

# insolvency2020



**Oct. 22, 2020, 5:00-6:15 p.m.**

## **NYIC: The Small Business Reorganization Act: Perspectives from All the Major Players in a Case**

George P. Angelich; Arent Fox LLP  
Hon. Melanie L. Cyganowski (ret.); Otterbourg P.C.  
Mitchell B. Hausman; U.S. Department of Justice  
Hon. Michael B. Kaplan; U.S. Bankruptcy Court (D. N.J.)  
Joseph Orbach; Hahn & Hessen LLP

# Educational Materials





ABI/NYIC Present:  
The Small Business Reorganization Act:  
Perspectives from all the  
Major Players in a Case

Panelists:

George P. Angelich, Arent Fox LLP  
Hon. Michael B. Kaplan, Chief Judge (Bankr. D.N.J.)  
Mitchell B. Hausman, Office of the U.S. Trustee  
Joseph Orbach, Hahn & Hessen LLP

Moderator:

Hon. Melanie L. Cyganowski (Ret.), Otterbourg P.C.

OCTOBER 22, 2020



- 1. Introduction**
- 2. Major Players**
- 3. Overview of Subchapter V**
- 4. Overview of Cash Collateral and DIP Financing in Subchapter V**
- 5. Discussion of different perspectives in Subchapter V and post-petition financing**
- 6. Trends in Subchapter V cases**
- 7. Questions**
- 8. Conclusion**



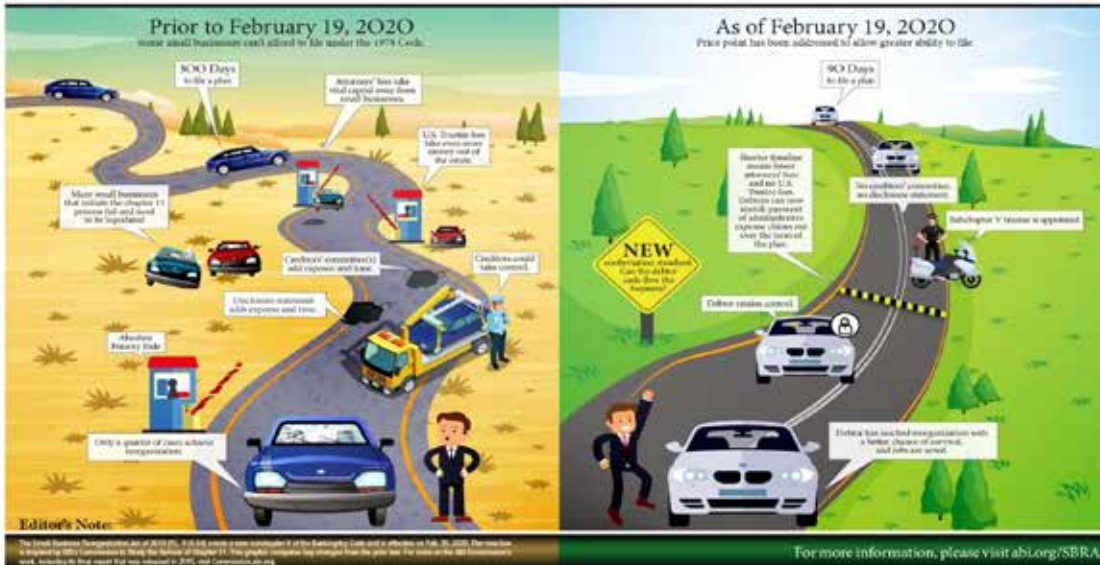
AMERICAN  
BANKRUPTCY  
INSTITUTE



SBRA



Small Business Reorganization Act  
A Better Road to Reorganization for Main Street Businesses



## Overview



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## The Major Players

- The Court
- The debtor
- The UST
- The secured lender
- The unsecured creditors
- The equity holder

## Major Players



## KEY PROVISIONS OF THE SBRA

- Qualifying Small Businesses
  - Debt cap in original SBRA was \$2,725,625
  - Debt cap was increased by the CARES Act to \$7.5 million
  - The increased debt limit is subject to one year sunset if not renewed
  - At least 50% of a debtor's debt must arise from business or commercial activity
  - Debtor must make Subchapter 5 election

### Key Provisions



- Subchapter 5 Trustee will be appointed
  - Trustee has certain oversight functions but does not manage the business
- No Creditor Committees (unless Court finds cause)
- No Competing Plans
  - Debtor maintains exclusivity but must file a Plan within 90 days
- No Disclosure Statements
  - Plan must contain summary of historical operations, liquidation analysis and projections demonstrating an ability to make payments under the plan

