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Individual Chapter 11s Really Do Work

Practical Considerations for Small-Business Debtors

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The focus of this article is chapter 11 proceedings for individual small business owners whose debt is primarily consumer debt and which exceeds the debt limits of §109(e). Since the passage of BAPCPA in 2005, chapter 11 for the individual debtor has become a blend of chapter 13 and 11. While chapter 11 cases for an individual small business debtor can provide substantial relief for individual businessowners overburdened with debt, lawyers must be aware of the differences in chapter 11 both from practice prior to the enactment of BAPCPA, and from chapter 13 practice.



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Increasing levels of credit card debt and rapidly expanding mortgage debt often put chapter 13 relief out of reach for many individual small business owners who want to reorganize their business operations. Such individuals often find themselves with secured and/or unsecured debt well in excess of the chapter 13 debt limits established by §109 of the Bankruptcy Code. Many of these individual debtors are sole-proprietors or are otherwise engaged in a business venture that was funded by friends and family, credit card debt, home equity lines of credit or personal loans and qualify as a “small business debtor” under §101(51D) (assuming the usual situation of no

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creditors’ committee). While business debt in the aggregate may be substantial, it does not necessarily exceed the consumer debt due to very high home mortgage balances. Moreover, many of these same debtors (*i.e.*, those whose debts are “primarily” consumer debts) are high-income earners that may be unable to avail themselves of chapter 7 because they have “monthly disposable income”

the debtor and meaningful to the creditors. This article provides a framework for successfully navigating an individual small business debtor through chapter 11.

New Law Adds Burdens on Small Business Debtors

Because chapter 11 can be much more complex than chapter 13, assembling a team of professionals, particularly accounting professionals with chapter 11 experience, can be essential to success. BAPCPA imposes substantially heightened reporting requirements on small business debtors both at the time of case commencement and thereafter until

Feature

on line 50 of the means test form that gives rise to a presumption of abuse for purposes of the means test under §707, or they have “monthly net income” on line 20.c of schedule J that could be devoted to repay creditor claims. Debtors in this conundrum are forced to address their unpaid debts through either (1) an out-of-court workout where a compromise of the obligation or a voluntary payment plan is established, (2) state court collection practice where a state court judge oversees the liquidation of the debt, or (3) a reorganization plan under chapter 11.

The alternatives to a chapter 11 do not provide much relief as they are not practical, too costly and/or simply more than the typical debtor wants to endure. A proceeding for reorganization under chapter 11, however, provides the individual debtor with the ability to bring sanity to the restructuring process, take control of the outcome and emerge with a repayment plan that is both viable for

plan confirmation that are likely beyond the capability of most individual business debtors to fulfill without professional assistance.

BAPCPA added §1116 to the Code, which requires small business debtors to file a number of documents in addition to those that are filed by all other debtors seeking relief under chapter 11, including a recent balance sheet, statement of operations, cash-flow statement (if in existence) and federal tax returns.² Many small business owners are unprepared to generate these financial reports that are now a mandatory part of any bankruptcy case filing. BAPCPA also added §308, which contains a list of new reports that small business debtors must file after

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² Note that unlike §521(e)(2)(A)(i), §1116(1)(A) does not provide for the filing of a tax transcript instead of the tax return, meaning that the tax return could be part of the public record of the case. Counsel may want to consider seeking a waiver of this requirement and offering, as an alternative, the submission of the tax return to the office of the U.S. Trustee. Local rules in some jurisdictions may also alter this result. For instance, in Massachusetts, Local Bankruptcy Rule 4002-1(c) provides that any tax returns filed with the court will only be available for inspection by parties in interest by motion and that no tax information filed with the court will be available to the public via the internet. PACER of CM/ECF.

case commencement, including reports on profitability, cash-flow projections, comparisons of actual cash receipts and disbursements with projections, timely filing of all tax returns, and such other reports as the may be in the “best interests of the debtor and creditors.” While these reporting requirements await the development and adoption of Rules to establish the forms that debtors are to use in order to be in compliance with the requirements, some U.S. Trustee offices have modified the monthly operating reports (MORs) in a way that the new MORs now capture some of the reporting contemplated under §308.³ Many small business debtors will not have systems in place to capture this kind of information and/or will need assistance in assembling it from their current records, a task that an accountant will be able to perform promptly and efficiently. Accounting support at the outset of a case can be invaluable, both in terms of assembling the necessary documentation for the filing, assisting the debtor in the preparation of the necessary reports from and after the filing date, and assisting with the development of financial projections for the chapter 11 reorganization plan.

