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December 15, 2023

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Re: Preliminary Report of the American Bankruptcy Institute Subchapter V Task Force Maintaining the \$7,500,000 Debt Cap for Subchapter V Eligibility

Dear Reps. Massie and Correa and Sens. Durbin and Graham:

The American Bankruptcy Institute (ABI) is the nation's largest association of bankruptcy professionals, comprised of over 10,000 members in multi-disciplinary roles, including accountants, attorneys, judges, lenders, auctioneers, bankers, professors, turnaround specialists and others. Founded in 1982, ABI offers its members education and resources, but also plays a leading role in providing congressional leaders and the public with nonpartisan reporting and analysis of bankruptcy regulations, laws, and trends. ABI members and/or senior staff are often called on to testify before Congress, analyze proposed bills, and conduct periodic briefings for congressional committees and legislative staff.

In April 2023, the ABI created a Subchapter V Task Force (Task Force) and charged it with reviewing the implementation and administration of the Small Business Reorganization Act of 2019 (SBRA), which is codified as Subchapter V of Chapter 11 of the United States Bankruptcy Code (Subchapter V). The Task Force includes a diverse group of bankruptcy judges, bankruptcy practitioners, and academics. The Task Force recently published its *Preliminary Report of the American Bankruptcy Institute Subchapter V Task Force Maintaining the \$7,500,000 Debt Cap for Subchapter V Eligibility (Preliminary Report)*, which I attach for your review and consideration. After my examination of the findings and recommendation of the Task Force, I write to express ABI's support for legislation that would maintain eligibility for Subchapter V at the current \$7.5 million debt cap.

Over the course of the last nine months, the Task Force sought input from a range of interested bankruptcy professionals and stakeholder groups. To date, the Task Force has convened seven public hearings, held roundtable discussions with impacted trade groups, and deployed a widespread survey inviting comment on Subchapter V. After extensive study, the Task Force, which is engaged in ongoing study of the implementation of Subchapter V, concluded that eligibility for Subchapter V should remain at \$7,500,000 in aggregate noncontingent, liquidated debt permanently (subject to the existing adjustment for inflation).

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The Task Force found that Subchapter V is functioning as Congress intended, and that many of those interviewed by the Task Force believe that Subchapter V is the most effective and useful bankruptcy legislation passed since the enactment of the Bankruptcy Code in 1978. The Preliminary Report details that Subchapter V debtors are confirming bankruptcy plans at higher rates, more quickly and at lower costs than non-Subchapter V small business cases and regular Chapter 11 cases.

Strong industry support exists for legislation that would maintain eligibility for Subchapter V at \$7.5 million in aggregate noncontingent, liquidated debts. As the Preliminary Report notes, Subchapter V is imperative for this category of debtors that cannot reorganize in a regular Chapter 11 case and would otherwise liquidate and close, thus harming owners, employees, and creditors.

Moreover, maintaining the debt cap at \$7.5 million provides consistency and access to Subchapter V. Most Subchapter V debtors have filed bankruptcy while the \$7.5 million debt cap has been in place. Reverting to the lower debt cap would make reorganization inaccessible to many smaller businesses. About 30% of all Chapter 11 bankruptcy cases filed since enactment of the SBRA have been Subchapter V cases. Significantly, more than 25% of these Subchapter V debtors would have been ineligible for Subchapter V relief under the lower cap. Had the \$7.5 million debt cap not been in place, given the cost of restructuring alternatives, these businesses would likely have been extinguished, thereby leading to the loss of jobs and harm to the economy.

If Congress does not act before June, the eligibility debt cap under Subchapter V will automatically be lowered to approximately \$3 million. ABI encourages Congress to review this issue now and consider maintaining the \$7.5 million debt cap as recommended by the Task Force.

We note that the views expressed in this statement are those of the American Bankruptcy Institute and its Subchapter V Task Force, on whose behalf this statement is issued, and do not necessarily reflect the personal views, if any, of any individual ABI member.

If you or anyone from your staff would like to discuss the findings of the Task Force's Preliminary Report or need additional information, please contact me directly by email at skapila@kapilamukamal.com at your convenience. Thank you for your attention.

Sincerely,

Soneet Kapila
President
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