## **SBRA AND SUBCHAPTER V UPDATE:**

*"There and Back Again"*: An Assessment of What Aspects of the SBRA and SubChapter V Work, and Work Less Well, in Bankruptcy

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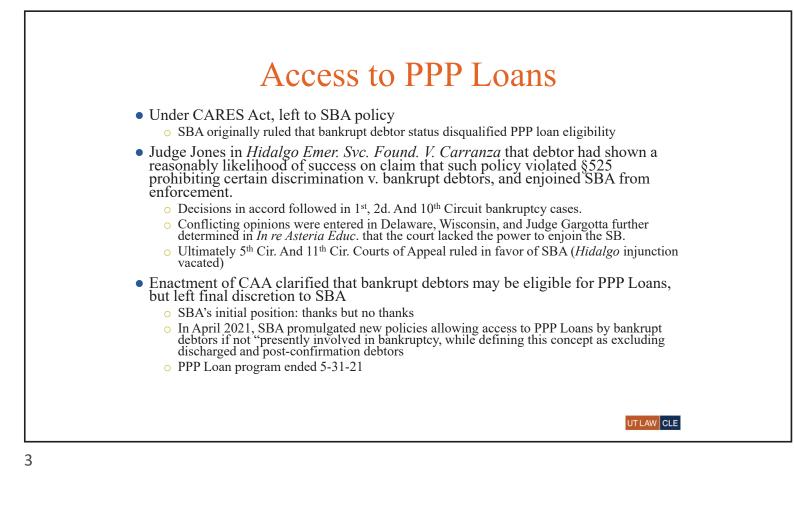
## SubChapter V Overview

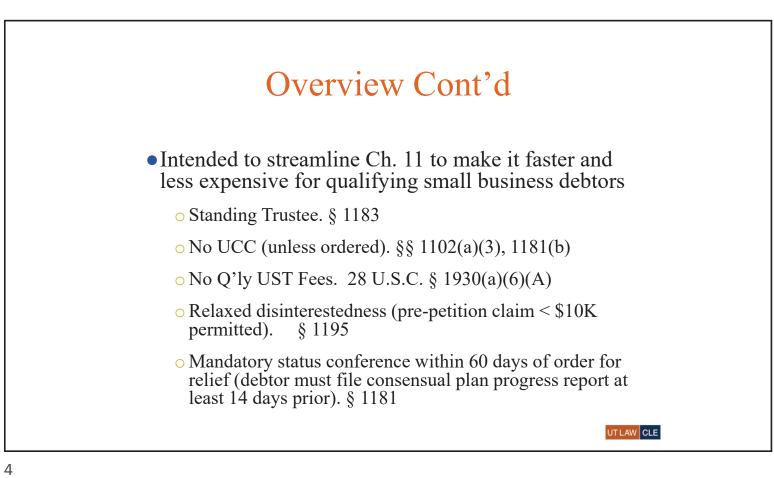
• SBRA enacted 2019; took effect Feb. 2020

- A Sub-part of Chapter 11
- Intended for small businesses but applies to an individual or business with less than \$2,725,625 in aggregate debt. § 101(51D)
- Under CARES Act (enacted 3-27-20), debt limit increased to \$7.5mm (currently expires 3-27-22)
  - At least 50% of debt must arise from debtor's business / commercial activities. § 101(51D)
- Under Consolidated Appropriations Act (enacted 12-27-20):
  - o Subchapter V debtors could receive PPP loans
  - Also extended §365(d)(4)(A) deadline for debtor-tenant to assume or reject nonresidential RE lease to a total of 210 days
    - With Court ordered extension for cause, as much as 300 days
  - Also excepts certain lease and supplier payment plans from preference claims



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## Overview Cont'd – Plan Terms

• Very Substantial Plan-related Provisions

- Debtor plan exclusivity not subject to termination (90-days). § 1189(a)
  - Only debtor may modify plan. § 1193
- No Absolute Priority Rule. § 1191(b)
  - Plan must devote minimum value of all projected disposable income during plan period to payment of creditors. § 1191(c)(2)
- Disclosure statement not mandatory. § 1181(b)
- Pay administrative claims over time. § 1191(e)
- No voting / impaired consenting class requirement for cramdown (also possible to cramdown claim secured by principal residence). §§ 1191(b), 1190(3)
- Expanded discharge rights. §§ 1181(c), 1192

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• Over 1.640 Subchapt	er V cases filed in 1 <sup>st</sup> Year (Feb. to Feb.)
• Steadily increasing o	
	of all Ch. 11 filings (including affiliates); over 75 debtor Ch. 11s
• 75% business / 25% i	individual
<ul> <li>Most popular industr Professional / Busine</li> </ul>	ies: Healthcare, Construction, Restaurants / Bars, ess Services, Retail
• Most popular venues	: Florida, California and Texas
o N.D. Tex. 4 <sup>th</sup> most po	opular district. S.D.Tex. 6th most popular district
<ul> <li>Confirmation rates approximation</li> </ul>	oprox. 20%
• Mostly consensual	-
• 6X greater than other	r small business Ch. 11s
• By end of 2020, UST Subchapter V trustees	appointed over 200 trustees to serve as

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