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IN THIS ISSUE

Reconversion of a Case to Chapter 13 and the Mysteries of 11 U.S.C. §706(a).

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I recently had a case as a debtor attorney where the client wanted to re-convert from chapter 7 to chapter 13, after already converting from 13 to 7. This required me to review 11 U.S.C. §706 which provides:

> (a) The debtor may convert a case under this chapter to a case under chapter 11, 12, or 13 of this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title. Any waiver of the right to convert a case under this subsection is unenforceable.
> (b) On request of a party in interest and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 11 of this title at any time.
> (c) The court may not convert a case under this chapter to a case under chapter 12 or 13 of this title unless the debtor requests or consents to such conversion.
> (d) Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter.

11 U.S.C. §706.

The questions I had were: Does subsection (a) mean that a case cannot be re-converted back to chapter 13 after it was already converted from chapter 13 to 7? If it is possible to re-convert, under what circumstances would a motion to re-convert be approved or denied? How should such motion be filed and served?

The Chapter 7 Conversion Statute and Subsection (a).

Each sub-section of the chapter 7 conversion statute addresses different topics. Subsection (b) addresses conversion to chapter 11. Subsection (c) provides that the debtor must request or consent to any conversion to chapters 12 or 13. Sub-section (d) requires that the debtor must qualify as a debtor in the converted case.

But §706(a) contained the worrisome language for what my client wanted to do. What does the phrase "if the case has not been converted under section 1112, 1208, or 1307 of this title" mean? Is this a prohibition on re-conversion back? What does "at any time" mean earlier in the sub-section? Is this the grant to the debtor of an absolute right to convert unless the case has already been converted?

As I review the cases interpreting §706(a), I find that the sub-section is somewhat perplexing. Courts have disagreed on both issues raised above. Prior to 2007, there was support for the position that §706(a) established an absolute right to the debtor to convert, based on legislative history:

> Subsection (a) of this section gives the debtor the one-time absolute right of conversion of a liquidation case to a reorganization or individual repayment plan case. If the case has already

> once been converted from chapter 11 or 13 to chapter 7, then the debtor does not have that right. The policy of the provision is that the debtor should always be given the opportunity to repay his debts, and a waiver of the right to convert a case is unenforceable.

Senate Report No. 95-989, shown in the legislative history notes to the statute.

But in **Marrama v. Citizens Bank of Massachusetts**, 549 U.S. 365, 127 S. Ct. 1105 (2007), the Court held that §706(a) does not confer an absolute right to a debtor to convert but that a court might deny conversion if the motion to convert was made in bad faith and the conversion would constitute an abuse of process.

Reviewing the Senate Report quote above, the Supreme Court stated:

> The Committee Reports' reference to an "absolute right" of conversion is more equivocal than petitioner suggests. Assuming that the described debtor's "opportunity to repay his debts" is a short-hand reference to a right to proceed under Chapter 13, the statement that he should "always" have that right is inconsistent with the earlier recognition that it is only a one-time right that does not survive a previous conversion to, or filing under, Chapter 13. More importantly, the broad description of the right as "absolute" fails to give full effect to the express limitation in subsection (d). The words "unless the debtor may be a debtor under such chapter" expressly conditioned Marrama's right to convert on his ability to qualify as a "debtor" under Chapter 13.

549 U.S. at 372. Reading this, one cannot escape the possibility that the Supreme Court was critical of the Senate Report on this issue.

The Court went on to hold that the debtor there forfeited his right to chapter 13 relief by his bad faith. He therefore would be subject to dismissal in chapter 13 and that is "tantamount to a ruling that (he) does not qualify as debtor under Chapter 13." 549 U.S. at 374.

The **Marrama** dissent argued that there was a "broad" right to convert, restricted in only two ways, namely, that the debtor must meet the conditions of being a debtor in the converted chapter and "that the right to convert is available only once". 549 U.S. at 376. So, here, we have language interpreting the "if the case has not been converted" phrase as a prohibition of re-conversion, but it comes from the dissent and that did not prevail in **Marrama**.