Know the Players and Issues

Office of the U.S. Trustee (OUST). Unlike in chapter 13, the OUST, and in particular the staff attorney assigned to the chapter 11 proceeding, will usually play an important role throughout the proceeding and can be a pivotal player during the negotiation of the terms of the plan and the plan confirmation process. This is particularly true in individual chapter 11 cases where creditors typically do not participate in the case and the U.S. Trustee views part of its role as watchdog for the otherwise unrepresented impaired creditors classes, typically the general unsecured creditors.

Creditors’ committee. Also unlike chapter 13 practice, counsel must also consider the possibility (albeit probably remote) that a creditors’ committee may be formed, the role that the committee may play in the reorganization process, and the additional expense that the committee will bring to the case.⁴ Moreover, creditors’ committees typically retain counsel, and this cost is an expense

of administration.

Credit counseling. Courses on credit counseling⁵ prior to filing and personal financial management⁶ post-filing must be taken by individual chapter 11 debtors.

Payment advices. Payment advices must be filed with the court or, if a local rule provides otherwise, supplied to the trustee⁷ (typically the OUST in a chapter 11 case where the debtor is continuing to operate the business as debtor-in-possession (DIP)).

Means testing. The means test form for chapter 11 is abbreviated, providing only for the calculation of current monthly income (CMI). The relative importance of this computation in chapter 11, while much debated in chapter 13, is unclear, but it is likely that with BAPCPA’s overlay of chapter 13 concepts in individual chapter 11 cases, the reasoning of the chapter 13 decisions will pour over into the chapter 11 arena. As a practical matter, preparation of Form 22C should occur in concert with, and in consideration of, Schedules I and J and statement of financial affairs questions 1 and 2, all of which bear on the debtor’s income and ability to pay.

Post-petition earnings. Property acquired after the commencement of the case, including all of the debtor’s post-filing earnings, is now property of the estate (§1115(a)). Moreover, an individual debtor’s plan must now provide for the payment to creditors of “all or such portion of earnings” of the debtor as may be necessary to fund the plan.⁸

Plan voting. Unlike chapter 13, in order to obtain plan confirmation, creditors whose claims are impaired under §1124 by the debtor’s plan are permitted to vote on the plan. Obtaining the affirmative vote of a class of creditors in individual chapter 11 cases can present a substantial hurdle to success because many credit card companies do not participate in the case and do not vote.⁹ Moreover, a single troublesome creditor may effectively control the vote since voting is based on actual votes cast. Unfriendly creditors are the most likely to vote, and vote against, the plan. Therefore, prior to filing a case, a

thorough vetting of the creditor list should be undertaken to identify potentially recalcitrant creditors that could dominate the voting class of creditors either due to size or activity and block the plan. Simply stated, depending on the makeup of the creditor body, considerable effort may be necessary in order just to get creditors to vote in favor of the plan.

Cost of chapter 11. Chapter 11 requires considerably more reporting and planning during the pendency of the case, and unlike chapter 13 practice, a standard form chapter 11 plan for use by small business debtors has yet to be promulgated. Moreover, chapter 11 debtors may need to file both a plan and a disclosure statement, though the hearing on these pleadings should be able to be combined in most cases.¹⁰ The criteria that chapter 11 plans must meet, as described in §1123, is considerably more extensive than the criteria established for chapter 13 plans in §1322. Also, there are many more opportunities for creditors to press their agenda in the chapter 11 process than in the typical chapter 13 proceeding. The possibility of increased intervention by the creditors in the case, either individually or as part of a creditors’ committee, must be carefully considered since it can dramatically increase the cost of a chapter 11 proceeding.

Also, while chapter 11 debtors avoid the administrative expense of the fee paid to the chapter 13 trustee, chapter 11 debtors must make quarterly payments to the OUST. Prior to the enactment of BAPCPA, the discharge of an individual debtor was entered when the plan was confirmed, and therefore, the case could be promptly closed after confirmation to prevent the further accrual of quarterly fees to the U.S. Trustee. BAPCPA changes all this, providing that the discharge for an individual debtor does not occur until the plan is completed. Therefore, the individual debtor’s case will remain open for the entire term of the confirmed plan, and the quarterly fees due to the U. S. Trustee will continue to accrue.

