United States Bankruptcy Court, Southern District of Alabama
Quarterly Bankruptcy Section Meeting
November 16, 2021

1. Jeffery Hartley, Section Chair
    - Holiday party?
2. Judges Callaway and Oldshue
    - Going back to in-person court the week of January 17th. Waiting to see what district court does but masks will probably be required. Chapter 7 and 13 341's to remain telephonic for at least first meeting.
    - Communications with clerk's office and chambers staff:
        - Emails with all other parties cc'd versus ex parte phone calls.
        - Minor procedural issues only.
        - Staff should ask their lawyer first before contacting the court.
        - Showing courtesy – word gets to the judges.
    - Service on corporate officers—title OK, name not required, per pending amendment of Rule 7004 effective December 2022. Service checklist on website has been updated.
    - Service by certified mail — return receipt must be filed. Don't create extra work for yourself by using certified mail when first class mail is allowed.
    - Proposed orders. Lawyers are clearly not reviewing many orders sent to chambers which do not accurately reflect what was done in court.
    - CARES Act chapter 13 plan extensions up to 84 months—window closes 3/27/22. Orders must be entered by then; file your motion by mid-February.
    - Motions for discharge in chapter 13 not using the LBF283 negative notice procedure (e.g., debtor deceased or incapacitated). New chapter 11 motion for discharge event being created.
    - Chapter 7 trustee's fees in cases converted to 13.
    - New eSR (electronic self-representation) module on the court website for pro se chapter 7 debtors.
    - Updated chapter 11 confirmation checklist on website (to include subchapter V)
    - Update on recent title pawn rulings:

- *In re Womack*, 2021 WL 3856036 (11th Cir. Aug. 30, 2021)(petition filed within first 30 days after pawn—debtor can treat in plan)
- *In re Northington*, 876 F.3d 1302 (11th Cir. 2017)(petition filed during second 30 days—debtor has only right of redemption, time continues to run, debtor can't treat in plan over objection)
- *In re Deakle*, 617 B.R. 709 (Bankr. S.D. Ala. 2020), *aff'd*, *TitleMax of Alabama, Inc. v. Deakle*, 2021 WL 1759302 (S.D. Ala. Mar. 31, 2021)(even if petition filed more than 60 days after pawn agreement, title pawn lender can waive forfeiture by failing to object to plan) (currently on appeal to Eleventh Circuit).

3. Andrea Redmon, Clerk of Court
    - Fees due upon filing
    - December 1, 2021 Rule 9036 – limiting high volume noticing

4. Mark Zimlich, Bankruptcy Administrator

5. Danny O'Brien, Chapter 13 Trustee

6. Consumer and business committees – chairs Stephen Klimjack and Danielle Mashburn-Myrick

7. Open the floor

8. Next meeting February 8, 2022

2021 WL 3856036
Only the Westlaw citation is currently available.
United States Court of Appeals, Eleventh Circuit.

IN RE: Levia E. WOMACK, Debtor.
Titlemax of Alabama, Inc., Plaintiff-Appellant,
v.
Levia E. Womack, Defendant-Appellee.

No. 21-11476
|
Non-Argument Calendar
|
(August 30, 2021)

Appeal from the United States District Court for the Middle District of Alabama, D.C. Docket No. 2:20-cv-00416-WKW, Bkcy No. 2:19-bk-30762-WRS

Attorneys and Law Firms

Stuart E. Walker, Jenny Martin Walker, Martin Snow, LLP, Macon, GA, David Anthony Butler, Jeffrey L. Ingram, Galese & Ingram, PC, Birmingham, AL, for Plaintiff-Appellant.

Richard Shinbaum, Shinbaum Law Firm, Montgomery, AL, for Defendant-Appellee.

Before WILLIAM PRYOR, Chief Judge, JILL PRYOR and BRANCH, Circuit Judges.