The **Marrama** ruling is consistent with a previous Sixth Circuit decision and other cases within this Circuit decided prior to **Marrama**. See **Copper v. Copper (In re Copper)**, 426 F.3d 810 (6th Cir. 2005) and **In re: Vaughn**, 071613 MIEBC, 12-31238. Of course, **Marrama** was followed by many courts holding no absolute right to convert. In our jurisdiction, see: **In re Condon,** 358 B.R. 317 (6th Cir BAP 2007), **In re: Hale,** 511 B.R. 870 (Bkrtcy.W.D.Mich. 2014).

Courts disagree on whether §706(a) prohibits re-conversion as well. This issue has not been resolved by the Supreme Court or addressed by the Sixth Circuit. In the Eastern District of Michigan, cases have gone both ways. In **In re Banks**, 252 B.R. 399, 402 (Bankr. E.D. Mich. 2000), Judge Rhodes held that §706(a) prohibits re-conversion. He recognized that were 3 categories of holdings on this

issue:

> Cases holding that § 706(a) bars re-conversion include: In re Carter, 84 B.R. 744, 748 (D.Kan.1988); In re Vitti, 132 B.R. 229, 231 (Bankr.D.Conn.1991); In re Bryan, 109 B.R. 534, (Bankr.D.D.C.1990); In re Hanna, 100 B.R. 591, 594 (Bankr.M.D.Fla.1989); In re Richardson, 43 B.R. 636, 638 (Bankr.M.D.Fla.1984); and In re Ghosh, 38 B.R. 600, 603 (Bankr.E.D.N.Y.1984).
>
> Cases holding that the court has discretion to permit re-conversion, but denying re-conversion based on the facts of the case include: In re Somers Corp., 123 B.R. 35, 37 (Bankr.N.D.Ohio 1990); In re Johnson, 116 B.R. 224, 227 (Bankr.D.Idaho 1990); In re Trevino, 78 B.R. 29, 32 (Bankr.M.D.Pa.1987); and In re Walker, 77 B.R. 803, 805 (Bankr.D.Nev.1987).
>
> Finally, cases holding that re-conversion is discretionary and allowing re-conversion based on the facts of the case include: In re Masterson, 141 B.R. 84 (Bankr.E.D.Pa.1992); In re Hollar, 70 B.R. 337, 338 (Bankr.E.D.Tenn.1987); and In re Sensibaugh, 9 B.R. 45, 47 (Bankr.E.D.Va.1981).

252 B.R. 399 at 400. Judge Rhodes further noted that: "The lack of clarity in the legislative history allows both sides to cite it in support of their respective positions." 252 B.R. at 402. Eventually, Judge Rhodes determined that 706(a) prohibited re-conversion, but his opinion seems to be based upon the conclusion that the section also gives a debtor an absolute right to convert:

> [I]t appears that Congress intended to give debtors a one-time right to convert, which is provided for in §706(a). Although the legislative history is not completely clear, it appears that Congress did not intend for the court to have the discretion to permit conversion of a case to chapter 13 if there had been a previous conversion. Subsection (a) establishes that a debtor has a right to convert, if there has not been a prior conversion. The legislative history suggests that this is an absolute right if the debtor is eligible for the chapter to which the debtor intends to convert

252 B.R. at 402.

In **In re Breckow**, Case No. 05-2005, **e-Journal Number:** 28180, Judge Tucker followed **Banks** but also noted the difference between §706 and §1307, the conversion statute in chapter 13. Section 1307(a) does not have the language about previous conversion and Judge Tucker thought that this was significant. He ruled that this means that a debtor cannot re-convert back to chapter 7 after having previously converted from chapter 7 to 13.

But §1307(b) does have the language about previous conversion. That governs dismissal of a chapter 13: "On request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable." 11 U.S.C. § 1307(b). Legislative history on this section is lacking as well.

It occurs to me that a reason to limit a debtor's ability to dismiss a chapter 13 which started as a chapter 7 is to prevent debtors from escaping the work of a chapter 7 trustee to liquidate assets by

converting to chapter 13, and then dismissing out from chapter 13. But that does not mean that such chapter 13s can never be dismissed. Under the appropriate circumstances, such chapter 13s can, and have been, dismissed over the years. So, if the intent is to protect the bankruptcy estate, is that a reason for the §706(a) language? Possibly. The drafters may have wanted to simply require more scrutiny with conversions out of chapter 7, knowing that debtors might try to convert any time a chapter 7 trustee finds an inconvenient asset. If they can escape the chapter 7 trustee in the chapter 13 and then dismiss the chapter 13 at any time, the system would be subject to abuse, at the detriment to the interests of the creditors. This is conjecture until legislative history or cases are found consistent with this analysis.

