

**MINUTES**  
**United States Bankruptcy Court for the District of Maine**  
**Local Rules Committee Meeting**  
**September 17, 2019 – 10:00 a.m.**

Present: Chief Judge Cary, Mr. Anderson, Mr. Creswell, Mr. Leddy, Mr. Dudley, Mr. Molleur, Mr. Hull (Chair), Ms. Dye (on behalf of Judge Fagone), Mr. Crosman, Ms. Doil, Mr. Morrell, Mr. Sleeper,

Absent: Mr. Wholly, Ms. Economy

1. **Approval of Prior Meeting(s) Minutes.** Mr. Hull opened the floor for any comments on previous minutes. Mr. Leddy asked that the minutes be titled June 25, 2019 and not June 26, 2019. Mr. Hull will be suggesting minor additional edits to the minutes. He will circulate the proposed final version to the Committee and unless there are any objections, those will be final minutes to be posted.
2. **Chair Announcements.** Mr. Hull thanked Mr. Creswell for his time as Chair. Judge Cary also thank Mr. Creswell for his service. (Spontaneous heartfelt cheer broke out!)
3. **Clerk's Office Report.**
  - The Court will start its transition to NextGen, which is the next generation of CM/ECF, beginning in October of 2019. It is estimated that this process will take 6 – 8 months. NextGen allows for nationwide single sign on, so you will be able to use your same login information for any other court that has NextGen. This will be a multi-year process around the country. The United States District Court of the District of Maine will be going live with NextGen in December of 2019.
  - The procurement has been awarded for the Bangor evidence presentation system. This installation is the final part of the two-courtroom update to the audio and evidence presentation-systems upgrades. The Bangor system will mirror the Portland system, and have the added benefit of video features. Intrastate “bankruptcy courtroom” to “bankruptcy courtroom” attendance is not available until video equipment is added to the Portland Courtroom, which is under discussion.
4. **Local Rule 3002-1(e) – Newly added creditors and deadline to object to claims**

Mr. Hull took lead on this issue. The proposed amendment deals with creditors that are added by amendment. The rule currently provides a 90-day deadline for the newly-added creditor to file a proof of claim and provides a general 30 day objection deadline for any claims that were filed under this rule in Chapter 7, 12, and 13 cases.

Two proposed edits to the rule were circulated, reviewed and discussed, and the following changes were approved by unanimous vote:

**D. Me. LBR 3002-1(e)**

(e) Creditors Added by Amendment - Time for Filing Proofs of Claim.  
When a Chapter 7, Chapter 12 or Chapter 13 debtor has amended his or her schedule of creditors to add a creditor, the newly-added creditor may file a proof of claim within ~~ninety~~ seventy (790) days after the date that the debtor served the creditor with notice of the amendment. ~~Objections to any claims~~

~~filed under this subparagraph shall be filed within thirty (30) days from the date the proof of claim is filed~~

5. **Federal Bankruptcy Rule Revisions Effective Dec. 1, 2018 – FRBP 7005; 9014; 5005**

Mr. Sleeper raised issues concerning a certificate of service when a pleading is served by filing it with the court's electronic-filing system. There is also a related issue involving transmittals to the US Trustee. Mr. Sleeper will prepare an overview and recommendations for the Committee to consider.

6. **Review of Local Rules for Consistency/Cross-References/Updating**

Judge Cary will be taking the first review of changes to the Local Rules. Will be reviewing for references to form numbers and references to Federal Rules or Reserved items. Once we have a first draft then we can figure out if we want to have a subgroup work on it.

7. **Local Rule 9045-1(b)(2)**

Mr. Leddy will distribute final version and will give one week for comments. The vote has already been made to approve it. Then it will follow the normal course for implementing the changes.

8. **Small Business Reorganization Act (SBRA).**

The Small Business Reorganization Act will become effective on February 19, 2020. Mr. Hull passed out some pages which give a quick overview of the changes that are coming. The Committee discussed forming a subcommittee to monitor the SBRA and report out to the group if there is anything that would affect the local rules or raising the awareness that this is coming. Mr. Molleur, Mr. Morrell and Mr. Anderson are the members of the subcommittee.