Opinion

PER CURIAM:

***1** This appeal presents the issue whether a debtor who declares bankruptcy under Chapter 13 of the Bankruptcy Code before defaulting on a title loan under the Alabama Pawnshop Act, Ala. Code § 5-19A-1 *et seq.*, can modify the pawnholder's rights in the plan of reorganization, 11 U.S.C. § 1322(b)(2). TitleMax of Alabama, Inc., challenges an order confirming Levia Womack's plan of reorganization on the ground that, after she filed for bankruptcy, her title loan matured, she forfeited her ownership in the vehicle that secured her loan by failing to exercise her statutory right of redemption, and title to the vehicle vested in TitleMax. *See* Ala. Code §§ 5-19A-6, 5-19A-10. The district court affirmed the judgment of the bankruptcy court that Womack held title to and the right to possess her vehicle while TitleMax remained a security creditor whose interest in the vehicle could be modified in Womack's plan of reorganization. We affirm.

On March 1, 2019, Womack pledged her vehicle to TitleMax in exchange for a loan of $3,792.40. Their contract stated that Womack had to pay "the principal sum plus a Pawnshop Charge of $416.78 ... on 3/31/19 (the '*Maturity Date*')" and that she "grant[ed] [TitleMax] a security interest in the Vehicle and the Title." By the terms of the contract, "[i]f [Womack] fail[ed] to timely pay any amount payable hereunder when due, then [her] account will be in default" and TitleMax "may take possession of the Vehicle...." The contract provided that, "[i]f [Womack] fail[ed] to redeem the Vehicle within 30 days following the Maturity Date ... and [she] d[id] not pay accrued and outstanding charges and enter into a new Pawn Ticket and Security Agreement with [TitleMax], then the Vehicle shall be forfeited to and absolute right, title, and interest in and to the Vehicle shall vest in [TitleMax]." Womack retained possession of the vehicle, and TitleMax recorded a lien on the title of the vehicle.

Under the Alabama Pawnshop Act, a pawn transaction gives a pawnbroker "a lien on the pledged goods pawned for the money advanced and the pawnshop charge owed, ... subject to the rights of other persons who have an ownership interest or prior liens in the pledged goods." Ala. Code § 5-19A-10(a). The pledgor has "no obligation to redeem pledged goods or make any payment on a pawn transaction." *Id.* § 5-19A-6. If "[p]ledged goods [are] not redeemed on or before the maturity date ... fixed and set out in the pawn ticket ... the pawnbroker [must hold the goods] for 30 days following that date ... [for] rede[mption] or repurchase[ ] by the pledgor...." *Id.* § 5-19A-10(b). "Pledged goods not redeemed within 30 days following the originally fixed maturity date shall be forfeited to the pawnbroker and absolute right, title, and interest in and to the goods shall vest in the pawnbroker." *Id.* § 5-19A-6.

On March 20, 2019, 11 days before her pawn contract matured, Womack filed a petition for bankruptcy. She listed her vehicle as an asset of her estate and TitleMax as a secured creditor, and she proposed in her plan of reorganization to repay TitleMax over the life of the plan. TitleMax objected and argued that "the only right held by [Womack's estate] under Alabama law [was] the right to *redeem* the pledged property." TitleMax argued that, like the debtor in *In re Northington*, 876 F.3d 1302 (11th Cir. 2017), Womack's "filing of [a] bankruptcy petition did not freeze the statutory right of redemption ... and after the expiration of the 60-day period [to redeem under state law, Ala. Code § 5-19A-10, and

the Bankruptcy Code, 11 U.S.C. § 108, she] automatically forfeited the [pawned] vehicle and absolute right, title and interest [to the vehicle] vested in TitleMax."

