

## Bankruptcy Rulings: Debtors Do Not Have to Be Currently Engaged in Business and Commercial Activities to Qualify for SBRA Relief

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The recently enacted Small Business Reorganization Act ("SBRA") is available to help "small business debtors" with debts of no more than \$2,725,625 (temporarily increased to \$7,500,000 for one year by the CARES Act). Although there are several requirements that must be satisfied in order to qualify as a "small business debtor" under the Bankruptcy Code, courts have recently considered whether an individual debtor must be engaged in "commercial or business activities" at the time of his or her bankruptcy filing. Both courts which have considered the question have answered "no."

Two recent bankruptcy cases, one from South Carolina and another from Louisiana, construe this phrase broadly, holding that a person is "engaged in commercial or business activities" for the purposes of the SBRA if the person's debts arose primarily from business activities (including guaranties of business debt). This is true regardless of whether the person seeks to reorganize an ongoing business or currently conducts business of any kind. If other courts follow suit, more debtors will qualify to file under the SBRA than creditors may have originally expected, making it more important than ever for creditors to fully understand this new "subchapter V of chapter 11" of the Bankruptcy Code.

In South Carolina, a bankruptcy court decided that an individual who incurred debt on behalf of businesses that subsequently ceased operations can nonetheless still proceed as a small business debtor because it is enough that the debt was related to business activities. Charles Wright had incurred more than \$200,000 in debt as a result of personal guaranties provided to two now-defunct businesses. Even though the businesses were no longer operating, Wright met the definition of "small business debtor" because his debt arose from "residual business activity." *In re Wright*, No. 20-01035 (Bankr. D.S.C. April 27, 2020). Neither Charles, nor the businesses for which he provided personal guaranties, needed to be *currently* engaged in business activities.

In Louisiana, a bankruptcy court decided that individual debtors may proceed under the SBRA when their debts arose from personal guarantees of debts owing by a separately incorporated businesses in which they had an interest. In this case, one of the businesses was currently operating; the other was not. The debtors qualified as "small business debtors" because their debts stemmed from the operation of businesses. *In re Blanchard*, No. 19-12440 (Bankr. E.D. La. July 16, 2020). The Louisiana court cited *In re Wright* as support that a debtor seeking to address "residual business debt" is not precluded from proceeding as a small business debtor.

These cases expand the SBRA to more debtors by holding that a debtor does not have to be currently engaged in business and commercial activities to qualify. Miller Canfield is following the case law developments on the SBRA and can assist you should you have any borrowers who have elected to proceed as a small business debtor. Miller Canfield has presented to financial institutions on the SBRA and would be pleased to discuss the SBRA further with your organization. Miller Canfield's previous e-alerts on the SBRA may be found here:

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