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ภาคผนวก

S.625**Bankruptcy Reform Act of 1999 (Reported in the Senate)****Subtitle B—Small Business Bankruptcy Provisions****SEC. 421. FLEXIBLE RULES FOR DISCLOSURE STATEMENT AND PLAN.**

Section 1125 of title 11, United States Code, is amended by striking subsection (f) and inserting the following:

“(f) Notwithstanding subsection (b), in a small business case--

“(1) in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information;

“(2) the court may determine that the plan itself provides adequate information and that a separate disclosure statement is not necessary;

“(3) the court may approve a disclosure statement submitted on standard forms approved by the court or adopted under section 2075 of title 28; and

“(4)(A) the court may conditionally approve a disclosure statement subject to final approval after notice and a hearing;

“(B) acceptances and rejections of a plan may be solicited based on a conditionally approved disclosure statement if the debtor provides adequate information to each holder of a claim or interest that is solicited, but a conditionally approved disclosure statement shall be mailed not later than 20 days before the date of the hearing on confirmation of the plan; and

`(C) the hearing on the disclosure statement may be combined with the hearing on confirmation of a plan.'.

SEC. 422. DEFINITIONS; EFFECT OF DISCHARGE.

(a) DEFINITIONS- Section 101 of title 11, United States Code, as amended by section 402 of this Act, is amended by striking paragraph (51C) and inserting the following:

`(51C) 'small business case' means a case filed under chapter 11 of this title in which the debtor is a small business debtor;

`(51D) 'small business debtor'--

`(A) subject to subparagraph (B), means a person (including any affiliate of such person that is also a debtor under this title) that has aggregate noncontingent, liquidated secured and unsecured debts as of the date of the petition or the order for relief in an amount not more than \$4,000,000 (excluding debts owed to 1 or more affiliates or insiders) for a case in which the United States trustee has appointed under section 1102(a)(1) a committee of unsecured creditors that the court has determined is sufficiently active and representative to provide effective oversight of the debtor; and

`(B) does not include any member of a group of affiliated debtors that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than \$4,000,000 (excluding debt owed to 1 or more affiliates or insiders);'.

SEC. 423. STANDARD FORM DISCLOSURE STATEMENT AND PLAN.

Within a reasonable period of time after the date of the enactment of this Act, the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States shall propose for adoption standard form disclosure statements and plans of reorganization for small

business debtors (as defined in section 101 of title 11, United States Code, as amended by this Act), designed to achieve a practical balance between--

- (1) the reasonable needs of the courts, the United States trustee, creditors, and other parties in interest for reasonably complete information; and
- (2) economy and simplicity for debtors.

SEC. 424. UNIFORM NATIONAL REPORTING REQUIREMENTS.

(a) REPORTING REQUIRED-

- (1) IN GENERAL- Chapter 3 of title 11, United States Code, is amended by inserting after section 307 the following:

Sec. 308. Debtor reporting requirements

- (1) For purposes of this section, the term 'profitability' means, with respect to a debtor, the amount of money that the debtor has earned or lost during current and recent fiscal periods.
- (2) A small business debtor shall file periodic financial and other reports containing information including--
 - (A) the debtor's profitability;
 - (B) reasonable approximations of the debtor's projected cash receipts and cash disbursements over a reasonable period;
 - (C) comparisons of actual cash receipts and disbursements with projections in prior reports;

(D)(i) whether the debtor is--

(I) in compliance in all material respects with postpetition requirements imposed by this title and the Federal Rules of Bankruptcy Procedure; and

(II) timely filing tax returns and paying taxes and other administrative claims when due; and

(ii) if the debtor is not in compliance with the requirements referred to in clause (i)(I) or filing tax returns and making the payments referred to in clause (i)(II), what the failures are and how, at what cost, and when the debtor intends to remedy such failures; and

(iii) such other matters as are in the best interests of the debtor and creditors, and in the public interest in fair and efficient procedures under chapter 11 of this title.'

(2) CLERICAL AMENDMENT- The table of sections for chapter 3 of title 11, United States Code, is amended by inserting after the item relating to section 307 the following:

'308. Debtor reporting requirements.'

(b) EFFECTIVE DATE- The amendments made by subsection (a) shall take effect 60 days after the date on which rules are prescribed under section 2075 of title 28, United States Code, to establish forms to be used to comply with section 308 of title 11, United States Code, as added by subsection (a).

SEC. 425. UNIFORM REPORTING RULES AND FORMS FOR SMALL BUSINESS CASES.