*2 The bankruptcy court overruled the objection of TitleMax and confirmed Womack's plan. The bankruptcy court determined that Womack had not defaulted on her loan and owned the pawned vehicle when she filed her bankruptcy petition and that "[t]he pawn contract and certificate of title listing TitleMax as the lienholder provided [it] with a perfected security interest in the vehicle," which Womack could modify in her plan of reorganization. The bankruptcy court distinguished Womack's case from *Northington*, where the pawn contract matured and the redemption period commenced running before the debtor filed for bankruptcy and transferred to the estate only a right to redeem, which lapsed and resulted in the rights to the pawned vehicle vesting automatically in the pawnbroker under "Georgia's pawn statute" and the asset "dropping out of the bankruptcy estate." 876 F.3d at 1306. The bankruptcy court explained that, because Womack's "pawn contract ... had not matured as of the petition date and [she] held legal title to the pawned vehicle, not mere redemption rights" when she filed her bankruptcy petition, the redemption period had "no application to [her] pawn contract," her "legal title interest and possessory interest [in the vehicle] entered the bankruptcy estate," and she was "entitled to modify TitleMax's secured claim under 11 U.S.C. § 1322(b)(2)."

The district court affirmed. It determined and TitleMax conceded that Womack owned the pawned vehicle when she filed for bankruptcy and that the vehicle became property of the estate. The district court ruled that, unlike the debtor in *Northington*, whose "conditional right to possess and the right to redeem" became property of the bankruptcy estate that "could be converted to a more substantial and permanent right, ownership, only by the affirmative act of redemption," Womack was the " 'owner of the vehicle,' not its mere possessor" and the "ownership interest" her bankruptcy estate assumed "lacked the dynamism that would cause it to leave the estate over time." The district court ruled that applying *Northington* to Womack's situation "would wrongly render the date of default irrelevant with respect to the bankruptcy estate—and therefore would fail to recognize that the parties' property interests change when that date passes."

Under the Bankruptcy Code, "[p]roperty of the estate is defined broadly to include 'all legal or equitable interests of the debtor in property as of the commencement of the case.' " *In re Lewis*, 137 F.3d 1280, 1283 (11th Cir. 1998) (quoting 11 U.S.C. § 541(a)(1)). "[T]he term 'commencement' means the date on which the debtor filed [her] bankruptcy petition." *Northington*, 876 F.3d at 1309. "[W]hether a debtor's interest constitutes property of the estate is a federal question," but "the nature and existence of the debtor's right to property is determined by looking at state law." *Lewis*, 137 F.3d at 1283 (internal quotation marks omitted). So to resolve whether Womack had an interest in her pawned vehicle that became property of her estate, we must examine the interplay between the pawn contract, Alabama law, and the Bankruptcy Code. And we review that issue of law *de novo*. *Northington*, 876 F.3d at 1307.

Womack's contract with TitleMax states that, "[i]f [she] fails to timely pay any amount ... *when due*, *then* [her] account will be in default," and TitleMax "may take possession" of the pawned vehicle, which triggers the period to redeem. (Emphasis added.) Consistent with caselaw interpreting the Alabama Pawnshop Act, the contract provides that it is only "[u]pon the debtor's default ... [that] title and right of possession pass to the creditor...." *See* *Am. Nat'l Bank & Tr. Co. of Mobile v. Robertson*, 384 So. 2d 1122, 1123 (Ala. Civ. App. 1980); *see also* *Complete Cash Holdings, LLC v. Fryer*, 297 So. 3d 1223, 1225 (Ala. Civ. App. 2019) (stating that a pawnbroker has no remedy under the Pawnshop Act until the borrower defaults on the loan). And under the Act, "the 30–day period ... to redeem [a] vehicle beg[ins] ... on the day the pawn ticket mature[s]," not before. *Pattans Ventures, Inc. v. Williams*, 959 So. 2d 115, 121 (Ala. Civ. App. 2006). As a result, a pawnbroker's right to title and to possession of a pawned vehicle ripens only on *expiration* of the redemption period; until that day, the pawnbroker is a "lienholder" who "is entitled [only] to the amount of its interest in the automobile." *State ex rel. Morgan v. Thompson*, 791 So. 2d 977, 978 (Ala. Civ. App. 2001).