Mr. Keach and Ms. Krakowka will be presenting an hour-long synopsis on this issue at the Maine State Bar Association bankruptcy CLE in Freeport on October 17, 2019.

Mr. Hull will touch base with the subcommittees for updates and as to whether items from the subcommittee will go on agendas.

A summary of the SBRA will be appended to the September 17, 2019 meeting minutes and available to the public.

9. **Upcoming MSBA Bankruptcy CLE**

October 17, 2019, Freeport. There will be a panel on the Small Business Reorganization Act. There will be a panel discussing "hot topics" in chapter 13 and chapter 7. Finally, there will be a panel discussing ethics.

10. **New Business/Matters/Issues.**

11. **Schedule Next Meeting.**

November 12, 2019, at 10:00 am

# **Small Business Reorganization Act of 2019**

## **11 U.S.C. §§ 1181-1195**

### **Disclaimer:**

The attached comments about the Small Business Reorganization Act of 2019 do not represent the work product, opinion or position of the United States Bankruptcy Court for the District of Maine or any of its judges or employees. Nor do the United States Bankruptcy Court for the District of Maine or any of its judges or employees verify or vouch for the accuracy of the comments.

**Small Business Reorganization Act of 2019  
11 U.S.C. §§ 1181-1195**

**(Eff. Feb. 19, 2020)**

**The Big Takeaways**

**Who may be a small business debtor?** SBRA requires at least 50% of small business debtor's debt to have arisen from commercial or business activities. Current § 101(51D) defines a "small business debtor" as one that has aggregate, noncontingent, liquidated, secured and unsecured debts of \$2,725,625 or less. Although this amount will adjust periodically, pursuant to § 104, any such limit will apply to Subchapter V cases. Small business debtors must opt in to Subchapter V by checking the appropriate box in Item 13 of a voluntary petition. See §§ 1182(1) and (2); amended § 101(51D)(A); and new § 103(i).

**Mandatory status conference not later than 60 days after entry of order for relief.** Unless court deems a later status conference appropriate upon a finding that such extension is "attributable to circumstances for which the debtor should not justly be held accountable." See §§ 1188(a) and (b).

**Debtor must file pre-status conference report at least 14 days before mandatory status conference.** Report must detail the "efforts the debtor has undertaken and will undertake to attain a consensual plan of reorganization." See § 1188(c).

**No Committees.** Unless court orders otherwise. See § 1181(b) and amended § 1102(a)(3).

**Standing Trustee in every small business debtor case.** See § 1183(a).

**If confirmation is consensual, Standing Trustee serves until substantial consummation of plan.** See § 1183(c) (termination of Standing Trustee's services) and § 1191(a) (consensual confirmation).

**If confirmation is contested, Standing Trustee serves until completion of payments under the confirmed plan.** See § 1183(c) (termination of Standing Trustee's services); § 1191(b) (contested confirmation); and § 1194(b) (Standing Trustee to make payments required under plan confirmed under § 1191(b), unless plan or confirmation order provide otherwise).

**If debtor in possession removed for cause, Standing Trustee takes over.** See § 1185 (removal of debtor) and § 1183(b)(5) (duties of Standing Trustee upon debtor's removal).

**Standing Trustee is paid like current Ch. 12/13 trustees, under 28 U.S.C. § 586(e)(1).** See amended § 326(b) and new 28 U.S.C. § 586(e)(5).

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**Standing Trustee makes all payments to creditors under the confirmed plan.** Unless plan or confirmation order provide otherwise. See § 1194.

**Standing Trustee may make adequate protection payments to secured creditors prior to confirmation.** As ordered after notice and a hearing. See § 1194(c).

**Standing Trustee must:** (a) appear at mandatory status conference; (b) facilitate the development of a consensual plan of reorganization; **and** (c) perform duties generally consistent with § 1302. See § 1183(b).

**No quarterly UST fees.** See amended 28 U.S.C. § 1930(a)(6)(A).

**Post-petition property and earnings are property of the estate.** See § 1186.

**Debtors must comply with § 1116(1)(A) or (B) and with §§ 1116(2), (3), (4), (5), (6), and (7).** See §§ 1187(a) and (b).