(a) PROPOSAL OF RULES AND FORMS- The Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States shall propose for adoption amended

Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms to be used by small business debtors to file periodic financial and other reports containing information, including information relating to--

- (1) the debtor's profitability;
- (2) the debtor's cash receipts and disbursements; and
- (3) whether the debtor is timely filing tax returns and paying taxes and other administrative claims when due.

(b) PURPOSE- The rules and forms proposed under subsection (a) shall be designed to achieve a practical balance among--

- (1) the reasonable needs of the bankruptcy court, the United States trustee, creditors, and other parties in interest for reasonably complete information;
- (2) the small business debtor's interest that required reports be easy and inexpensive to complete; and
- (3) the interest of all parties that the required reports help the small business debtor to understand the small business debtor's financial condition and plan the small business debtor's future.

SEC. 426. DUTIES IN SMALL BUSINESS CASES.

(a) DUTIES IN CHAPTER 11 CASES- Title 11, United States Code, is amended by inserting after section 1114 the following:

Sec. 1115. Duties of trustee or debtor in possession in small business cases

`In a small business case, a trustee or the debtor in possession, in addition to the duties provided in this title and as otherwise required by law, shall--

`(1) append to the voluntary petition or, in an involuntary case, file within 3 days after the date of the order for relief--

`(A) its most recent balance sheet, statement of operations, cash-flow statement, Federal income tax return; or

`(B) a statement made under penalty of perjury that no balance sheet, statement of operations, or cash-flow statement has been prepared and no Federal tax return has been filed;

`(2) attend, through its senior management personnel and counsel, meetings scheduled by the court or the United States trustee, including initial debtor interviews, scheduling conferences, and meetings of creditors convened under section 341 unless the court waives that requirement after notice and hearing, upon a finding of extraordinary and compelling circumstances;

`(3) timely file all schedules and statements of financial affairs, unless the court, after notice and a hearing, grants an extension, which shall not extend such time period to a date later than 30 days after the date of the order for relief, absent extraordinary and compelling circumstances;

`(4) file all postpetition financial and other reports required by the Federal Rules of Bankruptcy Procedure or by local rule of the district court;

`(5) subject to section 363(c)(2), maintain insurance customary and appropriate to the industry;

`(6)(A) timely file tax returns;

`(B) subject to section 363(c)(2), timely pay all administrative expense tax claims, except those being contested by appropriate proceedings being diligently prosecuted; and

`(C) subject to section 363(c)(2), establish 1 or more separate deposit accounts not later than 10 business days after the date of order for relief (or as soon thereafter as possible if all banks contacted decline the business) and deposit therein, not later than 1 business day after receipt thereof, all taxes payable for periods beginning after the date the case is commenced that are collected or withheld by the debtor for governmental units, unless the court waives that requirement after notice and hearing, upon a finding of extraordinary and compelling circumstances; and

`(7) allow the United States trustee, or a designated representative of the United States trustee, to inspect the debtor's business premises, books, and records at reasonable times, after reasonable prior written notice, unless notice is waived by the debtor.'

(b) TECHNICAL AMENDMENT- The table of sections for chapter 11, United States Code, is amended by inserting after the item relating to section 1114 the following:

'1115. Duties of trustee or debtor in possession in small business cases.'

SEC. 427. PLAN FILING AND CONFIRMATION DEADLINES.

Section 1121 of title 11, United States Code, is amended by striking subsection (e) and inserting the following:

`(e) In a small business case--

`(1) only the debtor may file a plan until after 90 days after the date of the order for relief, unless that period is --

`(A) shortened on request of a party in interest made during the 90-day period;

`(B) extended as provided by this subsection, after notice and hearing; or

`(C) the court, for cause, orders otherwise;

`(2) the plan, and any necessary disclosure statement, shall be filed not later than 90 days after the date of the order for relief; and

`(3) the time periods specified in paragraphs (1) and (2), and the time fixed in section 1129 (e), within which the plan shall be confirmed, may be extended only if--

`(A) the debtor, after providing notice to parties in interest (including the United States trustee), demonstrates by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable period of time;

`(B) a new deadline is imposed at the time the extension is granted; and

`(C) the order extending time is signed before the existing deadline has expired.'.

SEC. 428. PLAN CONFIRMATION DEADLINE.

Section 1129 of title 11, United States Code, is amended by adding at the end the following:

`(e) In a small business case, the plan shall be confirmed not later than 150 days after the date of the order for relief, unless such 150-day period is extended as provided in section 1121(e)(3).'