*3 "[T]he Bankruptcy Code takes an estate's constituent property interest as it finds them." *Northington*, 876 F.3d at 1314. When Womack filed for bankruptcy, 11 days remained for her to repay TitleMax. So on "commencement of [Womack's bankruptcy] case," 11 U.S.C. § 541(a)(1), her pawn contract had not matured and she owned rights to the title and to possess her vehicle. Short of the date of default,

"title and right of possession [had yet to] pass to [TitleMax]," *see* *Am. Nat'l Bank & Tr.*, 384 So. 2d at 1123, to trigger the period to redeem the vehicle, *see* *Pattans Ventures*, 959 So. 2d at 121. And TitleMax concedes that Womack's rights to the title, to possess, and of actual possession of her pawned vehicle became property of her bankruptcy estate.

Womack's fixed interest in her vehicle is distinguishable from the contingent interest that the debtor had in *Northington*. The debtor in *Northington* "filed a Chapter 13 bankruptcy petition ... [after he] defaulted on [his] loan by failing to repay it on time and ... shortly before expiration of the redemption period." 876 F.3d at 1305. So the property of the debtor's estate consisted only of a right to redeem his pawned vehicle. Under the Georgia pawn law, which is materially indistinguishable from the Alabama Pawnshop Act, if the debtor's estate failed timely to redeem the vehicle, it would "be automatically forfeited to the pawnbroker by operation of law, and any ownership interest of the [debtor] ... [would] automatically be extinguished as regards the pledged item." Ga. Code § 44-14-403(b)(3).

In contrast with the debtor in *Northington*, Womack enjoyed the benefit of the automatic stay. In *Northington*, because the debtor transferred his vehicle to the bankruptcy estate after the period to redeem commenced running, the Bankruptcy Code extended his redemption period "for a finite term of 60 days." 876 F.3d at 1306, 1313 (discussing 11 U.S.C. § 108(b)). The debtor could not avail himself of the automatic stay, 11 U.S.C. § 362(a), in *Northington*, because "anything temporarily stayed under the specific language of section 108(b) [can]not [be] indefinitely stayed by the more general language of section 362(a)." 876 F.3d at 1313. But the statutory right to redeem in the Alabama Pawnshop Act, Ala. Code § 5-19A-6, and the extension of time under the Code, 11 U.S.C. § 108(b), never applied to Womack because her vehicle became property of the estate. As a result, Womack's bankruptcy petition "operate[d] as a stay" to prevent any action by TitleMax to "obtain possession of property of the estate," to "enforce" its pre-petition lien, or to "collect, assess, or recover" any pre-petition claim. *See* *id.* § 362(a)(3)–(5).

Unlike the debtor in *Northington*, Womack had an interest in her vehicle that she could modify in her Chapter 13 plan. In *Northington*, the debtor never invoked his right to redeem and forfeited his legal interest in the pawned vehicle. 876 F.3d at 1309–10. Because the debtor's contingent rights to title of and to possess his vehicle vested automatically in the pawnbroker, Ga. Code § 44-14-403(b)(3), the asset "dropped out of the bankruptcy estate," and no property interest existed for the debtor to modify. *Northington*, 876 F.3d at 1306. But the automatic stay, 11 U.S.C. § 362(a) (3)–(5), froze the interest of TitleMax as a lienholder with a secured interest in Womack's vehicle, *see* Ala. Code § 5-19A-10(a), for "the amount of its interest in the automobile," *Thompson*, 791 So. 2d at 978. And Womack, as a Chapter 13 debtor, could "modify the rights of [TitleMax, as a] holder[ ] of [a] secured claim[ ]." *See* 11 U.S.C. § 1322(b)(2). The district court did not err.

***4** We **AFFIRM** the judgment confirming Womack's plan of reorganization.

All Citations

Not Reported in Fed. Rptr., 2021 WL 3856036

End of Document

Jennifer S. Morgan
Career Law Clerk to Judge Callaway
October 2021

SERVICE OF PROCESS CHECKLIST

*This outline is offered as an aid to bankruptcy practitioners in the Southern District of Alabama and does not reflect any official policy or rulings of that court.