Tax considerations. Many small businesses have significant tax problems that can quickly become overwhelming. Chapter 11 can be a very useful tool to restructure outstanding secured and priority tax claims. Prior to the enactment

³ The OUST for Region 1 modified its basic monthly operating report after the enactment of BAPCPA and the new form captures some of the information described in 11 U.S.C. §308. An official form of monthly operating report for small business debtors will become effective December 2008.

⁴ 11 U.S.C. §1102(3) provides that a small business debtor may request that a committee of creditors not be appointed.

⁵ 11 U.S.C. §109(h).

⁶ 11 U.S.C. §727(a)(11), incorporated into chapter 11 by 11 U.S.C. §1141(d)(3)(C). Note, however, that upon information and belief, it is the position of the U.S. Trustee Program that these sections do not require the chapter 11 individual debtor to receive the debtor education.

⁷ 11 U.S.C. §521(a)(1)(B)(iv).

⁸ 11 U.S.C. §1123(a)(8).

⁹ There are cases suggesting that a nonvote is a vote to accept the plan but those cases are in the minority. The prevailing view is that in cases where a plan proposes impairment of creditors, at least one class of impaired creditors must affirmatively vote in favor of the plan.

¹⁰ 11 U.S.C. §1125(f) provides that a disclosure statement may not be necessary if the plan provides adequate information and that the hearing on the disclosure statement and the plan may be combined, reducing the number of court hearings and cutting down on the cost of the case.

of BAPCPA, debtors generally had six years from the date a tax was assessed to pay off a tax obligation under a plan. BAPCPA provides debtors with five years from the date that the order for relief (this is the petition filing date) is entered, regardless of the assessment date of the tax and on terms and conditions that are no less favorable than the most favored nonpriority unsecured creditor.¹¹ This is one of the great benefits of BAPCPA because unpaid taxes are present in many small business cases, and typically the taxes are quite old by the time the debtor is finally seeking bankruptcy advice. Under the new law, regardless of the year of the tax, the debtor will have five years from the petition date to satisfy the tax debt. This benefit also means that the sooner a plan is confirmed, the longer the amortization period that the debtor will have to repay the taxes. Moreover, in many cases, the taxing authorities have recorded tax liens on the debtor's property. In such cases, and assuming the debtor's cash flow is sufficient, it may be advantageous for the debtor to enter into a cash collateral stipulation (see discussion under "cash collateral" below) with the taxing authority at the outset of the case so that the debtor could begin making monthly adequate protection payments to the taxing authority and start to reduce the tax obligation. The amount and timing of tax payments need to be considered early in the planning process when evaluating the prospects for a successful chapter 11 reorganization.

Exit strategy. As a general rule, a debtor should not enter chapter 11 until a strategy for exiting chapter 11 is formulated, absent exceptional circumstances (*i.e.*, the "eve of seizure" filing). Prior to filing the case, an outline of a feasible chapter 11 plan should be prepared. Consideration should be given to the debtor's post-filing cash flow. The plan should include cash-flow projections for the term of the plan that detail the debtor's receipts and disbursements, as well as a range of projected dividends that may be paid under the plan to the impaired creditor classes.

Immediate Considerations

After filing, the debtor and counsel will be required to immediately devote their attention to a number of important issues.

Cash collateral. Counsel must carefully inspect any loan documents of

the debtor to determine if the provisions of §363 relating to a debtor's use of cash collateral apply. If applicable counsel should be prepared to negotiate with the lender for the debtor's continuing use of cash collateral or, absent agreement, to seek approval of the bankruptcy court to continue to use cash collateral so that the debtor's business may continue to operate.

New debtor duties. Carefully review new §1116 relative to the additional filing requirements that the Code now imposes on small business debtors. Be prepared to seek a waiver of certain of these requirements if the requirements are unduly burdensome or not likely to be of benefit to the court and/or the creditors. When necessary, design and implement procedures for the debtor so that the debtor will be ready to timely prepare and file the monthly operating reports with the OUST. Also, unlike chapter 13, upon filing the case the debtor must close its bank accounts and establish new bank accounts that contain certain information, required by the Office of the U.S. Trustee, about the bankruptcy filing on the face of the check.