SEC. 429. PROHIBITION AGAINST EXTENSION OF TIME.

Section 105(d) of title 11, United States Code, is amended--

(1) in paragraph (1), by striking `and' at the end;

(2) in paragraph (2) [Struck out->] (B)(vi) [<-Struck out] , by striking the period at the end and inserting `; and'; and

(3) by adding at the end the following:

`(3) in a small business case, not extend the time periods specified in sections 1121(e) and 1129(e), except as provided in section 1121(e)(3).'

SEC. 430. DUTIES OF THE UNITED STATES TRUSTEE.

Section 586(a) of title 28, United States Code, is amended--

(1) in paragraph (3)--

(A) in subparagraph (G), by striking `and' at the end;

(B) by redesignating subparagraph (H) as subparagraph (I); and

(C) by inserting after subparagraph (G) the following:

`(H) in small business cases (as defined in section 101 of title 11), performing the additional duties specified in title 11 pertaining to such cases;';

(2) in paragraph (5), by striking `and' at the end;

(3) in paragraph (6), by striking the period at the end and inserting `; and'; and

(4) by inserting after paragraph (6) the following:

`(7) in each of such small business cases--

- `(A) conduct an initial debtor interview as soon as practicable after the entry of order for relief but before the first meeting scheduled under section 341(a) of title 11, at which time the United States trustee shall--
 - `(i) begin to investigate the debtor's viability;
 - `(ii) inquire about the debtor's business plan;
 - `(iii) explain the debtor's obligations to file monthly operating reports and other required reports;
 - `(iv) attempt to develop an agreed scheduling order; and
 - `(v) inform the debtor of other obligations;
- `(B) if determined to be appropriate and advisable, visit the appropriate business premises of the debtor and ascertain the state of the debtor's books and records and verify that the debtor has filed its tax returns; and
- `(C) review and monitor diligently the debtor's activities, to identify as promptly as possible whether the debtor will be unable to confirm a plan; and
- `(8) in any case in which the United States trustee finds material grounds for any relief under section 1112 of title 11, the United States trustee shall apply promptly after making that finding to the court for relief.'

SEC. 431. SCHEDULING CONFERENCES.

Section 105(d) of title 11, United States Code, as amended by section 429 of this Act, is amended--

- (1) in the matter preceding paragraph (1), by striking `, may';

(2) by striking paragraph (1) and inserting the following:

`(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and'; and

(3) in paragraph (2), by striking `unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure,' [Struck out->] and inserting `may' [<-Struck out] .

SEC. 432. SERIAL FILER PROVISIONS.

Section 362 of title 11, United States Code, is amended--

(1) in subsection (j), as redesignated by section 305(1) of this Act--

(A) by striking `An' and inserting `(1) Except as provided in paragraph (2), an'; and

(B) by adding at the end the following:

`(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) against such entity shall be limited to actual damages.'; and

(2) by inserting after subsection (j) [Struck out->] , as added by section 419 of this Act, [<-Struck out] the following:

`(k)(1) Except as provided in paragraph (2), the filing of a petition under chapter 11 [Struck out->] of this title [<-Struck out] operates as a stay of the acts described in subsection (a) only in an involuntary case involving no collusion by the debtor with creditors and in which the debtor--

`(A) is a debtor in a small business case pending at the time the petition is filed;

`(B) was a debtor in a small business case that was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;

`(C) was a debtor in a small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition;
or

`(D) is an entity that has succeeded to substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C).

`(2) Paragraph (1) does not apply to the filing of a petition if the debtor proves by a preponderance of the evidence that--

`(A) the filing of that petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed; and

ประวัติผู้เขียน

นายชัยณรงค์ เหลืองวิลัย เกิดวันที่ 10 พฤษภาคม พุทธศักราช 2513 ที่อำเภอ บ้านหมี่ จังหวัดลพบุรี สำเร็จการศึกษาปริญญาตรีนิติศาสตร์บัณฑิต คณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์ ปีการศึกษา 2535 และเข้าศึกษาในหลักสูตรนิติศาสตร์มหาบัณฑิต จุฬาลงกรณ์มหาวิทยาลัย เมื่อพุทธศักราช 2539 อดีตเคยทำงานเป็นเจ้าหน้าที่กฎหมาย ฝ่ายหนี้สิน และหลักทรัพย์ บริษัทเงินทุนหลักทรัพย์ ภัทรธนกิจ จำกัด (มหาชน) ปีพุทธศักราช 2536 ถึง 2539