Banks was decided before **Marrama.** If its decision is based upon the existence of an absolute right, one wonders what the result would have been there, knowing that there is no absolute right. But it remains to be determined what the language of §706(a) means for re-conversion.

Another Eastern Michigan case hold contrary to **Banks. In re Beckerman**, 381 B.R. 841, 851 (Bankr. E.D. Mich. 2008) was decided after **Marrama**, but it does not address **Marrama**. There, the debtors commenced a chapter 13 and then converted to chapter 7. The United States Trustee moved to dismiss the chapter 7 under 11 U.S.C. §707(b). The court decided that the case should be dismissed, but it allowed the debtor time to convert back to chapter 13. As part of that, the court reviewed whether §706(a) prohibited re-conversion. The court held that it did not. It reasoned that §706(a) provided a debtor the right to convert "by right" if the case had not previously been converted. But the case could be re-converted back by the court's discretion. 381 B.R. at 850. The court cited commentary in Colliers to support this decision:

> A few courts have read [§ 706(c)], and the absence of a specific authorization for a motion to convert to chapter 12 or chapter 13 when there is no absolute right to convert, to preclude reconversion to chapter 12 or chapter 13 after a case has been converted from one of those chapters to chapter 7. However, had Congress meant to bar such reconversions completely, it would not have used the language it used. Unlike section 706(a), which speaks of the debtor converting a case when the debtor has an absolute right to convert, subsection 706(c), like subsection 706(b), speaks of the court converting the case. Both sections 706(b) and 706(c) refer to a decision of the court, in its discretion, to permit conversion at the request of a party. Section 706(c) serves simply to limit who may request conversion to chapter 12 or chapter 13, permitting only the debtor to make such a request. If the court were not authorized to convert a case to chapter 13 in the first place, there would be no need for section 706(c). Therefore, the power of the court to convert a case to chapter 13 is implicit in section 706(c), which limits that power.
>
> Most courts have recognized that it would make little sense to deny the debtor any opportunity to convert back to chapter 12 or chapter 13 if the debtor decides an earlier conversion to chapter 7 was a mistake. While Congress did not give debtors an absolute right to reconvert, so that debtors cannot frustrate creditors by continually converting and reconverting, it did generally want to give debtors every opportunity to repay their debts if they chose.... The courts permitting reconversion have properly recognized that the decision whether to permit reconversion should rest in the sound discretion of the court based on what most inures to the benefit of the parties in interest. When no party objects to the reconversion it should normally be granted.

381 B.R. at 850-51, citing 6 Collier on Bankruptcy ¶ 706.04, at 706-8 (Alan N. Resnick & Henry J.

Sommer, 15th ed. rev.2007). The court held that the debtor was entitled to chapter 13 relief and that chapter 7 would be dismissed unless the debtors filed to re-convert with 20 days. 381 B.R. at 852.

Our Jurisdiction.

In **In re: Gwilt**, 581 B.R. 508 (Bkrtcy.W.D.Mich. 2018), Judge Dales expressed doubt about whether a debtor may re-convert. There, the debtors filed under chapter 13, converted to chapter 7 and then filed a motion to re-convert back to 13. That case had a number of complications for re-conversion, including that a creditor obtained relief from the stay during the chapter 7, possible confusion with multiple orders for relief, questions about the effectiveness of the confirmed plan in chapter 13 and the stated position of the United States Trustee that chapter 7 was presumptively abusive. The court reviewed the split of authority in the Eastern District of Michigan on the legal issue but did not decide the legal issue. "The cases are divided, but even assuming the court has the discretion to allow the re-conversion, it would decline to do so." 581 B.R. 509.

So, Judge Dales did not state a position on a re-conversion prohibition in §706(a), but it did provide insight into what would cause the court to exercise its discretion to deny the motion to re-convert.