Professional retention. Unlike chapter 13 practice in many jurisdictions, chapter 11 debtors must seek the permission of the court to retain professional persons pursuant to §327 and F.B.R.P. 2014. Compensation of professional persons is governed by §330 and Federal Bankruptcy Rule 2016. All of these provisions are typically supplemented by local rules of court.

Claims bar date. In a chapter 13 proceeding, the clerk of the bankruptcy court will generally set the deadline by which creditor claims must be filed. In chapter 11, the debtor must ask the court to establish a deadline for filing claims and must take command of the claims-objection process. The best practice is to establish a bar date as soon as the case is filed so that the amount of debt that will be treated under the plan can be determined. Also, unlike chapters 7 and 13, creditors need not file a proof of claim to participate in a dividend payment in chapter 11 if the creditor is in agreement with the amount as reflected on the debtor's schedules, unless the claim is listed as disputed, contingent or unliquidated.¹² Therefore, it is most important to take great care in listing the amount and validity (*i.e.*, claims may be listed as "disputed" on the bankruptcy schedules) of debt that is owed

to each creditor.

Initial meeting with the U.S. Trustee and first meeting of creditors. Shortly after the case is filed, the OUST will convene an informal meeting with the debtor and debtor's counsel, referred to as an initial debtor's interview.¹³ The debtor should be prepared to provide a clear explanation to the U.S. Trustee regarding the circumstances that led to the filing, and also be able to present an outline of a viable plan for exiting chapter 11 successfully and the timeline for doing so. Typically, the U.S. Trustee's Office will also use this meeting to establish that adequate insurance is in force and in effect, that the debtor has or is in the process of establishing DIP bank accounts at depository institutions that are approved by the OUST for use by chapter 11 debtors, and to confirm the debtor's receipt of the operating guidelines that establish a post-filing code of conduct for the chapter 11 debtor. This meeting can be most helpful if it is used to develop a positive relationship with the trustee's office. The debtor must also prepare for the first meeting of creditors conducted pursuant to §341 where the debtor should be prepared to carefully describe and promote the outline of the reorganization plan to the creditor body in general under oath.

Monthly operating reports. From and after the filing of the case, the debtor must timely file monthly operating reports with the OUST and, in some jurisdictions, with the bankruptcy court. These forms may vary from district to district, but there will be an official form in December 2008. The purpose of the reports is to provide the U.S. Trustee with current operating information about the debtor so that the trustee may monitor the debtor's post-filing activities and, if necessary, pursue appropriate relief in the court should the debtor's operating reports reflect an inability on the part of the debtor to perform its post-filing obligations or successfully reorganize.

Post-filing, Pre-confirmation Considerations

Building cash reserves and a favorable operating history. Absent a plan that contemplates liquidation of assets or an inflow of funds from a third party, most operating debtors will propose a plan providing creditors with payments over time and largely funded by the disposable income that is generated from their business operations and/or employment of

¹¹ See 11 U.S.C. §1129(a)(9)(C) and (D).

¹² See F.R.B.P. 3003.

¹³ See 28 U.S.C. §586 for a list of the specific duties that are now mandatory for the OUST to perform in small business cases.

the debtor. Typically, the debtor's pre-filing track record of generating meaningful disposable income that could be devoted to the payment of creditor claims is either not strong or nonexistent. Feasibility is a key criterion that a chapter 11 plan must meet in order to be confirmable and courts will typically look at the debtor's past financial performance as a strong predictor of future performance. For this reason, if the debtor had poor financial performance pre-filing, it will be very important for the debtor to be able to show positive financial performance from and after the commencement of the case so that the debtor will have an established track record that supports the cash flow projections contained in the plan. In many cases, this will require the debtor to reevaluate, on a line-by-line basis, all receipts and disbursements in an effort to enhance receipts and/or reduce expenses so that the debtor will have sufficient disposable income to fund a plan. At the same time, the debtor should be building a cash reserve while the case is pending that can convincingly demonstrate to the court that the debtor has the ability to generate the money necessary to fund a plan and that can be used by the debtor to fund an early dividend distribution to creditors at the time of plan confirmation.