**No disclosure statement.** Unless court orders otherwise. See §§ 1181(b) and 1187(c).

**Only debtor may file a plan.** See § 1189(a).

**Debtor must file a plan no more than 90 days after entry of order for relief.** Unless court extends deadline upon a finding that extension is “attributable to circumstances for which the debtor should not justly be held accountable.” See § 1189(b).

**Plan can modify the rights of holders of claims secured by debtor’s principal residence IF:** (a) the debt was not used primarily to acquire that real property; **and** (b) the debt was used primarily in connection with debtor’s business. See § 1190(3).

**No consenting impaired class needed for confirmation IF:** (a) plan satisfies § 1129(a) [other than (a)(8), (a)(10), and (a)(15)]; (b) plan does not discriminate unfairly; **and** (c) plan is fair and equitable, as to each impaired, nonconsenting class. See §§ 1181(a) and 1191(b).

**Plan is “fair and equitable” IF:** (a) § 1129(b)(2)(A) satisfied; (b) provides for application of all debtor’s projected disposable income for 3 years beginning on date first payment is due (or up to 5 years, as ordered) to plan payments; **and** (c) debtor will be able to make all plan payments **or** reasonable likelihood that debtor will be able to make all plan payments. See § 1191(c).

**Absolute Priority Rule does not apply.** See § 1181(a).

**Debtor’s counsel can have pre-petition claim of less than \$10,000 and still be disinterested.** See § 1195.

**Preference actions under § 547(b) – in ALL cases under the Code, not just Subchapter V cases – will require “reasonable due diligence in the circumstances of the case” on the part**

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**of the plaintiff “taking into account a party’s known or reasonably knowable affirmatives defenses under [§ 547](c).” See amended § 547(b).**

**Actions to which 28 U.S.C. § 1409(b) applies and in which the amount in controversy is less than \$25,000 (up from \$10,000) must be commenced in the district in which the defendant resides. See amended 28 U.S.C. § 1409(b).**

[Note: It is not clear whether 28 U.S.C. § 1409(b) applies to avoidance actions. The majority of courts hold that it does not, because it omits proceedings “arising under” Title 11 from those to which § 1409(b) expressly applies. See Webster v. Republic Nat’l Distrib. Co. LLC (In re Tadich Grill of Washington D.C. LLC), 598 B.R. 65, 67 (Bankr. D.C. 2019) (holding that 28 U.S.C. § 1409(b) does not apply to a proceeding “arising under title 11”). The minority view holds that the omission of proceedings “arising under” Title 11 was inadvertent, and that § 1409(b) should apply to such proceedings. See N1 Creditors’ Trust v. Crown Packaging Corp. (In re Nukote Int’l, Inc.), 457 B.R. 668, 684 (Bankr. M.D. Tenn. 2011) (applying 28 U.S.C. § 1409(b) to avoidance actions).]

## **Analysis**

### **§ 1181. Inapplicability of other sections**

(a) Renders §§ 105(d), 1101(1), 1104, 1105, 1106, 1107, 1108, 1115, 1116, 1121, 1123(a)(8), 1123(c), 1127, 1129(a)(15), 1129(b), 1129(c), 1129(e), and 1141(d)(5) inapplicable to a case under Subchapter V.

(b) Unless court orders otherwise, §§ 1102(a)(1), (2), and (4), as well as §§ 1102(b), 1103, and 1125 do not apply.

(c) If a plan is confirmed, § 1141(d) does not apply, except as provided in § 1192.

### **Sections Inapplicable under § 1181(a)**

**§ 105(d)** – (1) requires a court to hold status conferences as are necessary to further the expeditious and economical resolution of the case; and (2) permits a court to issue scheduling orders that set certain dates and deadlines including, but not limited to: (i) deadline to file a DS and plan; (ii) deadline to solicit acceptances of a plan; (iii) deadline by which a party other than the debtor may file a plan, (iv) provides that the hearing on approval of the DS may be combined with the hearing on confirmation of the plan.