In practice, I filed the motion and got the relief. It helped that I had concurrence from the chapter 7 trustee, the chapter 13 trustee and the attorney at the US Trustee office. Also, any inference about bad faith with respect to my client was resolved by his willingness to go back to chapter 13 and pay debt in that case. So, it would seem that a motion to re-convert in our district will be granted if there is no objection and all the trustee-like stakeholders concur. But, if there are problems, e.g., bad faith, the court could deny the motion. Also, if the debtor received a chapter 7 discharge, this could be a problem in any conversion to another chapter unless there are grounds to revoke the discharge. **In re: Voshell**, Case no. DG 13-00454. The discharge issue was also relevant in **In re: Williams**, Case no. BT 14-01038.

Procedure for Motion to Re-Convert.

I also needed to consider the process in requesting this relief. Bankruptcy Rule 1017 provides that Rule 9014 governs a proceeding to convert a case to another chapter, except under 11 U.S.C. §706(a). FRBP 1017(f)(1) (and other sections for other chapters). So, if the motion to re-convert is not made under §706(a), Rule 9014 governs. This rule governs contested matters and provides that relief may be requested by motion with reasonable notice and opportunity for hearing to interested parties. However, local rules provide that a motion to convert may not be done without a hearing set (with an exception that would not apply to a debtor's motion). LBR 9013(c)(4).

If the motion is made under §706(a), then Rule 9013 applies. FRBP 1017 (f)(2). Rule 9013 does not have the requirement for reasonable notice and opportunity of hearing to interested parties, but it does require that the motion be served on the trustee and entities the court directs. Again, local rules provide that a motion to convert may not be done without a hearing set. LBR 9013(c)(4).

I filed my motion to re-convert and, when the court set the hearing date, I then served motion and notice of the hearing date and appeared at the hearing to get the relief.

Bankruptcy Rule 2002 requires 21 days notice of a motion to convert. FRBP 2002(a)(4) (with exceptions that would not apply to a debtor's motion). So, the notice of hearing needs to be sent in compliance with that. Rule 9014 provides that service must be done in the manner required for service of a summons and complaint according to Rule 7004. FRBP 9014(b). I decided that I needed to serve the matrix and honor the special rules for serving special parties. For example, there are special rules for serving insured depository institutions (certified mail to an officer, etc.). So, I needed to determine which creditor(s) on the matrix fit within this category and served them that way. There are other rules for special manner of service in Rule 7004.

Summary.

To conclude, re-conversion from chapter 7 to 13 is possible in our jurisdiction, but you need to be mindful of the reasons why a Judge might exercise discretion to deny your motion and you need to be careful about filing and service. Finally, having the various trustee parties on board will provide some certainty as you go forward. They are likely reviewing the issues which a judge might have in connection with your motion.

SMALL BUSINESS REORGANIZATION ACT (SBRA)

11 U.S.C. §1181 *et seq.*

U.S. Bankruptcy Court
Western District of Michigan
February 19, 2020

WHAT IS THE SBRA?

- Amends title 11 of the Bankruptcy Code to create a new Subchapter V
- Does not repeal existing provisions of Chapter 11
- Alternative procedures small business debtors may opt to use

WHY THE SBRA?

Goal is to make Chapter 11 a:

- Faster
- Less expensive
- More successful

process for small business debtors

WHO IS A SMALL BUSINESS DEBTOR?

- Engaged in commercial/business activity
- Aggregate, noncontingent, liquidated secured & unsecured debt ≤ $2,725,625
- *At least 50% arose from commercial/business activity*

11 U.S.C. §101(51D)

WHO IS NOT A SMALL BUSINESS DEBTOR?

- Single asset real estate
- Publicly traded company subject to the reporting requirements of the Securities Exchange Act of 1934

11 U.S.C. §101(51D)

HOW TO OPT IN - BUSINESS

8. **Under which chapter of the Bankruptcy Code is the debtor filing?**	*Check one.*	
	❑ Chapter 7	
	❑ Chapter 9	
	❑ Chapter 11. *Check all that apply:*	
		❑ Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than $2,725,625 (amount subject to adjustment on 4/01/22 and every 3 years after that).
		❑ The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). If the debtor is a small business debtor, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if all of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
		❑ The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D), and it chooses to proceed under Subchapter V of Chapter 11.
		❑ A plan is being filed with this petition.
		❑ Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
		❑ The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.
		❑ The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.
	❑ Chapter 12	

HOW TO OPT IN - INDIVIDUAL

13. **Are you filing under Chapter 11 of the Bankruptcy Code and are you a *small business debtor*?**

For a definition of *small business debtor*, see 11 U.S.C. § 101(51D).