Developing plan discipline. Absent creditor opposition, a debtor may be able to propose and confirm a plan of any duration. However, under BAPCPA, if the plan does not propose full payment of creditor claims, unsecured creditor opposition may require a debtor to devote all "projected disposable income"¹⁴ to be received by the debtor for the longer of five years from and after the first plan payment date or the term of payments under the plan.¹⁵ Many debtors will find themselves having to commit to five-year plans in order to meet this requirement. While the timing of plan payments may vary (*i.e.*, monthly, quarterly, semi-annually, etc.) the accumulation of income during the chapter 11 period can serve as a trial run for purposes of establishing the necessary controls and instilling the debtor with the discipline that will be necessary to adhere to the

plan terms from and after confirmation.

Claims resolution. Promptly after expiration of the bar date, counsel should undertake a thorough review of all filed claims and file claims objections where necessary. This process should occur prior to plan confirmation so that the debtor may more precisely predict the amount of the plan dividend that will be paid to creditors under the plan. Because a debtor's bargaining leverage with the holders of priority claims is negligible, obtaining consensual and favorable repayment terms with the holders of priority claims can be very important to plan cash flow.

Participation of the OUST. Providing the U.S. Trustee with the opportunity to review and comment on the plan and disclosure statement prior to filing with the court and circulation to parties in interest to ensure that the plan and disclosure statement are in a format that is not objectionable to the U.S. Trustee can be essential to the ultimate success or failure of the plan. Resolving issues with the U.S. Trustee can also help reduce legal fees by eliminating hearings on objections.

Post-petition debt. After the petition is filed, all debts incurred in the ordinary course of the debtor's business should be timely paid. The accumulation of post-petition debt, and in particular tax debt, is rarely tolerated by the court and typically results in the prompt filing of a motion to convert or dismiss the case by the OUST. Simply stated, while in chapter 11 a debtor should not be getting further behind with the business vendors.

Plan formulation. BAPCPA added subsection (e) to §1121 extending the exclusivity period for small business debtors to 180 days (with extension possible under certain circumstances). It also imposes a 300-day drop-dead for the filing of a plan. The debtor must develop a feasible plan, and the centerpiece of the plan will be the cash-flow projection. Secured claims collateralized by property other than the debtor's principal residence¹⁶ may be bifurcated into secured and unsecured claims, depending on the amount of the claim in relation to the value of the underlying collateral. Since priority claims must be paid in full, the principal battleground¹⁷ in most small

business cases will be the terms of payment to the general unsecured creditors who typically are not paid in full. In the absence of creditor opposition to the plan, the Code would appear to allow any repayment amount and terms that the creditors vote to accept. Absent acceptance of the plan by at least one impaired class of creditors, the plan may not be confirmable.

As a practical matter, in practice it can become exceedingly difficult to get creditors to even vote on a plan where the proposed dividend is *de minimus*. This should be a very important consideration when formulating the amount of the plan dividend: Will creditors take the time to send in a ballot if the dividend is 3 percent over three years? On the other hand, 10 percent over that same three-year period, with an immediate cash dividend of 5 percent at plan confirmation, may be very enticing to a creditor. If the debtor is unable to accumulate funds for a dividend, options may include liquidation of otherwise-exempt assets to fund an initial plan dividend or to seek a contribution from a nondebtor third party, typically a business associate, friend or relative. Creditor opposition to a plan may force the debtor to propose a plan wherein the debtor devotes all projected disposable income to the plan during the term of the plan. In any event, the debtor must also be prepared to show that the plan is better than a liquidation, and a careful liquidation analysis should be prepared that plainly demonstrates this confirmation element. Last, the extended post-confirmation quarterly fees levied on individual chapter 11 debtors by BAPCPA must be factored into the plan budget.

Plan confirmation. BAPCPA added §1129(a) (15) as a new confirmation requirement in an effort to incorporate the disposable income test of chapter 13 into individual chapter 11 cases. Creditor voting and compliance with §1126 is of paramount importance in chapter 11, without which plan confirmation may not occur and the debtor may be "bankruptcy proof"—too much debt for chapter 13, presumptively abusive under chapter 7 (due the presence of disposable income or presumptively abusive under §707) and unconfirmable under chapter 11 due to the lack of sufficient creditor votes. Counsel must be certain that voting packages are sent to correct addresses and are in fact received by creditors and that ballots are timely returned.