### Key Provisions



- No Absolute Priority Rule
  - Owners may retain equity even if unsecured creditors are not paid in full
- No Impaired Consenting Class Required
  - Plan must be fair and equitable and not unfairly discriminate
  - Plan must provide for the debtor's contribution of all its projected disposable income over a period of three to five years
- Deferral of Administrative Expense Payments
  - Payments may be deferred for three to five years

Key Provisions



- Discharge Provisions
  - If plan is confirmed consensually, discharge is effective upon confirmation
  - If plan is confirmed through a cramdown, the discharge is effective when all required payments under the Plan are made (three to five years)

Key Provisions



### **Cash Collateral/DIP Issues**

- What role does the Subchapter V Trustee play in negotiating for the use of Cash Collateral or DIP Financing?
- How does documenting DIP Financing differ in Subchapter V case?
- Can the Subchapter V Trustee appear at DIP Hearing?
- How does the UST and Court view DIP Financing in Subchapter V Cases?
- Can a DIP Lender be crammed down?
- Can administrative trade credit be stretched over 3-5 year plan period?

Cash Collateral/DIP Issues



### **Trends in Subchapter V Cases**

- Real Property Leases
- Potential expiration of increased debt threshold?
- Additional stimulus packages?
- Funding of cases with PPP loans
- General COVID related trends

Trends in Subchapter V



**Questions?**

Questions



# Faculty

**George P. Angelich** is a partner in Arent Fox LLP's financial restructuring and bankruptcy group in New York, where he focuses on corporate reorganization and bankruptcy matters. He represents unsecured creditors' committees, secured creditors, indenture trustees, bondholder and noteholder groups, and other entities in bankruptcy reorganization and liquidation proceedings. Immediately prior to joining Arent Fox, Mr. Angelich clerked for Chief Bankruptcy Judge Arthur J. Gonzalez in the Southern District of New York (2002-03), where he gained experience working on matters ranging from several of the largest chapter 11 bankruptcy filings to date (*In re WorldCom*; *In re Enron*) to matters arising under the Securities Investor Protection Act (SIPA). He also clerked for Chief Bankruptcy Judge. Cecelia G. Morris in the Southern District of New York (2000-02), where he worked on voluntary and involuntary corporate and individual chapter 11 and 7 cases, as well as chapter 12 and 13 cases. Mr. Angelich is a member of ABI, INSOL International, Association of the City Bar of New York, New York County Lawyer's Association, New York State Bar Association, American Bar Association (for which he is a member of its Bankruptcy Court Rules Subcommittee) and the International Bar Association. He also participates in several pro bono programs, including the Bankruptcy Pro Bono Panel of the New York City Bar (providing pro bono representation in bankruptcy litigation matters) and the Credit Abuse Resistance Education (CARE) Program (educating high school students on the responsible use of consumer credit). Mr. Angelich is admitted to the District of Columbia, New York and Pennsylvania Bars, as well as the U.S. District Courts for the District of Connecticut, the Southern and Eastern Districts of New York, and the Eastern and Western Districts of Pennsylvania, and the U.S. Court of Appeals for the Third Circuit. He received his B.A. and J.D. from Duquesne University, where he was an editor of the *Duquesne Law Review* (for which he received the Editor's Choice Award) and the *Duquesne Business Law Journal*.

**Hon. Melanie L. Cyganowski** chairs Otterbourg P.C.'s Bankruptcy practice in New York. She joined the firm in 2008 after serving a full 14-year term as a U.S. Bankruptcy Judge for the Eastern District of New York and as its Chief Judge from 2005-08. She is currently co-counsel to the Ad Hoc Committee in *Purdue Pharma*, and was appointed as a member of a blue-ribbon committee by the Rockville Center Diocese with former Chief Bankruptcy Judge Arthur Gonzalez and former Comptroller of the City of New York Harrison J. Goldin. Judge Cyganowski's fiduciary appointments include receiver in *SEC v. Platinum Partners*; CRO and temporary operator of Brooklyn's Interfaith Medical Center; patient care ombudsman in *Randolph Hospital Inc.*, *Promise Healthcare*, *Orianna Health Systems*, *21st Century Oncology* and *California Proton*; auditor of Capital One; and various trusteeships. She also served as special master in *Vivendi* and *Neogenix Oncology*, a court-appointed expert in Orion HealthCorp, and an arbitrator/mediator in cases including *Madoff* and *Lehman*. Judge Cyganowski has testified as an expert in international cases involving U.S. bankruptcy laws. She is a Fellow in the American College of Bankruptcy, sits on the editorial advisory board of the *Norton Journal of Bankruptcy Practice & Law*, and is an adjunct professor at St. John's University School of Law in the Bankruptcy LL.M. Program. She also is active in philanthropic organizations, including Tina's Wish. Judge Cyganowski received her J.D. *magna cum laude* from the State University of New York at Buffalo School of Law in 1981.

