

CHANGES IMPACTING CHAPTER 11 CASES

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EXECUTORY CONTRACTS AND UNEXPIRED LEASES

In an attempt to effectively limit the amount of time that the debtor has to decide whether to assume or reject an unexpired lease of nonresidential real property, the Code has been amended to provide that if the trustee does not assume or reject such an unexpired lease by the earlier of 120 days after the date of the order for relief or the date of the entry of an order confirming the plan, the lease shall be deemed rejected and the trustee shall immediately surrender the property. § 365(d)(4)(A). The court may extend this 120 day period, prior to its expiration, for 90 days on the motion of the trustee or the lessor for cause. § 365(d)(4)(B)(i). Any further extensions would require the prior written consent of the lessor. § 365(d)(4)(B)(ii).

Section 365 has been modified to clarify that trustees and debtors are not required, prior to assuming a contract or lease, to cure nonmonetary defaults of a penalty rate or penalty provision in the lease or contract. § 365(b)(2)(D). However, for *leases of real property*, if it is impossible to cure a nonmonetary default at and after the time of assumption, the breach need not be cured unless the default arises from a failure to operate in accordance with a *nonresidential real property lease*. In such a case, the default must be cured upon assumption including compensation for all pecuniary losses. § 365(b)(1)(A). Similarly, § 1124(2)(D) defines as unimpaired a claim or interest arising from a failure to perform a non-monetary obligation (other than a failure to operate a nonresidential real property lease subject to § 365(b)(1)(A)), as to which the plan provides for compensation of the claim or interest holder for any actual pecuniary loss incurred by such holder because of such failure.

The subparagraphs of § 365(d) relating solely to airport terminal and gate leases have been eliminated.

A new subsection (l) has been added to § 1114 to provide that if the debtor, during the 180 day period ending on the date of the filing of a petition, modified retiree benefits and was insolvent when such modification occurred, the court shall, upon motion of a party in interest, issue an order reinstating the benefits as they existed prior to the modification as of the date of the modification, unless the court finds that the balance of the equities clearly favors such modification. This provision was effective on April 20, 2005, and applicable to cases filed on and after that date.

Section 365(f)(1) has been modified to provide that a trustee or debtor, except as provided in both subsections 365(b) and (c), may assign a contract or lease notwithstanding a provision in the contract or lease, or under applicable law, which prohibits, conditions or restricts the assignment of the contract or lease. Previously, only subsection 365(c) was referenced as an exception to § 365(f). The change was motivated by cases in which assignments to users of leased space in violation of a lease's use provisions were allowed. § 1114(l) (effective on April 20, 2005 and applicable only to cases filed on or after such date).

CLAIMS

With respect to a nonresidential real property lease previously assumed and subsequently rejected, only claims for a sum equal to all monetary obligations due (excluding those arising from or relating to a failure to operate or a penalty provision) for two years after the later of the turnover or rejection date, without reduction or setoff except for sums actually received, are entitled to administrative priority status. § 503(b)(7).

The value of any goods sold to the debtor in the ordinary course of the debtor's business and received by the debtor within 20 days before the commencement of the case are now entitled to administrative priority status as are certain awards from the National Labor Relations Board. §§ 503(b)(1)(A)(ii) and (b)(9). Claims of a debtor's insiders for retention bonuses, severance pay and certain other payments (*i.e.*, those not in the ordinary course to officers, managers or consultants) failing to meet the described requirements are neither allowable nor payable if:

1. the claim arises from a transfer or an obligation incurred to induce an insider to remain with the debtor's business, unless the transfer or obligation is essential to retention of the insider because he or she has a bona fide job offer from another business at the same or greater rate of compensation, and the person's services are essential to the survival of the business and either the amount of the transfer or obligation is not greater than ten times the amount of the mean transfer or obligation of a similar kind given to nonmanagement employees for any purpose during the calendar year in which the transfer is made or the obligation incurred, or, absent such transfers or obligations in respect of nonmanagement employees, the amount of the transfer or obligation is not greater than 25% of the amount of any transfer or obligation benefiting such insider for any purpose during the calendar year preceding the year in which the transfer is made or the obligation is incurred;
2. the claim arises from a severance payment to the insider, unless the payment is part of a program generally applicable to all employees and the amount of the payment is not greater than ten times the amount of the mean severance pay given to nonmanagement employees during the calendar year in which the payment is made.
3. the claim arises from a transfer or obligation outside the ordinary course of business and is not justified by the facts and circumstances of the case (including claims of officers, managers or consultants hired after the petition filing date).