Objections to claims

- Governed by Rules 3007(a)(2) and 7004

(1) For everyone EXCEPT federal government (including agencies and officers) and insured depository institutions, the objection "shall be served on a claimant by first-class mail to the person most recently designated on the claimant's original or amended proof of claim as the person to receive notices, at the address so indicated"

(2) For federal government (including agencies such as the IRS and Dept. of Education, as well as officers) – serve both address on claim form AND under Rule 7004(b), which requires service by first class mail on

- The civil process clerk at the U.S. attorney's office for this district,
- The Attorney General in Washington, D.C., and
- The agency or officer, as applicable (most common is IRS)

(3) For insured depository institutions – serve both address on claim form AND under Rule 7004(h), which requires service by **certified mail** addressed to **an officer of the institution**[1]

[1] New Rule 7004(i), which will go into effect in December 2022, states: "The defendant's officer or agent need not be correctly named in the address – or even named – if the envelope is addressed to the defendant's proper address and directed to the attention of the officer's or agent's position or title."

- Exception – if the institution's attorney has filed a notice of appearance,[2] you can serve the attorney by first-class mail to satisfy the second prong
- Check FDIC.gov (under "Deposit Insurance" and then "BankFind") to determine whether a bank is an insured depository institution

Service in APs, contested matters (including lien avoidance), and plan cramdowns of secured claims

- Governed by Rule 7004 (APs), 9014 (contested matters, but the rule says to serve in accordance with Rule 7004 so service is the same for both APs and contested matters), and 3012(b) (plan cramdowns, but the rule says to serve in accordance with Rule 7004)
- Service by first class mail is permissible EXCEPT on a federally-insured depository institution, which must be by certified mail
- PITFALL (particularly re: lien avoidance) – service on the attorney listed on the judgment is NOT sufficient; service must also be made on the creditor itself.

Corporation, partnership, or unincorporated association

- First class mail addressed to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process – Rule 7004(b)[3]
- Certified mail addressed to an officer, a partner (other than a limited partner), a managing or general agent, or any agent authorized by appointment or by law to receive service of process – FRCP 4(h)(1)(A) and Ala. R. Civ. P. 4(c)(6)
- Delivering a copy to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process – FRCP 4(h)(1)(B)

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[2] Filing a creditor request for notices or filing a pleading on behalf of a bank is not the same as filing an actual notice of appearance. Only use this rule if the bank's attorney has filed an actual notice of appearance in the bankruptcy.

[3] New Rule 7004(i), which will go into effect in December 2022, states: "The defendant's officer or agent need not be correctly named in the address – or even named – if the envelope is addressed to the defendant's proper address and directed to the attention of the officer's or agent's position or title."

Insured depository institution

- By **certified mail** addressed to **an officer of the institution** – Rule 7004(h)
  - Exception – if the institution's attorney has noticed an appearance,[4] then serve the attorney by first-class mail (there are other rare exceptions)
  - Check FDIC.gov (under "Deposit Insurance" and then "BankFind") to determine whether a bank is an insured depository institution

Federal government (including agencies and officers)

- First class mail on the civil process clerk at the U.S. attorney's office for this district, the Attorney General in Washington, D.C., AND on the agency or officer as applicable (most common is IRS) – Rule 7004(b)
- Alternatively, for the United States, by delivering a copy to the U.S. attorney's office for this district or sending by registered or certified mail thereto AND by sending a copy to the Attorney General in Washington, D.C. by registered or certified mail – FRCP 4(i)(1)
- Alternatively, for an agency or officer sued in official capacity, by serving the U.S. as discussed immediately above AND by sending a copy by registered or certified mail to the agency or officer – FRCP 4(i)(2). There are separate rules if officer is sued in individual capacity.

State or municipal corporation or other governmental organization

- By first class mail to the person or office upon whom process is prescribed to be served by Alabama state law or, in the absence of the designation of any such person or office, then the chief executive officer thereof – Rule 7004(b)
  - For the state or any of its departments, agencies, officers, or institutions – by serving the officer responsible for the administration of the department, agency, office, or institution, and by serving the attorney general of the state. Most common is Department of Revenue. Note that service is required on both the Revenue Commissioner and the AG – Ala. R. Civ. P. 4(c)(7)
  - For a county, municipal corporation, or any other governmental entity not previously mentioned – by serving the chief executive officer or the clerk, or other person designated by appointment or by statute to receive service of process (can also serve attorney general if such persons are unknown or cannot be located, but case law requires quite a lot before an affidavit saying this is accepted). – Ala. R. Civ. P. 4(c)(8).