**Instead: § 1188(a)** requires the court to convene a status conference not later than 60 days after entry of the order for relief “to further the expeditious and economical resolution” of the case. **§ 1188(b)** permits the court to extend this period “if the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable.” Under **§ 1188(c)**, no

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fewer than 14 days prior to the status conference, 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.”

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**§ 1101(1)** – Defines “debtor in possession” as debtor

**Instead:** **§ 1182(1)** defines “debtor” as a “small business debtor”; and **§ 1182(2)** defines debtor in possession as “debtor”. [Per **§ 101(51D)**, a “small business debtor” is a person engaged in commercial or business activities that has aggregate noncontingent liquidated secured and unsecured debts as of the petition date not exceeding \$2,725,625 (as of Apr. 4, 2019 and excluding debts owed to affiliates or insiders) *not less than 50% of which arose from the commercial or business activities of the debtor\**]

\* *Italicized text* added to § 101(51D)(A) by conforming amendments incorporated into SBRA. [Debtor will have to opt in to treatment as a small business debtor in Item 13 of Petition; see new § 103(i), below.]

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**§ 1104** – Appointment of trustee or examiner

**Instead:** **§ 1183(a)** provides that, if a standing Ch. 12/13 trustee has been appointed, then that individual shall serve as trustee in Subchapter V cases. Otherwise, the UST shall appoint one disinterested person to serve as trustee in the case or the UST may serve as trustee in the case, as necessary.

**and**

**Instead:** **§ 1185** governs removal of debtor in possession. Provides for removal of a debtor in possession “for cause,” including “fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor, either before or after the commencement of the case, or for failure to perform the obligations of the debtor under a plan confirmed under this subchapter.” Tracks first portion of § 1104(a)(1), but omits (a)(2) (appointment of a trustee where it would be in the interests of creditors). Failure to perform obligations under a confirmed plan as grounds for appointment of a trustee comports with §§ 1112(b)(4)(M) (inability to effectuate substantial consummation of a confirmed plan) and (N) (material default by the debtor with respect to a confirmed plan).

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**§ 1105** – Termination of trustee’s appointment

**Instead:** **§ 1183(c)** Termination of Trustee Service

(1) If D’s plan is confirmed, the service of the trustee in the case shall terminate upon substantial consummation, except that the UST may reappoint a trustee as needed to perform



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duties set forth in § 1183(b)(3)(C) (appear at hearings concerning the modification of a confirmed plan) and § 1185 (removal of debtor in possession)

(2) No more than 14 days after substantial consummation of plan, the debtor shall file with the court and serve on the trustee, UST, and all parties in interest notice of substantial consummation.

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**§ 1106 – Duties of trustee and examiner**

**Instead: § 1183(b)**

(b) The trustee shall –

(1) perform duties specified in §§ 704(a)(2) (be accountable for all property received), (5) (examine POC and object to improper claims, if necessary), (6) (oppose the debtor's discharge, if advisable), (7) (unless otherwise ordered, furnish information concerning the estate and the estate's administration as parties in interest might request), **and** (9) (make a final report and file a final account of the administration of the estate with the court and with the UST)

(2) If the court orders for cause and on request by a party in interest, the trustee, or the UST, perform duties specified in §§ 1106(a)(3) (investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business and any other matter relevant to the case or to the formulation of a plan), (4) (as soon as practicable, file a statement of such investigation and transmit a summary or copy to any creditors' or equity committee, any indenture trustee, or as ordered), **and** (7) (file any necessary or court-ordered post-confirmation reports)

(3) appear at the § 1188 status conference **and** at any hearing that concerns:

- (a) value of property subject to a lien
- (b) confirmation
- (c) post-confirmation modification of plan
- (d) sale of property of the estate

(4) ensure commencement of timely payments under confirmed plan

(5) If D is removed (see § 1185), perform the duties in § 704(a)(8) (for an operating business, file MORs) and §§ 1106(a)(1) (incorporates §§ 704(a)(2) (collect and reduce to \$\$ property of the estate as expeditiously as possible), (5) (examine POC and object to improper