The amounts and time limits regarding allowed employee priority claims formerly set forth in § 507(a)(3), now § 507(a)(4), have been changed, effective on April 20, 2005 but applicable only to cases filed on or after that date, from \$4,000 to \$10,000 and incurred during the 180 days prepetition (formerly 90 days).

OFFICERS AND ADMINISTRATIVE AND PROFESSIONAL PERSONS

As amended, the Code now provides that a court may order the United States trustee to change the membership of a creditors' or equity security holders' committee if the court deems it necessary to assure adequate representation, and the court may order the United States trustee to increase the number of members of a committee to include a small business concern if the creditor holds claims (of the kind represented by the committee) the aggregate amount of which, in comparison the annual gross revenue of that creditor, is disproportionately large. § 1102(a)(4). Further, the 2005 Act requires that a committee must provide access to information for creditors holding claims of the kind represented by the committee and solicit and receive comments from such creditors. § 1102(b)(3). Additionally, as amended, the Code now requires that the debtor who is a plan administrator of an employee benefit plan continue to perform its obligations as an administrator. § 521(a)(7). (A similar requirement is imposed by the 2005 Act on a chapter 7 trustee if the debtor was a plan administrator at the commencement of the case. § 704(a)(11).)

In determining reasonable compensation for a chapter 7 or chapter 11 trustee under § 330, the court must treat such compensation as a commission, based on § 326. § 330(a)(7). In determining reasonable compensation for a professional person, and in considering the nature, extent and value of the person's services, the court must take into account all relevant factors, including, as supplemented by the 2005 Act, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field. § 330(a)(3)(E). The definition of disinterested person has been modified to eliminate references to investment bankers, their attorneys, directors, officers and employees. § 101(14). Accordingly, such entities and individuals can now be considered to be disinterested persons, unless otherwise defined in § 101(14) as not disinterested.

The 2005 Act changes § 1104. First, new subsection (a)(3) provides that a trustee or examiner may be appointed if grounds exist to convert or dismiss a case under § 1112, but the court determines that the appointment of a trustee or an examiner is in the best interests of creditors and the estate. Next, subsection (b)(2) has been added to clarify the procedure for the election of an eligible, disinterested trustee at the meeting of creditors by requiring that the United States trustee file a report certifying the election. Upon the filing of the report, the trustee elected under subparagraph (b)(1) shall be considered to have been selected and appointed, and the services of any trustee appointed under § 1104(d) shall terminate. § 1104(b)(2). Additionally, new § 1104(e) provides that the United States trustee must move for the appointment of a trustee if there are reasonable grounds to suspect that any of the debtor's officers or directors participated in actual fraud, dishonesty, or criminal conduct in the management of the debtor or the debtor's public financial reporting. § 1104(e) (effective on April 20, 2005 and applicable only to cases filed on or after that date).

Section 1114 has also been modified by the 2005 Act to provide that, on order of the court, the United States trustee (rather than the court, as previously provided) must appoint a committee of retired employees.

DISCLOSURE STATEMENTS AND PLANS

The period within which only the debtor can file a plan has been limited by the 2005 Act to a date which is 18 months after the date of the order for relief and the exclusive period for soliciting acceptances of the plan cannot be extended beyond 20 months from that date. § 1121(d)(2).

