOULD BE IN A STATUS REPORT?

- The who, what, why, when and how of the case.
- Topics to address:
 - The business, financial, and other problems that prompted the filing of this case;
 - Attendance at a meeting of creditors;
 - Estate's need for professionals (e.g., attorneys, accountants, brokers, etc.);
 - Unique issues concerning secured debt, employees, cash collateral, executory contracts, and existing management;
 - Post petition operations and revenue;
 - Status of any litigation pending in or outside this court;

(continued on next slide)

WHAT SHOULD BE IN A STATUS REPORT?

- Topics to address (continued):
 - Compliance with requests for information from the UST including, but not limited to, requests made in the Initial Debtor Interview;
 - Type and adequacy of insurance coverage;
 - An outline of the proposed plan;
 - A proposed schedule for filing and confirming the proposed plan;
 - Debtor-In-Possession Bank Account; and
 - Any other matters that might materially affect the administration of the case.

BEST PRACTICES FOR STATUS REPORT AND STATUS HEARING

- File report and attend status conference, or case subject to dismissal or conversion under § 1112(b).
- Review local rules for court-specific policies.
- Communicate with your Subchapter V trustee, as they are required to appear and be heard at the status conference.
- Persuasive drafting.
- Allows the court to preview the case projection and learn about the debtor. Don't simply repeat your debtor's background in other pleadings.
- Use status report checklist (in printed materials).
- Before the conference, communicate with your Subchapter V trustee, as they are required to appear and be heard at the status conference.
- During conference, be prepared to discuss anything related to the case.
- If additional time is needed, request it early.

PRE-CONFIRMATION ISSUES

11

PRE-CONFIRMATION ISSUES

- Role of the Subchapter V Trustee.
- Dismissal and Conversion Issues.
- Balloting and Acceptance of the Plan.



12

ROLE OF THE SUBCHAPTER V TRUSTEE

So, what exactly should you expect from the Subchapter V Trustee?

Assistance to the debtor in possession.

Oversight.

Help in facilitating the negotiation of a consensual plan of reorganization.

Candid advice to the Court concerning the progress of the case and debtor's efforts to comply with its statutory duties.

Fulfill duties required of the Trustee in Possession if debtor ceases to be a debtor in possession.



Powers are specifically enumerated in 11 U.S.C. § 1183(b)

13

DISMISSAL AND CONVERSION ISSUES

- Section 1112 applies to Subchapter V cases.
- Language in the order.
- Trustee compensation.



14

BALLOTING AND ACCEPTANCE OF THE PLAN

- 11 U.S.C. § 1129(a)(8) requires acceptance by all impaired class of claims. See *also* Fed. R. Bankr. P. 3018(c) for requirements on the form of acceptance or rejection.
- General rule is that a class cannot be deemed to have accepted a plan if no creditor in the class submitted a ballot.
 - *In re: Franco Paving*, Case No.: 23-20069 (Bankr. S.D.Tex. Oct. 5, 2023); and
 - *In re Bressler*, No. 20-31024, 2021 Bankr. LEXIS 64 (Bankr. S.D.Tex. Jan. 13, 2021).
- But what if you simply cannot get a creditor to vote? What should you do?



POST CONFIRMATION ISSUES

- Communication with Debtor's representative and Debtor's counsel.
- 3 or 5-year Pro-Forma of payments.
- Notice of Default of Payment.
- Annual Report from the Debtor to determine disposable income.
- Trustee's Quarterly Report.
- Re-appointment of Trustee.
- Closing the case after all payments made under § 1192.
- Breakout debtor and subchapter V side.
 - Best practices for debtor and subchapter V.

COMMUNICATION WITH DEBTOR'S REPRESENTATIVE AND DEBTOR'S COUNSEL

Parties agree to endeavor to take all reasonable measures to keep the confidential data and information of any party that another party may know or access during performance of the Trustee's duties (hereinafter referred to as "Confidential Information"), and shall not disclose, make available or assign such Confidential Information to any third party without the prior written consent of the party providing the information.

Language for the Plan - The Subchapter V contact my client directly concerning the administrative requirement of the plan. These requirements include ...

17

3 OR 5-YEAR PRO-FORMA OF PAYMENTS

- Why is this necessary?
 - To ensure payments are correct.
 - Payments and amount.
 - See *materials*.

18

NOTICE OF DEFAULT OF PAYMENT TO THE TRUSTEE

- Trustee as disbursement agent.
 - Include a procedure for what the Trustee shall do if the debtor does not make a payment to the Trustee.
 - Payment shall be sent to the Trustee by the 5th day of the month.
 - If payment, in good funds, are not received by the Trustee by the 10th day of the month, Trustee shall send notice to debtor and debtor's attorney.
 - If the payment, in good funds, are not received by the 25th day of the month, Trustee shall file a notice of default with the Court.

