

The Newsletter



FAUCHER LAW

TAX & BANKRUPTCY

Small Business Reorganization Act

Small Biz Chapter 11 Now Cheaper and Faster!

INSIDE STORIES

- Faucher Family Farms: Chicks Now Hens!
- Fast, Easy, Tasty: Asian Chicken Lettuce Wraps
- Small Business Reorganization Act Highlights with commentary from Sebastian the Feline Paralegal

It's almost as if Congress anticipated last August the economic mess we'd be in now, when it passed the Small Business Reorganization Act – the biggest change in bankruptcy law since 2005. The SBRA, effective February 19, was initially limited to businesses with less than \$2.7

million in debt, but Congress expanded the debt limit to \$7.5 million a month later, when it passed emergency Covid-related bills.

Chapter 11 of the Bankruptcy Code allows struggling businesses to continue operating while sorting out debt. The process works – companies of all sizes confirm bankruptcy plans, pay off debt and continue successfully. But chapter 11s have gotten extraordinarily expensive – so much so that only the very largest firms can afford them. Small businesses under pressure from creditors typically fold. Congress passed the SBRA to give small business owners the same financial breathing room afforded to large firms under old chapter 11 rules.

Why so expensive historically? When a company files chapter 11 its assets become part of a newly-created estate. This estate can pay nothing – salaries, vendors, rent – without court approval, meaning an attorney has to file a motion and get a judge to say “go ahead” to the payment of all expenses over the potential objections of creditors. The attorney also cannot get paid without a court order. Since firms seeking bankruptcy protection have a higher-than-average likelihood of failure, and because attorneys in bankruptcy cases aren't allowed to withdraw for clients' failure to pay, bankruptcy lawyers insist on being paid up-front for chapter 11s. At minimum, most attorneys ask for \$50,000 to start. Few small businesses have this amount, particularly when already in a cash flow crunch. Thus, chapter 11 bankruptcies have been used overwhelmingly only by very large firms.

Congress addressed this lack of access to chapter 11 for small businesses with the SBRA's Subchapter V changes. First, in standard chapter 11 cases, a debtor must propose a plan for debt repayment that unsecured creditors, such as credit card companies, can veto. Under Subchapter V, **there is no voting; the court may**

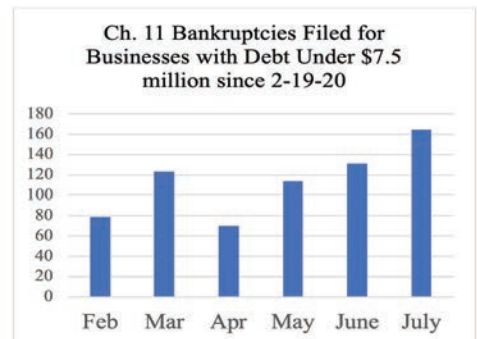
approve the plan so long as it is “fair and equitable.” This change alone vastly streamlines the process, saving time and money.

Second, in a standard chapter 11 case, secured debt, such as mortgages and car loans, may be modified except for mortgages on a principal residence. Since many small business owners take mortgages on their homes to fund the business, prior chapter 11 law did not allow for modifications to a primary source of credit for many small business owners. Under SBRA, **an individual can modify a mortgage on her house so long as the majority of the loan funded business operations** rather than the purchase of the house or living expenses.

Third, the process is quicker under SBRA. A standard case treats the plan like a financial security: the debtor must provide a disclosure statement to explain the plan, creditors may object to the amount of detail and disclosure in that statement, and the court must issue an order approving the disclosure statement. Only then may a debtor solicit votes in favor of its plan, and the confirmation occurs several weeks to many months later. Under SBRA, **the plan contains all the required disclosures; there is no separate disclosure statement.**

Fourth, the “absolute priority rule” does not apply in a Subchapter V bankruptcy. The “absolute priority rule” says that an equity holder – an individual owning the business's assets – cannot keep her interest in the business if the plan does not pay the general unsecured debts in full. It's arcane, but this rule places a huge roadblock in reorganizations. **Removing the absolute priority rule vastly changes the balance of power between creditors and debtors in the debtor's favor.**

As this chart illustrates, many small businesses are taking advantage of the new chapter 11 rules to try and make it through the pandemic recession. Would SBRA benefit you? Call me and we'll walk through it. **JDF**



Source: American Bankruptcy Institute

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ABOUT PERSONAL BANK-
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BOOK: "DO'S & DON'TS OF
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My star Paralegal, Sebastian, has his paws in all aspects of tax and bankruptcy.