Section 341(e), added by the 2005 Act, provides that on request of a party in interest and after notice and hearing, the court can order that the United States trustee need not convene a meeting of creditors if the debtor has filed a plan for which the debtor solicited acceptances prepetition. § 341(e). Further, § 1125(g) creates an exception to the standard postpetition solicitation limits by permitting prepetition solicitation of a claim or interest holder's acceptance or rejection of the plan if the solicitation complies with applicable nonbankruptcy law and if the holder was solicited in compliance with applicable nonbankruptcy law. § 1125(g).

Section 1125 has also been amended to add to the requirements for adequate information in a disclosure statement a discussion of potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case. Further, in determining the adequacy of the information in the disclosure statement, a court must, under the 2005 Act amendments to § 1125(a)(1), 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. § 1125(a)(1).

Section 1127 (plan modification) has been supplemented to clarify that §§ 1121-1128 and the requirements of § 1129 apply to any plan modification, and the plan as modified becomes the plan only after there has been such § 1125 disclosure as the court directs after notice and a hearing.

AMENDMENTS AFFECTING INDIVIDUAL DEBTORS

Section 1115 has been added to chapter 11 by the 2005 Act to provide that if the debtor is an individual, property of the estate also includes all property of the kind specified in § 541 that the debtor acquires, and all earnings from services performed by the debtor, after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first. § 1115(a). Section 1115 also provides that except as provided in § 1104 or a confirmed plan, the debtor remains in possession of all property of the estate. § 1115(b).

Another 2005 Act change provides that in a case under chapter 7, 11, or 13 in which the debtor is an individual, the automatic stay terminates on the date that is 60 days after a request for termination is made by a party in interest unless a final decision is rendered by the court during that 60-day period or the 60-day period is extended by agreement of all the parties in interest, or by the court, for good cause, for a specific period of time. § 362(e)(2).

Section 1123 (contents of a plan) has been amended to provide that if the debtor is an individual, the plan must assure payment of the debtor's income to creditors to the extent necessary for execution of the plan. § 1123(a)(8).

Section 1127(e) has been added to the Code to provide that an individual debtor's plan may be modified at any time after confirmation but before completion of payments under the plan upon the request of the debtor, the trustee, the United States trustee or the holder of an allowed unsecured claim to alter the amount of payment to a particular class, to adjust the time for payment, or to alter the amount of distribution to a particular creditor.

Section 1129 has been modified to be consistent with other changes to the Code relating to domestic support obligations (newly defined in § 101(14A)). Pursuant to the modification, a plan must provide that if a debtor is required by a judicial or administrative order or by statute to pay a domestic support obligation, the debtor has paid all amounts payable under the order or statute for the obligations that first became payable after the debtor's petition date. § 1129(a)(14).

Section 1129(a)'s confirmation requirements have been augmented to provide in an individual debtor's case if the holder of an allowed unsecured claim objects to the confirmation of the plan, that the plan include representations that either the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the amount of the claim, or that the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in § 1325(b)(2)) to be received during the five-year period starting on the date the first payment is due under the plan, or during the plan payment period, whichever is longer. § 1129(a)(15). Similarly, § 1141(d)(5) has been added to the Code setting forth the requirements for a discharge of an individual debtor. Except as provided in § 1141(d)(5)(B), and unless after notice and a hearing, the court for cause orders otherwise, confirmation of a plan does not discharge an individual debtor from any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan. §§ 1141(d)(2) and (5)(A). Under § 1141(d)(5)(B), after plan confirmation, and after notice and a hearing, a court may grant a discharge to an individual debtor who has not completed plan payments if the value, as of the plan's effective date, of property distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the debtor's estate had been liquidated under chapter 7 on that date and modification of the plan under § 1127 is not practicable. It is not entirely clear if the 2005 Act addition of § 1141(d)(5)(C), requiring the court to find, after notice and a hearing held within 10 days before the entry of the discharge order, no reasonable cause to believe that § 522(g)(1) (also created by the 2005 Act and relating to exemptions sought by a convicted felon, securities law violator or tortfeasor) may be applicable to the debtor and that any proceeding in which the debtor might be found guilty of a felony, or liable for debts described in § 522(g)(1) exists, is applicable to all individual discharges, or only those sought pursuant to § 1141(d)(5)(B).