NOTICE OF DEFAULT OF PAYMENT

- Debtor as disbursement agent.
 - Include a procedure for what the Trustee shall do if the debtor does not make a payment to a Creditor
 - Notice of payments to creditors shall be sent to the Trustee, by the 21st day of the month immediately following the month in which payments are due to creditors.
 - If notice of payments are not received by the Trustee by the 21st day of the month, Trustee shall send notice to debtor and debtor's attorney.
 - If notice of payments is not received 30th day of the month, Trustee shall file a notice of default with the Court.

ANNUAL REPORT FROM THE DEBTOR TO DETERMINE DISPOSABLE INCOME

- Language for the Plan – The Subchapter V Trustee, or other designated disbursing agent, must file, for the duration of the period in which the Debtor must tender projected disposable income or equivalent values of property under the confirmed plan as required under § 1191(c)(2), a status report on each anniversary date of the entry of the confirmation order which outlines the status of payments made by the Debtor and distributed by the Subchapter V Trustee or other designated disbursing agent, in the past year and any other post-confirmation action taken toward consummation of the plan and serve that report upon the master mailing list (matrix) as constituted by the Court on the date of service.

TRUSTEE'S QUARTERLY REPORT

- Disbursements Report.
 - Language for the Plan - Trustee shall file quarterly reports, as practicality possible after the end of the quarter.
 - See *attached*.

CLOSING THE CASE

- Language for the Plan – Upon completion of plan payments, the Subchapter V Trustee or other disbursing agent as set forth in the confirmed plan or confirmation order shall file a notice of completion of plan payments which documents that all payments of projected disposable income or equivalent values of property by the Debtor under the confirmed plan as required under § 1191(c)(2) have been completed and that all other prerequisites for the entry of an order of discharge pursuant to 11 U.S.C. § 1192 have been fulfilled.
- Within thirty (30) days of the filing of the notice of plan completion, the Debtor must file a motion for entry of discharge and a motion for final decree.

23

QUESTIONS?

MODERATOR

THE HONORABLE CHIEF JUDGE EDUARDO V. RODRIGUEZ*
U.S. BANKRUPTCY COURT, SOUTHERN DISTRICT OF TEXAS

PANELISTS

LYNN BUTLER, HUSCH BLACKWELL LLP, AUSTIN, TX

BRENDON SINGH, TRAN SINGH LLP, HOUSTON, TX

SHANE P. TOBIN, TRIAL ATTORNEY, OFFICE OF THE UNITED STATES TRUSTEE, AUSTIN, TX¹

* DISCLAIMER: This material does not constitute the official position of the author or of any court and should not be construed as an indication of future rulings involving the Small Business Reorganization Act of 2019.

¹ 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.

24

ORDER
POST CONFIRMATION

_____ (“*Debtor*”) Plan having been confirmed pursuant to 11 U.S.C. § 1191(a) on _____, 2023, it is hereby:

ORDERED that:

1. No later than fourteen (14) days from the effective date of the confirmed plan:
 - a. all professionals, including the Subchapter V Trustee, must file all final fee applications, pursuant to Fed. R. Bankr. P. 2016; and
 - b. Debtor must file a motion for final decree, pursuant to Fed. R. Bankr. P. 3022 and 11 U.S.C. § 1106(a)(7).
2. Pursuant to 11 U.S.C. § 1183(c)(2), not later than 14 days after Debtor’s plan is substantially consummated, Debtor must file with the court and serve on _____ (the “*Subchapter V Trustee*”), the United States Trustee, and all parties in interest notice of such substantial consummation and file such notice with the Clerk of Court.
3. Upon substantial consummation of the Plan, the duties of the Subchapter V Trustee in the Debtor’s bankruptcy case shall terminate as provided under 11 U.S.C. § 1183(c)(1). Nevertheless, the Subchapter V Trustee is not discharged pursuant 11 U.S.C. § 350(a) until such time as the Court enters its final decree and closes the case.
4. The Subchapter V Trustee must on or before _____, 2024, file with the Clerk of Court a Report of No Distribution (NDR) or Final Report (TFR).
5. Debtor must request a hearing date on all final motions including the motion for final decree.