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claims, if necessary), **(7)** (unless otherwise ordered, furnish information concerning the estate and the estate's administration as parties in interest might request), **(8)** (for an operating business, file MORs), **(9)** (make a final report and file a final account of the administration of the estate with the court and with the UST), **(10)** (provide notice to holders of domestic support claims as required by § 704(c)), **(11)** (continue to fulfill debtor's ERISA plan administrator obligations, if any), **and (12)** (use all reasonable and best efforts to transfer patients from a healthcare business that is being closed to one that is nearby and similar); **(2)** (if debtor hasn't done so, file schedules, statements, and other documents required by § 521(a)(1)); **and (6)** (provide financial information to taxing authorities)

- (6)** Provide notice to holders of domestic support claims as required by § 704(c)
- (7)** facilitate the development of a consensual plan of reorganization.

**and**

**Instead: § 1194** requires debtor to make all plan payments through the trustee

**(a)** Trustee retains all funds until confirmation or denial of confirmation. If plan confirmed, trustee makes payments according to confirmed plan. If plan not confirmed, trustee returns \$\$ to debtor after deducting **(1)** unpaid claims under § 503(b) [administrative expense claims]; **(2)** adequate protection payments; **and (3)** any fee owing to the trustee.

**(b)** If a plan is confirmed, trustee makes payments to creditors under the plan, unless plan or confirmation order provide otherwise.

**(c)** Prior to confirmation and after notice and a hearing, court may order trustee to make adequate protection payments to holder of secured claim.

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#### **§ 1107 – Rights, powers, and duties of debtor in possession**

**Instead: § 1184** affords debtor in possession “all the rights and powers” of a trustee [other than to compensation under section 330], and requires a debtor to “perform all functions and duties of a trustee” [other than those in §§ 1106(a)(2) (if debtor hasn't done so, file schedules, statements, and other documents required by § 521(a)(1)), **(4)** (as soon as practicable, file a statement of the investigation of debtor's financial condition and transmit a summary or copy to any creditors' or equity committee, any indenture trustee, or as ordered), **and (6)** (provide financial information to taxing authorities)], including the operation of debtor's business.

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**§ 1108 – Authorization to operate business**

**Instead: § 1183(b)(5)** (authorizing trustee to operate debtor’s business upon debtor’s removal)  
**and § 1184** (authorizing debtor in possession to operate its business)

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**§ 1115 – Property of the estate**

**Instead: § 1186**

(a) If a plan is confirmed, property of the estate includes everything in § 541 **and**

(1) property acquired post-petition but prior to the earlier of closure of case, dismissal, or conversion to 7, 12, or 13; **and**

(2) earnings from services performed by the debtor post-petition but before the earlier of closure of case, dismissal, or conversion to 7, 12, or 13.

(b) Except per § 1185 (removal of debtor in possession), per a confirmation order, or per a confirmed plan, the debtor shall remain in possession of all property of the estate.

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**§ 1116 – Duties of trustee or debtor in possession in small business cases**

**Instead: § 1187**

(a) Requires debtor to append to petition (voluntary case) or, in involuntary case, to file within 7 days of entry of order for relief (1) most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return; or (2) statement under penalty of perjury that no such documents have been prepared or filed [i.e., to comply with §§ 1116(1)(A) or (B)]

(b) Requires debtor to comply with §§ **1116(2)** (attend § 341 meeting, IDI, and scheduling conferences, unless ordered otherwise upon a finding of “extraordinary and compelling circumstances”), **(3)** (timely file all schedules and SOFA, unless court extends deadline; deadline cannot be extended beyond 30 days following entry of order for relief except upon a finding of “extraordinary and compelling circumstances”), **(4)** (file all MORs and other post-petition reports), **(5)** (maintain insurance), **(6)** (timely file all tax return and timely pay all taxes entitled to administrative expense priority, except those being contested by appropriate proceedings), **and (7)** (allow UST or designated representative to inspect premises, books, and records)

(c) If court orders application of § 1125, then § 1125(f) will apply [if plan provides adequate information as defined in § 1125(a)(1), then separate DS not required; court may use

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standardized forms; tentative approval process OK; OK to solicit votes on tentatively approved plan; OK to combine confirmation hearing with hearing to consider final approval of DS]