Several changes to § 362 will affect individual debtors who seek chapter 11 relief. New subsections 362(c)(3) and (4) deal with repeat filers, extending the automatic stay for only 30 days after the individual is in the second case (if the first case was dismissed, whether under

chapter 7, 11 or 13, but other than a case refiled under a chapter other than chapter 7 after dismissal under § 707(b)) within one year (§ 362(c)(3)) and affording no stay to an individual in three or more cases within one year (other than a case refiled under § 707(b)) (§ 362(c)(4)). A debtor or other party in interest may seek to extend or impose the stay under certain circumstances, but under each of the subsections, there is a presumption that the most recent case has not been filed in good faith, which can only be rebutted by clear and convincing evidence.

New subsection 362(h) provides that an individual debtor will lose the benefit of the stay with regard to personalty securing a claim, or subject to an unexpired lease, and the personalty will no longer be subject to an unexpired lease, if the debtor fails within the applicable time under § 521(a)(2) to file a statement of intention or to indicate in the statement that the debtor will either surrender the personalty, or retain it, and if retaining it, either redeem it under § 722, reaffirm the debt under § 524(c), or assume the unexpired lease under § 365(p), and timely take the action specified in the statement (unless the statement specifies the debtor's intent to reaffirm the debt on the original contract terms and the creditor refuses to agree to the reaffirmation on such terms). § 362(h)(1). The foregoing will not apply if the court determines, on motion of the trustee filed within the time prescribed by § 521(a) (in chapter 11, within 30 days after the first date set for the § 341(a) meeting) that the personalty is of consequential value or benefit to the estate, orders adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee. If the court does not so determine, the stay will terminate at the conclusion of the hearing on the trustee's motion.

New § 362(i) provides that if a chapter 7, 11 or 13 case is dismissed due to the creation of a debt repayment plan, for purposes of § 362(c)(3) any subsequent case commenced by the debtor under either chapter 7, 11 or 13 shall not be presumed to be filed not in good faith.

New subsection 362(k)(2) limits the damages recoverable by an individual under any chapter of the Code injured by a willful violation of the stay to actual damages if the violation is based on an action taken by an entity in the good faith belief that § 362(h) (regarding stay expiration pertaining to an individual debtor owning or leasing personalty) applies to the debtor.

New § 365(p) governs personal property lease assumptions and rejections by individual debtors under chapters 7, 11 and 13. Under § 365(p)(1) if a personalty lease is rejected or not timely assumed under § 365(d), the leased property is no longer property of the estate and the § 362(a) stay is terminated. An individual chapter 7 debtor may, under § 365(p)(2)(A) notify the lessor in writing of a desire to assume the lease, and the lessor, at its option, may notify the debtor that it is willing to have the debtor assume the lease and may condition assumption on cure of any outstanding default on terms set by the contract. If, within 30 days after the lessor's notice (the new section is unclear whether it is the debtor's or the lessor's § 365(p)(2)(A) notice but logically it should be the lessor's notice) the debtor notifies the lessor in writing that the lease is assumed, the liability under the lease will be assumed by the debtor but not by the estate. The § 362 stay and the § 524(a)(2) injunction will not be violated by the lessor's notification and negotiation of cure. A personal property lease by an individual chapter 11 or 13 debtor-lessee which is not assumed in the plan confirmed by the court is

deemed rejected as of the conclusion of the confirmation hearing. If rejected, the §§ 362 or 1301 stay will be automatically terminated with respect to the leased property.

AMENDMENTS AFFECTING SMALL BUSINESS DEBTORS

Included in the 2005 Act are a series of provisions relating solely to small businesses. Pursuant to the 2005 Act, Congress has directed the Administrator of the Small Business Administration to conduct a study to determine what causes small businesses to become debtors under chapter 11 of the Code.