If you are filing under Chapter 11, the court must know whether you are a small business debtor so that it can set appropriate deadlines. If you indicate that you are a small business debtor, you must attach your most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).

- ☐ No. I am not filing under Chapter 11.
- ☐ No. I am filing under Chapter 11, but I am NOT a small business debtor according to the definition in the Bankruptcy Code.
- ☐ Yes. I am filing under Chapter 11, I am a small business debtor according to the definition in the Bankruptcy Code, and I do not choose to proceed under Subchapter V of Chapter 11.
- ☐ Yes. I am filing under Chapter 11, I am a small business debtor according to the definition in the Bankruptcy Code, and I choose to proceed under Subchapter V of Chapter 11.

WHEN MUST A DEBTOR OPT IN?

- Act does not specify
- Interim Rule 1020: Election must be made on petition (voluntary case)
  - Within 14 days (involuntary case)
- Designation holds "unless and until the court enters an order finding that the debtor's statement is incorrect."

DUTIES OF DEBTOR UNDER SBRA – COMPLIANCE WITH §1116

* File:
  - most recent balance sheet
  - statement of operations
  - cash-flow statement
  - federal income tax return
  - OR statement under penalty of perjury that those documents do not exist and a tax return has not been filed
  - Schedules, SOFA
  - Postpetition financial reports

11 U.S.C. §1187(a) and (b)

* Attend meetings scheduled by Court or UST

* Maintain customary and appropriate insurance

* Timely file tax returns & pay post petition taxes

* Allow UST to inspect business, books and records

DUTIES OF DEBTOR UNDER SBRA – COMPLIANCE WITH §308

Financial reports must contain information about:

* Debtor's profitability
* Reasonable approximations of projected cash receipts and disbursements
* Actual cash receipts & disbursements vs. projections in prior reports
* Compliance with Code and Rules, timely filing tax returns, and paying taxes and admins when due

  *If not, why not, and when will failure be remedied

11 U.S.C. §1187(b)

DIFFERENCES UNDER SBRA

- No committee (unless Court orders for cause)
  - 11 U.S.C. §§1102(a)(3); 1181
- Trustee in every case
  - 11 U.S.C. §1183(a)
- No quarterly fees
  - 28 U.S.C. §1930(a)(6)
- Property of estate includes post-petition property & earnings if nonconsensual plan
  - 11 U.S.C. §1186

DIFFERENCES UNDER SBRA – STATUS CONFERENCE

- Status conference w/in 60 days of filing
  - 11 U.S.C. §1188(a)
- Debtor must file report at least 14 days prior
  - 11 U.S.C. §1188(c)
- Report must detail the Debtor's efforts to attain a consensual plan
  - 11 U.S.C. §1188(c)

DIFFERENCES UNDER SBRA – PLAN CONSIDERATIONS

- No disclosure statement (unless Court orders)
  - 11 U.S.C. §1181(b)
- Only Debtor may file plan
  - 11 U.S.C. §1189(a)
- Filed w/in 90 days unless Court extends deadline
  - 11 U.S.C. §1189(b)
- Absolute priority rule does not apply
  - 11 U.S.C. §1181(a)

DIFFERENCES UNDER SBRA – PLAN CONSIDERATIONS

- Debtor may modify the plan after filing
- At any time prior to confirmation
- Postconfirmation of consensual plan – any time between confirmation and substantial consummation (first plan payment)
- Postconfirmation of nonconsensual plan – any time over term of plan payments (3-5 years)

11 U.S.C. §1193

DIFFERENCES UNDER SBRA – PLAN CONSIDERATIONS

90-day deadline to file Plan may be extended for "circumstances for which the Debtor should not justly be held accountable"