ORDER
POST CONFIRMATION

____ (“Debtor”) Plan , ECF No. ____, having been confirmed pursuant to 11 U.S.C. § 1191(b) on _____, 2023, ECF No. ____, it is hereby:

ORDERED that:

1. No later than fourteen (14) days from the effective date of the confirmed plan, all professionals including the Subchapter V trustee must file fee applications, pursuant to Fed. R. Bankr. P. 2016 for all services provided through the date of the confirmation order;
2. Debtor must file a Notice of Substantial Consummation promptly upon the occurrence of such event and serve such notice upon the master mailing list (matrix) as constituted by the Court on the date of service;
3. the Subchapter V Trustee, or other designated disbursing agent, must file, for the duration of the period in which the Debtor must tender projected disposable income or equivalent values of property under the confirmed plan as required under § 1191(c)(2) (the “*Non- Consensual Commitment Period*”), a status report on each anniversary date of the entry of the confirmation order which outlines the status of payments made by the Debtor and distributed by the Subchapter V Trustee or other designated disbursing agent, in the past year and any other post-confirmation action taken toward consummation of the plan and serve that report upon the master mailing list (matrix) as constituted by the Court on the date of service;
4. Upon completion of plan payments, the Subchapter V Trustee or other disbursing agent as set forth in the confirmed plan or confirmation order shall file a notice of completion of plan payments which documents that all payments of projected disposable income or equivalent values of property by the Debtor under the confirmed plan as required under § 1191(c)(2) have been completed and that all other prerequisites for the entry of an order of discharge pursuant to 11 U.S.C. § 1192 have been fulfilled;
5. Within thirty (30) days of the filing of the notice of plan completion, the Debtor must file a motion for entry of discharge and a motion for final decree.
6. Debtor must request a hearing date on all final motions including a motion for final decree.
7. Subchapter V Trustee must on or before _____, 2024
 - a. File with the Clerk of Court an application for professional fees and expenses incurred during the chapter 11 administration, and
 - b. File with the Clerk of Court a Report of No Distribution (NDR) or Final Report (TFR)
8. After the filing of the Subchapter V Trustee’s final report and resolution of any objection thereto, _____ is discharged as Subchapter V Trustee of the estate, the Subchapter V Trustee’s bond is cancelled, and the case is closed.

Status Report Checklist

1. What type of plan will the Debtor propose?

- Consensual, nonconsensual, undetermined.
- Why type of plan.
- When the plan will be filed (90 days from petition imposed by § 1189(b).
- Basic nature of plan.

2. Efforts towards consensual plan.

- State the parties whom the debtor has discussed plan (secured creditors, priority creditors, unsecured creditors, equity interest holders, subchapter v trustee, other)
- Describe efforts taken by debtor to obtain consent of creditors.
- Describe efforts the debtor will take to obtain consent of creditors.
- Explain specific efforts to specific creditors or parties and if a certain party has not been in contact, explain why.

3. Committee and disclosure statement.

- Explain if there is any cause for appointment of committee of creditors pursuant to § 1181(b) and § 1102(b).
- Explain if there is cause for the Court to require filing a separate disclosure statement pursuant to § 1181(b) and § 1125.

4. Compliance in reporting.

- Confirm if filed Debtors most recent balance sheet, the most recent statement of the Debtor's operations, the Debtor's most recent cash-flow statement, the Debtor's most recent Federal income tax return as required under § 308.
 - i. or a statement under penalty under perjury that any of these items were not prepared) as required under § 1187(a).
- Confirm if monthly operating reports were filed, and if not or are deficit, explain which portions are definition or not fully reported and how the Debtor intends to correct the deficiency.

5. Other compliance under § 1116.

- Confirm debtor attended initial debtor interview and meeting of creditors.
- Confirm debtor filed all schedules and statement of financial affairs.
- Confirm debtor-maintained insurance appropriate for the debtor's business.
- Confirmed debtor timely filed tax returns or other government filings and paid all required administrative expense priority taxes.
- Confirm debtor allowed united states trustee to inspect the Debtor's premises, books, and records.

6. Cash collateral.

- Identify if the county approved any orders authorizing cash collateral.
- Confirm if any entity asserts an interest in cash collateral consents to the use of cash collateral.
- Identify any entity and property of the bankruptcy estate that constitutes cash collateral.
- Identify if debtor using, selling, or leasing any property that is alleged to be cash collateral.
- Identify if the debtor previously used, sold, or leased any property that is alleged to be cash collateral.

7. First day matters.

- Identify any first day motions filed (cash collateral, DIP financing, wage payments, cash management, utilities, limiting notice, joint administration, critical vendor, or other).
- If there is a prepetition plan support agreement, identify it and attach.

8. Other matters to consider.

- Detail goals of the reorganization plan.
- Outline any complications the debtor may expect in timely proposing a confirmable plan (discovery, valuation, motion practice, adversary proceedings, or claim adjudication).
- Description of business operation.
- Projection of plan.
- Disclosure of any executory contracts or unexpired bar dates,
- Disclosure of any extension of bar date for proofs of claims.
- Disclosure of any property sold.
- Explain overall exit strategy.