As a preliminary matter, the definition of "small business" has been amended. A "small business debtor":

- (A) subject to subparagraph (B), means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning or operating real property or activities incidental thereto) that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the petition or the date of the order for relief in an amount not more than \$2,000,000 (excluding debts owed to 1 or more affiliates or insiders) for a case in which the United States trustee has not appointed under section 1102(a)(1) a committee of unsecured creditors or where the court has determined that the committee of unsecured creditors is not 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 \$2,000,000 (excluding debt owed to 1 or more affiliates or insiders).

The changes add the insider, affiliate and nonexistent or inactive committee concepts. § 101(51D). Further, the term "small business case" has now been added to the Code and is defined as a case filed under chapter 11 of the Code in which the debtor is a small business debtor. § 101(51C).

The Code has been amended by the 2005 Act to provide certain exceptions or special provisions applicable to small business debtors and small business cases. In particular, § 1116 has been added to the Code and sets forth the duties of the trustee or debtor-in-possession in small business cases. § 1116. Such duties include filing the most recent balance sheet, operating and cash flow statements, and Federal tax return (or a statement that no such documents have been prepared and no return filed) with the petition (or in an involuntary case,

within 7 days after the date of the order for relief), attending the § 341 and other meetings through senior management and counsel, timely filing all schedules and statements of financial affairs (unless the court, after notice and hearing, grants an extension, not to go beyond 30 days after the order for relief absent extraordinary and compelling circumstances), filing all postpetition financial reports required by the Federal Rules of Bankruptcy Procedure or local rules, maintaining insurance, filing returns and paying taxes, and allowing the United States trustee to inspect the debtor's premises, books and records. § 1116. Additionally, § 308 has been added to the Code by the 2005 Act to require small business debtors to file periodic financial reports regarding the debtor's profitability and compliance with reporting requirements – the form of which is to be prescribed by the Judicial Conference of the United States (the "Conference"). This provision will become effective 60 days after the forms are prescribed. § 308. Similarly, additional duties of the United States trustee are set forth in 28 U.S.C. § 586(a)(7). The duties include: conducting an initial debtor interview before the § 341 meeting to begin to determine the debtor's viability and business plan; visiting, if advisable, the business premises of the debtor to ascertain the state of the debtor's books and records and the filing of tax returns; and reviewing and monitoring diligently the debtor's activities to identify as promptly as possible whether the debtor will be unable to confirm a plan. If the United States trustee finds material grounds for conversion or dismissal, the United States trustee must now so move. 28 U.S.C. § 586(a)(8).

Section 362(n), added by the 2005 Act, provides that the automatic stay, with certain exceptions, does not apply in a case in which the debtor in a small business case pending at the time the petition is filed, was a debtor in a small business case that was dismissed for any reason or in which a plan was confirmed, in the two-year period ending on the date of the order for relief, or is an entity that acquired substantially all of the assets of any of the foregoing.

Section 1112(b) (conversion or dismissal) has been modified to provide that upon request of a party in interest and after notice and a hearing (which must occur within 30 days after the filing of motion with a decision within 15 days of the commencement of the hearing), absent unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate, the court must convert or dismiss a case if the movant establishes cause – examples of which are set forth in § 1112(b)(4). The modified or new grounds include: 4(A), which now requires *substantial* accounting loss to or diminution of the estate; 4(B), gross mismanagement of the estate; 4(C), failure to maintain appropriate insurance that poses a risk to the estate or the public; 4(D), unauthorized use of cash collateral substantially harmful to one or more creditors; 4(E), failure to comply with a court order; 4(F), unexcused failure to satisfy timely any filing or reporting requirement; 4(G), failure to attend a § 341(a) meeting or a Federal Rule of Bankruptcy Procedure 2004 examination without good cause; 4(H), failure to timely provide information or attend meetings reasonably requested by the United States trustee; 4(I), failure to timely pay taxes owed after the date of the order for relief, or to file tax returns due after the order for relief date; 4(J), failure to file a disclosure statement, or file or confirm a plan, within the time fixed in the Code by court order; and 4(P), failure to pay a domestic support obligation first becoming payable after the petition date. A chapter 11 debtor or another party-in-interest can prevent conversion or dismissal if either is not in the best interests of creditors and the estate and if they establish that there is a reasonable likelihood that a plan will be confirmed within the §§ 1121(e)

and 1129(e) timeframes, or, if they are inapplicable, within a reasonable time, and that the grounds for conversion or dismissal include an act or omission of the debtor (other than substantial loss to the estate and absence of a reasonable likelihood of rehabilitation (§ 1112(b)(4)(A)) which will be cured in a reasonable time fixed by the court.