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§ 1121 – Who may file a plan

**Instead: § 1189**

(a) Only debtor may file a plan

(b) D shall file a plan no more than 90 days after entry of order for relief, unless court extends that period upon a finding that such an extension is “attributable to circumstances for which the debtor should not justly be held accountable”

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§ 1123(a)(8) – Requires a plan proposed by an individual debtor to provide for payments to creditors all or such portion of earnings from personal services performed post-petition or other future income as is necessary for the execution of the plan

**Instead: § 1190** requires plans filed under Subchapter V to –

(1) shall include:

(A) a brief history of the business operations of the debtor

(B) a liquidation analysis; **and**

(C) projections with respect to the ability of the debtor to make payments under the proposed plan of reorganization;

(2) shall provide for the submission of all or such portion of the future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan; **and**

(3) notwithstanding § 1123(b)(5) [Ch. 11 anti-modification provision], “may modify the rights of the holder of a claim secured only by a security interest in real property that is the principal residence of the debtor if the new value received in connection with the granting of the security interest was –

(A) not used primarily to acquire the real property; **and**

(B) used primarily in connection with the small business of the debtor.

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§ 1123(c) – plan not proposed by debtor may not provide for use, sale, or lease of property exempted under § 522 absent debtor’s consent

**Instead: § 1189(a)**, which permits only the debtor to file a plan

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§ 1127 – Modification of plan

**Instead: § 1193** governs modification of plans

(a) Debtor may modify a plan at any time prior to confirmation, but may not propose a modified plan that fails to comply with § 1122 (classification of claims or interests) and § 1123 (contents of plans; but see § 1190)

(b) Post-confirmation and before substantial consummation, debtor may modify the plan at any time so long as modified plan complies with § 1122 (classification of claims or interests) and § 1123 (contents of plans; but see § 1190) **and** confirms the modified plan **and** finds that circumstances warrant the modification

(c) Post-confirmation and post-substantial consummation, debtor may modify the plan at any time within 3 years, or such longer time as fixed by the court (but not to exceed 5 years), but any proposed modified plan must comply with § 1191(b) and court must so find and must find that circumstances warrant the modification

(d) Post-confirmation, any holder of a claim or interest that has accepted or rejected the plan is deemed to have accepted or rejected the modified plan unless, within the time fixed by the court, such holder changes its previous acceptance or rejection.

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§ 1129(a)(15) – In order to be confirmed, an individual debtor’s plan, to which the holder of an allowed unsecured claim has objected, must distribute to the objecting creditor: (A) value, as of the effective date, not less than the amount of such objecting creditor’s claim; or (B) value not less than the projected disposable income of the debtor to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.

§ 1129(b) – Cramdown/Absolute Priority Rule

**Instead: § 1191** governs confirmation

(a) Court shall confirm a plan only if all requirements of § 1129(a) [other than (a)(15)] are met

(b) BUT if plan complies with all requirements of § 1129(a) [other than (a)(8) (each class has accepted plan or is not impaired), (a)(10) (at least one accepting, impaired, non-insider class

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required), and (a)(15) (see above)] court shall confirm the plan so long as plan “does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan”

(c) Plan is fair and equitable if:

(1) as to a class of secured claims, the plan satisfies § 1129(b)(2)(A) [(i)(I) and (II) retain lien and receive present value of allowed secured claim in deferred cash payments; (ii) sale of collateral free and clear with lien to attach to proceeds and treatment under (i) or (iii); **or** (iii) indubitable equivalent]

(2) as of effective date of plan

(A) plan provides that all of the projected disposable income of the debtor to be received in the 3-year period beginning on the date the first payment is due under the plan (or such longer period fixed by the court not to exceed 5 years) will be applied to make payments under the plan; **or**

(B) the value of property to be distributed under the plan [in the same period defined in (A)] is not less than the projected disposable income of the debtor.

(3)(A)

(i) The debtor will be able to make all payments under the plan; **or**

(ii) there is a reasonable likelihood that the debtor will be able to make all payments under the plan; **and**

(B) the plan provides appropriate remedies, which may include the liquidation of non-exempt assets, to protect the holders of claims or interests in the event that the payments are not made.