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[4] See footnote 2 above.

- By delivering a copy to the state or local government's chief executive officer – FRCP 4(j)

Competent adult individual within U.S.

- First class mail addressed to individual's residence – Rule 7004(b)
- First class mail addressed to individual's business address (not PO Box) – Rule 7004(b)
- Following Alabama state law for serving a summons – FRCP 4(e)(1)
- Personal service on the individual – FRCP 4(e)(2)(A)
- Leaving a copy at the individual's residence with someone of suitable age and discretion who resides there – FRCP 4(e)(2)(B)
- Delivering a copy to an agent authorized by appointment or by law to receive service of process – FRCP 4(e)(2)(C)

UPDATED October 2021

CHAPTER 11 CONFIRMATION CHECKLIST

A. VALIDITY

1. The proponent is entitled to propose a plan at this time and has complied with the disclosure and solicitation requirements of Code §§ 1123 and 1125. Code § 1129(a)(1) and (2).

2. The plan is proposed in good faith and not by any means forbidden by law. Code § 1129(a)(3).

3. The principal purpose of the plan is not the avoidance of taxes or registration under the Securities Act of 1933. Code § 1129(d).

4. All classes of claims and interests have been properly classified and designated. Code §§ 1129(a)(1), 1122, and 1123(a)(1).

5. At least one impaired class, exclusive of insiders, has accepted the plan. Code § 1129(a)(10). [Does not apply to cramdown in subchapter V (section E below). Code § 1191(a).]

6. Each impaired class has accepted the plan (if not, go to requirements set out in section D or E). Code § 1129(a)(8). A class accepts if more than half in number and at least 2/3 in amount of those creditors vote in favor of the plan. Only those voting are counted. Code § 1126(c) and (d).

7. [Subchapter V only.] The plan must include: (1) a brief history of the operations of the debtor; (2) a liquidation analysis; and (3) projections regarding the ability of the debtor to make payments under the proposed plan. Code § 1190(1).

B. TREATMENT OF ADMINISTRATIVE EXPENSES AND PRIORITY CLAIMS

1. The proponent has disclosed all payments for services already made or proposed to be made under the plan, and they have been approved as reasonable or are subject to approval. Code § 1129(a)(4).

2. All filing and quarterly fees are current or to be paid by plan's effective date. Code § 1129(a)(12).

3. All administrative and involuntary gap expenses will be paid in full on the effective day of the plan unless the holder has agreed otherwise. Code § 1129(a)(9)(A).

4. All priority tax claims will be paid in full with interest over a period of time not to exceed 5 years after the date of the order for relief. Code § 1129(a)(9)(C) and (D).

5. Priority non-tax claims (DSO, wage, prepetition benefit plan contributions, and consumer deposits) will be paid in accordance with the provisions of Code § 1129(a)(9)(B) -- payment in full with interest in plan if class has accepted, at effective date if not.

C. BEST INTERESTS OF CREDITORS (LIQUIDATION TEST) -- FOR EACH DISSENTING CREDITOR OR STOCKHOLDER

All dissenting holders of claims or interests will receive or retain property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under Chapter 7 (holders of non-recourse claims must receive at least the value of such creditor's interest in its collateral). Code § 1129(a)(7).

D. CRAMDOWN IN NON-SUBCHAPTER V -- IF THERE ARE IMPAIRED CLASSES THAT HAVE NOT ACCEPTED THE PLAN

1. The plan does not discriminate unfairly. Code § 1129(b)(1).

2. The plan provides for fair and equitable treatment of impaired classes of creditors which have not accepted the plan. Code § 1129(b)(1).