The exclusive period within which only a small business debtor may file a plan has been extended by the 2005 Act from 100 to 180 days after the date of the order for relief (which can be extended by the court after notice and a hearing or otherwise ordered by the court for cause) but a plan (and disclosure statement, if any) must be filed no later than 300 days after the date of the order for relief. § 1121(e). Further, if filed in compliance with § 1121(e), the plan must be confirmed within 45 days after it is filed. § 1129(e). Additionally, § 1125 has been changed to provide that in a small business case, the court may determine that the plan itself provides adequate information and that a separate disclosure statement is not necessary. § 1125(f). A conditionally approved disclosure statement, previously permitted under § 1125(B)(2) must be mailed not later than 25 days prior to the confirmation hearing (10 days prior to the hearing, had been the timing under § 1125(f)(2)). § 1125(f)(3). The 2005 Act also provides that the Conference shall prescribe an official standard form disclosure statement and plan of reorganization for small business debtors. 28 U.S.C. § 2075.

OTHER AMENDMENTS RELATING TO CHAPTER 11

Utilities: Section 366 (utility service) has been amended to include a definition of "assurance of payment" which includes a cash deposit, a letter of credit, a certificate of deposit, a surety bond, a prepayment of utility consumption or another form of security that is mutually agreed upon (§ 366(c)(1)(A)); the amendment excludes entitlement to administrative expense priority as a method of assurance of payment (§ 366(c)(1)(B)). It also sets forth factors that a court should not consider when determining whether an assurance of payment is adequate, including the absence of security, or timely payment, prepetition, or the availability of an administrative expense priority. § 366(c)(3). Section 366 as amended provides that a utility may alter, refuse or discontinue service if it does not receive adequate assurance of payment that is satisfactory to it during the 30 days beginning on the date of the filing of the petition, and further provides that a utility may recover or set off against a security deposit without notice or order of the court. § 366(c)(2), (4).

Lien Avoidance: Section 546 has been amended to provide that a warehouseman's lien for storage, transportation or other similar costs cannot be avoided. The prohibition must be applied in a manner consistent with state statutes similar to Uniform Commercial Code § 7-209, or its successors. § 546(i).

Reclamation and Return Rights: Section 546(c) has been amended to provide more liberal time periods for a seller of goods seeking reclamation, and to expressly state that such seller's rights are subject to the prior rights of a secured creditor in the goods or proceeds thereof. Under the 2005 Act, a seller to an insolvent debtor who received the goods within 45 days of the petition date and who in writing demands reclamation no later than 45 days after the debtor received the goods, or not later than 20 days after the petition date if the 45-day period expires after such date, may reclaim the goods. If the seller fails to provide the written reclamation demand, it may receive an administrative expense priority under new § 503(b)(9) for

the value of any goods received by the debtor within 20 days before the petition date if the goods were sold to the debtor in the ordinary course of its business.

Under § 546(g) (now § 546(h)) if a creditor consents, a debtor, on motion and after notice and a hearing, may return goods shipped to the debtor before the petition date to the creditor if the return is in the best interests of the estate; the creditor may offset the purchase price of such goods against its prepetition claim against the debtor. The 2005 Act subjects the return right to the prior rights of a secured creditor in the goods or proceeds thereof.

Automatic Stay: The commencement or continuation of an investigation or action by a "securities self regulatory organization" (defined in new § 101(48A) as a securities association or national securities exchange registered with the Securities and Exchange Commission) is added by the 2005 Act as an exception to the automatic stay. § 362(b)(25).