Follow his musings on Instagram
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New Ch. 11 Bankruptcy Law for Small Businesses

On page 1, I detail how the Small Business Reorganization Act, the most significant changes to bankruptcy law since 2005, makes filing for chapter 11 easier for small businesses with debt under \$7.5 million. Here's the highlights & implications of the new process:

- Greatly reduced administrative requirements lower cost and speed up process
- Small business owners have 3-5 years to repay creditors
- Greater leverage to renegotiate leases and other credit obligations
- Owners continue operating their business
- Owners can retain equity after bankruptcy completed
- If a home was collateral for business loan, the residential mortgage can be modified
- Creditors can be paid based on business' projected income
- Best to file bankruptcy before business' cashflow has been depleted

Questions? Wondering how this may benefit your business and get you some breathing room from Covid-related financial strains? Call me and let's talk about your situation and whether we can use SBRA to help you get your business through this remarkably challenging time.

FAUCHER FAMILY FARMS SNAPSHOTS

Look at my lil' chicks all grown up! I can barely tell the younger hens from the older ones anymore, except that the young'uns tend to have sterner expressions – I don't know why. I'm getting eggs now from almost all dozen hens in the flock, which is a lot of eggs – 8-9 daily. So, what could I do? I bought another four chicks! I'm so good at raising chickens, I can't seem to stop expanding. Soon I'll be getting so many eggs that I'll have to bring some to the office to give to clients. Will you be a lucky recipient?



WORTH A THOUGHT...

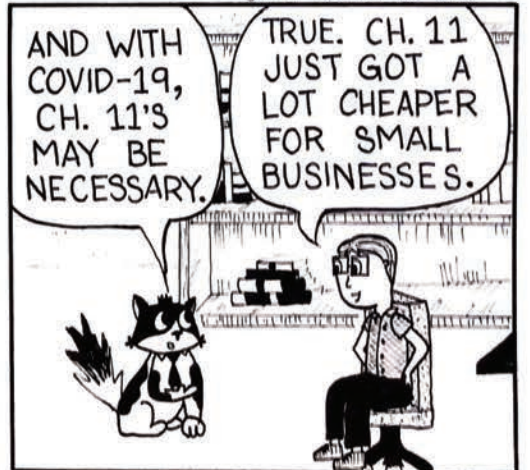
"My mission in life is not merely to survive, but to thrive; and to do so with some passion,



some compassion, some humor, and some style."

-Maya Angelou

Sebastian the Feline Paralegal



Keep it Light with Asian Chicken Lettuce Wraps

This recipe is super-easy and fast to make (Karen's favorite kind), and really tasty. It works well for dinner, or as an appetizer. All the ingredients can be found in any large grocery, though some will be in the Asian food section. With apologies to the hens at Faucher Family Farms...

1. Heat olive oil in a saucepan over medium high heat. Add ground chicken and cook until about 5 minutes, crumbling chicken as it cooks; drain excess fat. Add onion and cook until chicken is lightly browned and onion translucent, about 5-7 minutes.
2. Stir in garlic, hoisin sauce, soy sauce, rice wine vinegar, ginger, green onions & chestnuts, cook another 2-3 minutes until everything is heated through; season with salt & pepper.
3. To serve, spoon several tablespoons of the chicken mixture into the center of a lettuce leaf, taco-style. **Serves 3-4.**



1 lbs ground chicken	1 TBS rice wine vinegar
2 TBS olive oil	1-2 TBS freshly grated ginger
2 cloves minced garlic	1 8-oz can water chestnuts, drained & diced
1 medium-large onion, diced	3-4 green onions, thinly sliced
¼ cup hoisin sauce	Coarse salt & fresh ground pepper, to taste
2 TBS soy sauce	1 head butter lettuce

WELCOME TO FAUCHER LAW

John D. Faucher worked for 10 years as an IRS trial attorney and has been in private practice since 2008. He and his team speak the legal language. They know the **tax and bankruptcy systems** and can help you get the best result. Have other legal issues? Call us. We'll find the lawyer who's right for you, your friends, or family.

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Just In Time For Covid-Triggered Sales Slumps

Chapter 11 Small Business Bankruptcy Now Cheaper & Easier



In this issue, I summarize **changes to Chapter 11 bankruptcy law** that went into effect this February, making bankruptcy for **small business owners** vastly cheaper, easier and quicker than before. It's not quite a Get-Out-Of-Jail-Free Card but, in the Monopoly game of guiding a business through this crazy economy, the new bankruptcy rules could be akin to drawing a good Chance card. **Sebastian the Feline Paralegal** opines on the SBRA changes, too, and they're highlighted again on page 2 because they are so important. The chicks of **Faucher Family Farms** are now hens so I ... got more chicks! But I promise none of my chickens will become ingredients in the enclosed **chicken lettuce wrap recipe**.