Secured creditors (Code § 1129(b)(2)(A)):

a. Lien retention plus cash payments that total amount of claim and have a present value, as of plan's effective date, of creditor's interest in property,
b. Sale of collateral with lien to attach to proceeds, or
c. Realization of "indubitable equivalent" of such claims.

Unsecured creditors: Each impaired unsecured class and all below it in priority are treated according to the absolute priority rule. Code § 1129(b)(2)(B).

Equity interest holders (Code § 1129(b)(2)(C)):

a. Holder will receive greater of fixed liquidation preference, redemption price, or actual value, or

b. Absolute priority rule – no junior class will receive anything.

E. CRAMDOWN IN SUBCHAPTER V -- IF THERE ARE IMPAIRED CLASSES THAT HAVE NOT ACCEPTED THE PLAN

1. The plan satisfies 1129(a) [other than (a)(8), (a)(10), and (a)(15)]. Code § 1191(b).

Sections NOT applicable to cramdown in subchapter V:

- Each impaired class has accepted the plan. Code § 1129(a)(8).
- At least one impaired class, exclusive of insiders, has accepted the plan. Code § 1129(a)(10).
- If an unsecured creditor has objected, plan meets liquidation test and all of debtor's projected disposable income for five years is devoted to plan. Code § 1129(a)(15).

2. The plan does not discriminate unfairly. Code § 1191(b).

3. The plan is fair and equitable, as to each impaired, nonconsenting class. Code §§ 1191(b) and (c).

a. With respect to secured creditors, Code § 1129(b)(2)(A) is satisfied:

   i. Lien retention plus cash payments that total amount of claim and have a present value, as of plan's effective date, of creditor's interest in property,
   ii. Sale of collateral with lien to attach to proceeds, or
   iii. Realization of "indubitable equivalent" of such claims.

b. The plan provides for application of all debtor's projected disposable income for 3 years beginning on date first payment is due (or up to 5 years, as ordered);
c. The debtor will be able to make all plan payments or reasonable likelihood that debtor will be able to make all plan payments; and
d. The plan provides appropriate remedies to protect the holders of claims or interests in the event that payments are not made.

F. FEASIBILITY

1. Adequate means for execution of the plan has been provided, and confirmation of the plan is not likely to be followed by liquidation or further reorganization. Code § 1129(a)(11).

   Factors:
   a. Adequacy of the debtor's capital structure
   b. The earning power of its business
   c. Economic conditions
   d. The ability of the debtor's management
   e. The probability of the continuation of the same management
   f. Any other related matters which determine the prospects of a sufficiently successful operation to enable performance of the provisions of the plan

2. Any regulatory commission with jurisdiction over the rates of the debtor has approved any rate change provided for in the plan. Code § 1129(a)(6).

3. [Subchapter V only for both individual and non-individual cases.] The plan must provide for the submission of all or such portion of the future earnings or other future income of the debtor to the supervision

and control of the trustee as is necessary for the execution of the plan. Code § 1190(2).

NOTE: Trustee serves until substantial consummation if confirmation is consensual; otherwise, trustee makes payments required under plan, unless plan or confirmation order provides otherwise. Code §§ 1183(c) and 1194(b).

G. INDIVIDUAL DEBTOR

1. Postpetition DSO is current. Code § 1129(a)(14).

2. If an unsecured creditor has objected, plan meets liquidation test and all of debtor's projected disposable income for five years is devoted to plan. Code § 1129(a)(15). [Does not apply in subchapter V; Code §§ 1181(a), 1191(a).]

H. CORPORATE DEBTOR

1. The plan discloses postconfirmation directors, officers, voting trustees, and insiders, whose service is consistent with the interests of creditors, equity holders, and public policy. The plan discloses the identity and compensation of any insider that will be employed or retained. Code § 1129(a)(5).

2. The plan provides for all retiree benefits to be paid for the duration of the period debtor is obligated to pay such benefits. Code § 1129(a)(13).

3. If the debtor is a nonprofit entity, any transfers under the plan comply with applicable nonbankruptcy law (e.g., any required governmental authorization). Code § 1129(a)(16).