Under new § 362(d)(4), if there is a stay of an act against real property subject to a mortgage which the court finds resulted from a petition filed as part of a scheme to delay, hinder and defraud creditors involving either transfer of all or part ownership of or other interest in the property without the secured creditor's consent or court approval, or multiple bankruptcy filings, the court, on request of a party-in-interest and after notice and a hearing, must order relief from the stay. If the relief from stay order is recorded in accordance with applicable state laws, the order will be binding in any other case under the Code purporting to affect the subject realty filed not later than two years after the date of the order. A debtor in a subsequent case can move for relief from the order based on changed circumstances or for good cause shown.

Under new § 362(j), if a party-in-interest requests, the court must issue an order under § 362(c) confirming that the stay has been terminated.

Venue: Section 1409(b) of Title 28 has been modified to provide that a trustee can commence a proceeding arising in or related to a bankruptcy case to recover a consumer debt of less than \$15,000, or a debt (excluding a consumer debt) against a noninsider of less than \$10,000, only in the district court for the district in which the defendant resides.

Nonprofit Charitable Corporations and Entities: The Code has been amended to provide that the use, sale or lease of the property of a non-moneyed, non-business or non-commercial corporation or trust under either § 363(b) or (c), and all plans providing for transfer of such an entity's property, must be in accordance with the applicable non-bankruptcy law governing the transfer of such corporation's or trust's property. §§ 363(d), 1129(a)(16). Property held by a debtor which is a corporation described in § 501(c)(3) of the Internal Revenue Code may be transferred to a non-§ 501(a) exempt entity only under the same conditions as would apply if the transferor had not filed a bankruptcy petition. § 341(f). Although not specifically yet codified in title 11, § 1221(d) of the 2005 Act requires that the court not confirm a plan of a nonprofit organization under chapter 11 unless it considers whether the proposed actions set forth above would substantially affect the rights of a party-in-interest who first acquired rights with respect to the debtor after the petition filing date; § 1221(d) further provides that the parties who may appear and be heard in a proceeding under § 1221 (presumably in proceedings involving §§ 363, 541 and 1129) include the attorney general of the state in which the debtor is

incorporated, was formed, or does business. The changes regarding nonprofit entities are applicable to cases pending on or filed after April 20, 2005, but becoming effective on October 17, 2005.

Single Asset Real Estate: Section 362(d)(3) has been modified to provide that payments by a single asset real estate debtor to a secured creditor may be made from rents or other income generated before, on or after the petition date without obtaining the secured creditor's consent or court approval, but must be made at the applicable nondefault contract rate of interest rather than the fair market rate. § 362(d)(3).

In a technical amendment in the 2005 Act, § 101 (51B) now clarifies that residential real property of less than 4 units generating all the gross income of a debtor other than a family farmer is not "single asset real estate."

Treatment of Tax Claims in a Plan: Claims described in § 507(a)(8) (certain claims for taxes on income or gross receipts) if unsecured must be paid under a plan in regular cash installments of a total value, as of the plan's effective date, equal to the allowed amount of the claim, over a period not longer than 5 years after the date of the order for relief, in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than § 1122(b) administrative convenience claims). If the tax claim is secured, the holder must be treated the same as prescribed above for unsecured claims.

Nondischargeable Claims: New § 1141(d)(6) provides that confirmation of a corporate debtor's plan does not discharge debts owed to a domestic governmental unit and described in § 523(a)(2)A) (money or other assets obtained by falsity or fraud) and § 523(a)(2)(B) (money or property obtained using a materially false written statement), debts owed to any person as a result of an action filed under 31 U.S.C. §§ 3721-3733 and similar state statutes (relating to claims initially brought against governmental units), or tax or customs duties with respect to which the debtor made a fraudulent return or willfully attempted to avoid.

Jurisdiction: The district court in which a case is commenced or pending (as to all cases filed after April 20, 2005) has exclusive jurisdiction over all claims or causes of action involving construction of § 327, or rules relating to disclosure requirements under § 327.

Effective Date and Applicability Date: Except as differently indicated, the changes above become applicable on October 17, 2005, and are applicable to cases filed on or after that date.