(d) Disposable income means – the income that is received by the debtor and that is not reasonably necessary to be expended –

(1) for –

(A) the maintenance or support of the debtor or a dependent of the debtor; **or**

(B) a domestic support obligation that first becomes payable after the date of the filing of the petition; **or**

(2) for the payment of expenses necessary for the continuation, preservation, or operation of the debtor’s business

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(Bankr. N.D. Cal.)

(e) Notwithstanding § 1129(a)(9)(A) [unless claimant agrees, plan must pay holders of claims entitled to priority under § 507(a)(2) [post-petition administrative expenses under § 503(b)] or § 507(a)(3) [post-petition, allowed, unsecured claims arising in an involuntary case from the ordinary course of the debtor's business but before the appointment of a trustee or entry of an order for relief] cash on effective date in an amount = allowed amount of such claim], court may confirm a plan that provides for payment of such claims through the plan.

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**§ 1129(c)** – Court may confirm only one plan unless the confirmation order is revoked

**Instead: § 1193** governs modification of plans and provides for confirmation of modified plans under a number of circumstances

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**§ 1129(e)** – In a small business case, the court shall confirm a plan that meets all content and confirmation requirements and that is filed within the time limits provided by § 1121(e) [applicable to small business cases] not later than 45 days after filing of the plan unless the time for confirmation is extended in accordance with § 1121(e)(3).

**Instead: § 1189(a)** only the debtor may file a plan; **and (b)** debtor shall file a plan not later than 90 days after entry of order for relief, unless court extends that deadline upon a finding that the “need for the extension is attributable to circumstances for which the debtor should not justly be held accountable”

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**§ 1141(d)(5)** – In an individual case (A) confirmation does not discharge any debt until completion of payments under the plan **but (B)(i)** court may grant a discharge to a debtor who hasn't completed all payments under the plan if the present value of money or property actually distributed on account of each allowed, unsecured claim is not less than what the holders of such claims would have received in distributions in a case under Ch. 7, (ii) modification is not practicable, **and (iii)** sub-part (C) is satisfied [no reasonable cause to believe § 522(q)(1) applies].

**Instead: § 1192 -- If** plan confirmed under § 1191(b) (contested confirmation, as opposed to consensual confirmation under § 1191(a)), court must issue a discharge “as soon as practicable after completion by the debtor of all payments due within the first 3 years of the plan (or such longer period as fixed by court, not to exceed 5 years unless debtor waives discharge in writing). See also § 1181(c).

Discharge under § 1192 applies to all debts provided in § 1141(d)(1)(A), and all other debts allowed under § 503, except any debt (1) on which the last payment is due after the first 3 years of the plan or such other time not to exceed 5 years as fixed by the court; **or (2)** specified in § 523(a).

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(Bankr. N.D. Cal.)

If plan is confirmed by consent under § 1191(a), then current § 1141(d)(1) applies. See also § 1181(c).

### **Sections Inapplicable under § 1181(b)**

§ 1102(a)(1) – provides for appointment of an unsecured creditors committee

§ 1102(a)(2) – provides for appointment of additional creditors' committees and/or equity security holders committees

[But see amended § 1102(a)(3), which will apply and which will read: “Unless the court for cause orders otherwise, a committee of creditors may not be appointed in a small business case or a case under Subchapter V of this chapter.”]

§ 1102(a)(4) – authorizes UST to change membership of committees

§ 1102(b) – governs composition of committees

§ 1103 – powers and duties of committees

§ 1125 – governs disclosure statements [But see § 1187(c), which permits the court to order the application of § 1125 and provides that, if court does so, § 1125(f) will apply (if plan provides adequate information as defined in § 1125(a)(1), then separate DS not required; court may use standardized forms; tentative approval process OK; OK to solicit votes on tentatively approved plan; OK to combine confirmation hearing with hearing to consider final approval of DS)]

### **Sections Inapplicable under § 1181(c)**

§ 1141(d) – If plan confirmed under § 1191(b) (contested confirmation), § 1141(d) shall not apply except as provided in § 1192 [Discharge applies to all debts provided in § 1141(d)(1)(A), and all other debts allowed under § 503, except any debt (1) on which the last payment is due after the first 3 years of the plan or such other time not to exceed 5 years as fixed by the court; or (2) specified in § 523(a)]

### **Other**

§ 1195 – A person is not disqualified from employment under § 327 by virtue of holding a pre-petition claim of less than \$10,000.