9. Double check that all requirements set forth in any court order or local rules are met.

Case Name:

Case Number:

POST CONFIRMATION
QUARTERLY DISBURSEMENT REPORT

QUARTERLY REPORT FOR: Q1

1. BEGINNING OF QUARTER CASH BALANCE:		JANUARY	FEBRUARY	MARCH	TOTAL
2. CASH RECEIPTS:					
(a) Cash receipts from Debtor					\$0.00
(b) Cash receipts from other sources					\$0.00
3. TOTAL CASH RECEIPTS:	\$0.00				
4. CASH DISBURSEMENTS:					
(a) PAYMENTS MADE UNDER THE PLAN TO CREDITORS					
(i)					\$0.00
(ii)					\$0.00
(iii)					\$0.00
(iv)					\$0.00
(v)					\$0.00
(vi)					\$0.00
(vii)					\$0.00
(b) OTHER PAYMENTS MADE THIS QUARTER:					
(i) General Business					\$0.00
(ii) Other Disbursements					\$0.00
5. TRUSTEE'S FEES PAID THIS QUARTER:					\$0.00
6. TOTAL DISBURSEMENTS THIS QUARTER:	\$0.00				
7. TOTAL TRANSFERRED TO RESERVE ACCOUNT:					\$0.00
8. CASH BALANCE END OF QUARTER:	\$0.00				

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
POUGHKEEPSIE DIVISION

HEARING DATE: April 12, 2023
HEARING TIME: 9:00 a.m.

-----	X
In re:	:
	:
NEW YORK HAND & PHYSICAL	:
THERAPY PLLC,	:
	:
Debtor.	:
-----	X

Case No. 21-35911 (CGM)
(Chapter 11 Subchapter V)

ORDER DISMISSING CHAPTER 11 SUBCHAPTER V CASE

Upon the United States Trustee's Motion to Dismiss or Convert Case under 11 U.S.C. § 1112(b) (the "Motion"), filed on February 1, 2023, the hearing on the Motion, held on April 12, 2023, the Memorandum Decision Conditionally Granting the United States Trustee's Motion to Dismiss, entered on April 14, 2023, the Order Approving Stipulation regarding the Subchapter V Trustee's Final Fee Application and the United States Trustee's Motion to Dismiss or Convert Case under 11 U.S.C. § 1112(b), entered on June 26, 2023 (the "Stipulation and Order"), and the Letter Confirming Payment of Fees, filed by Charles Persing, Subchapter V Trustee, on August 7, 2023; and the Debtor having filed all operating reports as required under the Stipulation and Order; and it appearing that notice of the Motion was proper and that there is cause to grant the relief sought, it is hereby

ORDERED, that the Motion is granted; and it is further

ORDERED, that the Debtor's chapter 11 subchapter V case is dismissed.

Dated: August 21, 2023
Poughkeepsie, New York



/s/ Cecelia G. Morris

Hon. Cecelia G. Morris
U.S. Bankruptcy Judge

Starting date	7/29/2023
Cash balance alert minimum	

[illegible][illegible]

Starting date

Cash balance alert minimum

[illegible][illegible]

Starting date

Cash balance alert minimum

[illegible][illegible]

CHAPTER 11 FEES:

[illegible]

Starting date

Cash balance alert minimum

Starting date

Cash balance alert minimum

Starting date

Cash balance alert minimum

Starting date

Cash balance alert minimum

DISPOSABLE INCOME
JORGE SIMON

Starting date
Cash balance alert minimum

	August-28	September-28	October-28	November-28	December-28	Total
	Month 56	Month 57	Month 58	Month 59	Month 60	
Cash on hand (beginning of month)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
Income						
Rental Income						\$0.00
Owner contributions						\$0.00
Other Income						\$0.00
TOTAL INCOME	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Total cash available	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
EXPENSES						
Advertising						\$0.00
Commissions and fees						\$0.00
Phone Bill						\$0.00
Fuel						\$0.00
Insurance (other than health)						\$0.00
Software						\$0.00
Internet						\$0.00
Meals and entertainment						\$0.00
Bank Fees						
Office expense						
Other interest expense						
Simply Green Bookkeeping						
Lease of Yard						
Rent or lease: Green Trailer						
Repairs and maintenance						
Truck Lease						
Supplies						
Taxes and licenses						
Travel						
Utilities						
Wages (less emp. credits)						
Memberships						
Other expenses						
Other expenses						
Miscellaneous						
SUBTOTAL	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Well Fargo						\$0.00
John Deere						\$0.00
Texas Comptroller of Public Accounts						\$0.00
General Unsecured Creditors						\$0.00
CHAPTER 11 FEES:						
Subchapter V Trustee						\$0.00
Debtor's Counsel						\$0.00
Other Administrative Costs						
Other Administrative Costs						
SUBTOTAL	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
TOTAL CASH PAID OUT	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Cash on hand (end of month)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	