**Mitchell B. Hausman** is a trial attorney with the U.S. Department of Justice in Newark, N.J. He represents the Office of the U.S. Trustee in all aspects of the administration of bankruptcy cases before the bankruptcy court, and is responsible for conducting § 341(a) hearings, forming creditor committees, objecting to fee and retention applications, and filing motions on a broad array of bankruptcy issues (including writing briefs and memoranda). He also reviews and refers bankruptcy fraud matters to the U.S. Attorney's Office and is member of Bankruptcy Fraud Task Force. Mr. Hausman previously was a trial attorney with the Internal Revenue Service in Manhattan, where he was responsible for trial preparation, settlements, briefs and the litigation of tax disputes before the U.S. Tax Court. He also reviewed and referred criminal tax matters to the Department of Justice.

**Hon. Michael B. Kaplan** is Chief U.S. Bankruptcy Judge for the District of New Jersey in Trenton, initially appointed on Oct. 3, 2006, and named Chief Judge on May 1, 2020. Prior to taking the bench, Judge Kaplan served as a standing chapter 13 bankruptcy trustee, as well as a member of the chapter 7 panel of bankruptcy trustees, where he received case appointments as both a chapter 11 and chapter 12 trustee. His private practice included the representation of institutional lenders consumer debtors (under both chapters 7 and 13), business debtors and individuals undergoing reorganization pursuant to chapter 11. Judge Kaplan is licensed to practice law in New Jersey, New York and Connecticut, and is admitted to practice before the U.S. Supreme Court, Third Circuit Court of Appeals, U.S. Court of International Trade and various federal district courts. Over the past 30 years, he has spoken to numerous bar associations and business organizations, and authored several articles relating to bankruptcy issues. Judge Kaplan is a co-author of West's *Consumer Bankruptcy Manual* and *Consumer Bankruptcy Handbook*. Additionally, he serves on the editorial board and as business manager for the *American Bankruptcy Law Journal* and teaches as an adjunct professor at Rutgers University School of Law. Judge Kaplan has been the recipient of the Conrad B. Duberstein Memorial Award given by the New York Institute of Credit, the Judicial Service Award from the Association of Insolvency and Restructuring Advisors, the National Association of Chapter 13 Trustees' 2006 Distinguished Service Award and New Jersey State Bar Association's 1999 Legislative Recognition Award. He has been appointed by the Director of Administrative Office of the Courts (AO) to a term as the Third Circuit representative to the Bankruptcy Judges Advisory Group, in addition to appointments as the Bankruptcy Judge representative on both the Human Resources Advisory Council and Budget & Finance Advisory Council to the AO. He is an officer of the National Conference of Bankruptcy Judges and member of the Turnaround Management Association, ABI and the Commercial Law League of America. Prior to taking the bench, Judge Kaplan served as mayor and councilman for the Borough of Norwood, N.J., and as a member of the Norwood Planning Board. He received his A.B. from Georgetown University in 1984 and his J.D. from Fordham University School of Law in 1987.

**Joseph Orbach** is an associate in the Bankruptcy and Restructuring Department of Hahn & Hessen LLP in New York and has represented a variety of clients in diverse aspects of bankruptcy and insolvency law. His practice primarily focuses on the representation of creditors' committees, secured and unsecured creditors, and trustees in corporate reorganizations, restructurings and liquidations. Mr. Orbach has analyzed and prosecuted thousands of preferences/fraudulent transfers for liquidating trustees, and has also defended dozens of preference actions. Additionally, he has advised companies on distressed asset investments, sales and initial and secondary capital offerings. Mr. Orbach is a certified bankruptcy mediator and is a member of the Mediation Panel of the U.S. Bankruptcy Courts of the Eastern and Southern Districts of New York and the District of Delaware. He received his B.A. *summa cum laude* in 2004 from Queens College of the City University of New York and his

J.D. *magna cum laude* in 2007 from Fordham University School of Law, where he was elected to the Order of the Coif.