- What does this mean? Seems more than just "for cause"
- No deadline for getting Plan confirmed

11 U.S.C. §1189(b)

DIFFERENCES UNDER SBRA – PLAN CONSIDERATIONS

Can modify the rights of holder of claim secured by Debtor's principal residence if new value received in exchange for the security interest was:

- not used primarily to acquire the principal residence

AND

- was used primarily in connection with Debtor's business

11 U.S.C. §1190(3)

DIFFERENCES UNDER SBRA – PLAN CONSIDERATIONS

No need for impaired consenting class for confirmation IF:

- Plan does not discriminate unfairly, AND
- Plan is fair & equitable to each impaired class that has not accepted the plan

11 U.S.C. §1191(b)

DIFFERENCES UNDER SBRA – PLAN CONSIDERATIONS

What is a fair & equitable plan?

(1) For class of secured claims, §1129(b)(2)(A) satisfied

(2) All projected disposable income (or property of equivalent value) for 3 years beginning on date 1st payment due (or up to 5 yrs. if ordered) applied to plan payments

(3) Debtor has ability to make plan payments

(4) Includes remedies if plan payments not made

11 U.S.C. §1191(c)

DIFFERENCES UNDER SBRA – SUBSTANTIAL CONSUMMATION

Within 14 days of substantial consummation, Debtor SHALL file a notice of same.

DEBTOR'S COUNSEL

- Can have a pre-petition claim <$10,000 and still be disinterested
  - 11 U.S.C. §1195
- Can be paid through the plan rather than in full on effective date
  - 11 U.S.C. §1191(e)

SBRA TRUSTEE

- Appointed by UST
- Not an operating trustee like a typical Chapter 11 trustee UNLESS Debtor ceases to be Debtor-in-possession

11 U.S.C. §1183

DUTIES OF SBRA TRUSTEE

Perform duties in paras. 2, 5-7, 9 of §704(a)

* accountable for all property received
* may examine POCs and object if improper
* oppose discharge if advisable
* furnish info about estate and its administration
* file final report and account of estate administration

11 U.S.C. §1183(b)(1)

DUTIES OF SBRA TRUSTEE

Perform duties in paras. 3, 4, and 7 of §1106(a) if ordered by Court

* Investigate acts, conduct, assets, liabilities, & financial condition of Debtor
* Investigate operation of business and desirability of continuing
* Investigate any other matter relevant to the case or formulation of plan
* File statement of such investigation
* File post-confirmation reports

11 U.S.C. §1183(b)(2)

DUTIES OF SBRA TRUSTEE

- Attend status conference
- Attend 341
- Attend any hearing that concerns:
  - Value of property subject to a lien
  - Plan confirmation
  - Modification of confirmed Plan
  - Sale of property of the estate

11 U.S.C. §1183(b)

DUTIES OF SBRA TRUSTEE

- Facilitate development of a consensual plan
- Ensure Debtor makes timely plan payments

11 U.S.C. §1183(b)

TERMINATION OF TRUSTEE'S SERVICES

Consensual Plan: substantial consummation

Note: Can be reappointed to be heard on post-confirmation modification of Plan or upon removal of Debtor as DIP

Nonconsensual Plan: trustee may stay on and make payments to creditors pursuant to the terms of the Plan

11 U.S.C. §§1183(c)(1); 1194(b)

TRUSTEE COMPENSATION

- Apply for compensation under §330
- Not commission-based compensation

TRUSTEE RETENTION OF PROFESSIONALS

Trustee may retain professionals under §327(a)

Unchanged by SBRA

DISCHARGE

Consensual Plan: at confirmation

Nonconsensual Plan: after completion of all payments due within first 3 yrs of Plan (or up to 5 yrs if Court orders)

WHAT ABOUT NEED FOR FIRST-DAY MOTIONS?

Nothing in SBRA alters need to seek authority for:

* Use of cash collateral
* Obtaining postpetition financing

PRE-FILING CHECKLIST

(Non-exhaustive)

* Gather all required financial information
* Confirm necessary insurance
* Identify & begin negotiations with creditors
* Identify interests in cash collateral & need to use same
* Consider need to retain financial professional to assist with financial reporting and projections
* Draft necessary first-day motions