### **Important Conforming Amendments**

**§ 101(51D)(A)** – revises definition of “small business debtor” to require at least 50% of debt to have arisen from debtor’s commercial or business activities and removes language regarding the absence of a committee (given that § 1181(b) renders §§ 1102(a)(1), (a)(2), and (a)(4); § 1102(b); and § 1103 inapplicable).

**§ 103 – adds new § 103(i)** “Subchapter V of chapter 11 of this title applies only in a case under chapter 11 in which a small business debtor elects that subchapter V shall apply.”

**§ 326(a)** – excludes small business debtor cases from those to which this section applies

**§ 326(b)** – adds small business debtor cases to those to which this section applies. [This means trustee compensation will be governed this section and will permit “reasonable compensation . . . for the trustee’s services, payable after the trustee renders such services, not to exceed 5% upon all payments under the plan.” See also 28 U.S.C. § 586, below.]

**§ 363(c)(1)** – adds small business debtor cases to those in which the trustee is authorized to in which a trustee may enter into ordinary course transactions, and may use estate property in the ordinary course, without notice or hearing

**§ 364(a)** – adds small business debtor cases to those in which the trustee is authorized to obtain ordinary course unsecured credit or to incur ordinary course unsecured debt as an administrative expense

**§ 523(a)** – adds “§ 1192” to the list of discharges to which § 523(a)’s exceptions apply

**§§ 524(a)(1), (a)(3), (c)(1), and (d)** – adds § 1192 to list of discharges in each of these sections

**§ 547(b)** – amended to condition the ability to avoid a preferential transfer on the plaintiff having undertaken “reasonable due diligence in the circumstances of the case” and having taken “into account a party’s known or reasonably knowable affirmative defenses under [§ 547](c).”

**§ 1102(a)(3)** – rewritten to state: “Unless the court for cause orders otherwise, a committee of creditors may not be appointed in a small business case or a case under subchapter V of this chapter.”

**28 U.S.C. § 586** – adds small business debtor cases to those referenced in §§ 586(a)(3), (b), (d)(1), (e)(1), and (e)(2) **and adds new § 586(e)(5)**, which states: “In the event that the services of the trustee in a case under Subchapter V of chapter 11 of title 11 are terminated by dismissal or conversion of the case, or upon substantial consummation of a plan . . . the court shall award compensation to the trustee consistent with the services performed by the trustee and the limits on the compensation of the trustee established pursuant to paragraph (1) of this subsection.”

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**28 U.S.C. § 1409(b)** – amended to increase from \$10,000 to \$25,000 as the threshold amount in controversy that determines venue in actions to which § 1409(b) applies. If such actions involve an amount in controversy less than \$25,000, they must be brought in the defendant’s home district.

[Note: It is not clear whether 28 U.S.C. § 1409(b) applies to avoidance actions. The majority of courts hold that it does not, because it omits proceedings “arising under” Title 11 from those to which § 1409(b) expressly applies. See Webster v. Republic Nat’l Distrib. Co. LLC (In re Tadich Grill of Washington D.C. LLC), 598 B.R. 65, 67 (Bankr. D.C. 2019) (holding that 28 U.S.C. § 1409(b) does not apply to a proceeding “arising under title 11”). The minority view holds that the omission of proceedings “arising under” Title 11 from § 1409(b) was inadvertent, and that § 1409(b) should apply to such proceedings. See N1 Creditors’ Trust v. Crown Packaging Corp. (In re Nukote Int’l, Inc.), 457 B.R. 668, 684 (Bankr. M.D. Tenn. 2011) (applying 28 U.S.C. § 1409(b) to avoidance actions).]

**28 U.S.C. § 1930(a)(6)(A)** – amended to **exclude** Subchapter V cases from those Ch. 11 cases in which a quarterly fee must be paid.