If there is more than one impaired class of creditors under the plan,

¹⁴ There are many court decisions in the chapter 13 context on the issue of whether projected disposable income for purposes of 11 U.S.C. §1325 is determined by reference to the means test, schedule I and J or some combination of both. The definition of projected disposable income in 11 U.S.C. §1129(a)(15)(B) is equally unclear and perhaps even more so because (1) §1129 references §1325(b)(2) to determine "projected disposable income" but §1329(b)(2) defines "disposable income," not "projected disposable income" and (2) §1129(a)(15) does not reference 11 U.S.C. §1329(b)(3), so it is not clear how "expenses reasonably necessary to be expended" under §1329(b)(2) are to be determined.

¹⁵ 11 U.S.C. §1129(a)(15).

¹⁶ Unlike chapter 13 (see 11 U.S.C. §1325(a)(9)), chapter 11 affords no special protections to creditors whose collateral consists of a motor vehicle.

¹⁷ Arrearage claims on secured debt may be cured as part of the plan. This can present obstacles to plan confirmation as well since such treatment will typically result in claim impairment, meaning that the creditor may vote to reject the plan, requiring the debtor to seek cram down of the claim under 11 U.S.C. §1129(b).

cramdown under §1129(b) may be an option. BAPCPA added a phrase to the end of §1129(b)(2)(B)(ii) that allows individual debtors to retain their property. This new phrase seemingly eliminates the absolute-priority rule as a challenge by creditors to plans filed by individual debtors seeking to retain all of their property after plan confirmation.¹⁸

Depending on local practice, counsel will be required to present witnesses or may be able to rely upon offers of proof, typically in the form of affidavits of the debtor, debtor's counsel and debtor's financial advisor at the hearing on plan confirmation. The debtor must be able to attest to the plan's compliance with the elements of §1129, submit an affidavit of voting that details the results of the creditor voting, and be prepared to present live witness testimony on plan feasibility that will establish the debtor's ability to meet the payment schedule described in the plan.

In an effort to minimize cost and expense to the estate, the debtor should seek to consolidate the hearing on the adequacy of the disclosure statement with the hearing on plan confirmation, obtaining provisional approval of the disclosure statement if possible. Pursuant to §1125, counsel may also seek a ruling from the court that a separate disclosure statement is not even necessary. All professionals should prepare and file final fee applications in conjunction with the filing of the plan so that professional fees and expenses may be paid at confirmation or otherwise paid over time pursuant to the terms of the plan. The plan deposit (*i.e.*, the money that will be used to fund the initial plan dividend, if any) should also be available at the time of confirmation¹⁹ so that it may be promptly distributed to creditors in accordance with the terms of the plan when the court enters the confirmation order.

Post-confirmation Considerations

Plan payments and post-confirmation reporting requirements. Upon plan confirmation, plan payments should commence. Any delay in payment could constitute a default under the plan and be grounds for conversion of the case to chapter 7.²⁰ The debtor must continue to file monthly operating reports with the

U.S. Trustee's Office after plan confirmation in a format that is usually much shorter than the form of report filed prior to plan confirmation.

Post-confirmation plan modification. While individual debtor cases under BAPCPA will remain open for a much longer period of time, BAPCPA also creates considerable latitude for individual debtors seeking post-confirmation plan modification. Section 1127(e) provides the debtor and its creditors with the ability to increase or decrease the plan payment and the plan term, aligning the chapter 11 process more closely to chapter 13.

Motion for final decree. Upon completion of the plan payments, or such other period of time that the court may allow, the debtor will file a motion for final decree requesting that the court grant a discharge and requesting that the case be closed.

Conclusion

Chapter 11 proceedings for individual small business debtors require careful planning and skilled implementation. While BAPCPA added many provisions to chapter 11 that increase the reporting burden and incorporate chapter 13 plan concepts, much of the complexity and the flexibility of chapter 11 practice remains. Careful planning will result in a successful reorganization plan for individual small business owners that might otherwise be unable to find any debt relief whatsoever. ■

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¹⁸ See *In re Roedemeier*, 374 B.R. 264 (Bankr. D. Kan. 2007) and *In re Tegeeder*, 369 B.R. 477 (Bankr. D. Neb. 2007)

¹⁹ In some jurisdictions, the deposit requirement is governed by local rule. For instance, in Rhode Island, proof of the plan deposit, typically equal to the amount that is needed to pay the initial distribution to creditors under the plan, must be filed with the court at least three days in advance of the plan confirmation hearing together with a bank statement showing the amount of the deposit. See Rhode Island Bankruptcy Rule 3020-1(b).

²⁰ See §1112(b) (4) (N).