



Business Restructuring and Turnaround, Accounting and Finance: An In-Depth Analysis of Subchapter V Chapter 11 Bankruptcy

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Abstract

The enactment of the Small Business Reorganization Act of 2019 (SBRA), which introduced Subchapter V into Chapter 11 of the United States Bankruptcy Code, marked a qualitative change in the approach to corporate reorganization. The previously established framework of American bankruptcy law, grounded in the absolute priority rule and a multilevel system of covenants, in practice generated structural barriers for small and medium-sized enterprises (SMEs), as a result of which even economically viable companies were often displaced into liquidation procedures. The conducted study is oriented toward an applied understanding of Subchapter V and includes an analysis of its normative formation, the financial-legal instruments for confirmation of reorganization plans, the accounting parameters for determining disposable income, as well as a comparison with foreign restructuring models, including the Part 26A Restructuring Plan in the United Kingdom and EU Directive 2019/1023. Central attention is devoted to an empirical assessment of data arrays for 2023–2025, an examination of the behavioral determinants of entrepreneurs' choice of the relevant procedures, and a review of the emerging case law clarifying the limits of applicability of this mechanism in the context of macroeconomic instability.

Keywords: *Subchapter V, SBRA (2019), Chapter 11 of the United States Bankruptcy Code, Cramdown, Projected Disposable Income (PDI), SME Restructuring, Transaction Costs and Behavioral Factors.*

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INTRODUCTION

The American model of corporate bankruptcy has for a long time developed under conditions of pronounced asymmetry, which the research literature describes as a collision between the logic of too big to fail as applied to large corporations and the logic of too small to survive as applied to small and medium-sized enterprises (SMEs). The traditional design of Chapter 11, oriented toward the restructuring of large public companies with a diversified and multi-tier capital structure, demonstrated an institutional disproportion to the needs of small business, where ownership is, as a rule, highly concentrated and the owner's property sphere is in fact intertwined with the assets and liabilities of the enterprise.

The reform impulse of 2005, implemented through the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), did not eliminate the key dysfunctions and in a number of aspects aggravated the vulnerability of SMEs. The tightening of procedural deadlines and the expansion of creditors' bargaining power increased pressure on debtors, while not reducing the basic agency costs and transaction expenses that determined the economic inefficiency of classical reorganization for small companies. Empirical observations recorded that prior to 2019 the overwhelming majority of small business cases under Chapter 11 ended either in conversion to a liquidation procedure under Chapter 7 or in dismissal of the case without any tangible distribution in favor of creditors [1]. The central legal barrier was the absolute priority rule, formalized in section 1129(b)(2)(B)(ii): the retention by owners of an equity interest was blocked until the claims of unsecured creditors were paid in full, except in situations involving a substantial contribution of new value. For entrepreneurial structures in which capital and assets are already to the maximum extent embedded in operating activity, such a condition de facto deprived reorganization of rational meaning, because the reconstruction of the debt profile was accompanied by a guaranteed loss of control over the business.

A response to these structural imbalances was the adoption of the Small Business Reorganization Act of 2019 (SBRA), prepared with due regard to the recommendations of the National Bankruptcy Conference and the American Bankruptcy Institute (ABI). Subchapter V incorporated by the SBRA, which entered into force in February 2020, was designed as a mechanism for reducing the direct costs of bankruptcy, primarily legal and administrative, and as a

procedural accelerator for exiting crisis. The conceptual innovation was expressed in a shift of the regulatory focus from maximizing liquidation value to preserving the value of a going concern through a simplified architecture: the need to form a creditors' committee is eliminated, and confirmation of a plan is permitted without creditor voting on the condition that all disposable income is directed to servicing indebtedness [1].

A key parameter of the de facto availability of Subchapter V is the debt limit. Initially it was set at 2 725 625 United States dollars, and then temporarily increased to 7 500 000 dollars within the CARES Act as an anti-crisis response to the COVID-19 pandemic. Further variability of the threshold value, including a short-term reduction in June 2024 and subsequent restoration, formed conditions close to a natural experiment, making it possible to assess the behavioral and institutional effects of the parametric tuning of the regime. The accumulated data indicate that the increased threshold expanded access to effective restructuring for a significant segment of the middle market that previously had been located in a regulatory gray zone: the scale of operations exceeded the possibilities of simplified solutions, yet the resource base was insufficient to finance the costs of traditional Chapter 11. Statistical estimates show that more than one quarter of debtors who resorted to the Subchapter V procedure during the period of the increased limit would not have satisfied the previous threshold, which in a typical scenario would have increased the probability of transition to liquidation [4].

The purpose of the work consists in conducting an assessment of the effectiveness, limits of applicability, and key risks of the Subchapter V regime for the financial rehabilitation of SMEs through an analysis of normative architecture, the accounting parameters of PDI, case law, and statistics for 2023–2025 in a comparative-law context.

The scientific novelty is reduced to the fact that in the work, for the first time within a unified applied framework, the legal design of Subchapter V (cancellation of APR and the PDI test), the accounting-financial methodology for calculating disposable income, and empirical data for 2023–2025 with a comparison to UK Part 26A and EU approaches (RPR) are linked, demonstrating how these elements jointly determine the outcomes of SME rehabilitation.

The author's hypothesis is based on the assumption that

Subchapter V increases the probability of successful SME reorganization and the expected satisfaction of creditors by reducing transaction costs and replacing absolute priority with the PDI test; however, the effect substantially depends on the quality of accounting inventory of obligations and the realism of financial modeling, and is also strengthened or weakened by behavioral and institutional factors (volatility of the debt cap, true-up, discharge collisions).

INSTITUTIONAL ARCHITECTURE AND PROCEDURAL MECHANICS OF SUBCHAPTER V

Subchapter V represents a hybrid model that borrows elements from Chapter 12 (bankruptcy of family farmers) and Chapter 13 (debt restructuring of individuals), adapted to the corporate environment.

Trustee: Facilitator, Not Operator

A central element of the procedures under Subchapter V is the fiduciary trustee (Subchapter V trustee). Unlike a Chapter 7 trustee, oriented toward liquidation of property, or a Chapter 11 trustee, vested with broader instruments of control and potential intervention in corporate governance, the trustee under Subchapter V performs predominantly a coordinating function. The normative construction of 11 U.S.C. § 1183 defines its key purpose as an institutional intermediary that ensures the organization of the negotiation process and the advancement toward a consensual reorganization plan. As a rule, the trustee does not take assets into possession and does not substitute for the debtor in day-to-day management, because preservation of Debtor-in-Possession (DIP) status is regarded as the baseline model; an exception is permitted only upon judicial removal of the debtor from possession due to fraud or gross incompetence [7].

The function of an honest broker acquires particular importance in the procedural environment where there is no official committee of unsecured creditors. In classic Chapter 11, the committee often forms a parallel center of procedural power: independent lawyers and financial consultants are engaged, and payment for their services is made from the bankruptcy estate, which, given the limited value of the business, can transform into accelerated depletion of its residual value. Refusal to require the formation of such a committee in Subchapter V reduces the intensity of transaction costs and administrative pressure on the enterprise's cash flow, allowing resources to be reallocated in favor of performance of core debt obligations and maintenance of operational stability [9].

The procedural architecture of Subchapter V thus shifts the emphasis from adversarial contest to managed coordination of interests, and the trustee serves as a mechanism for balancing information asymmetry between the debtor and creditors. In circumstances where individual creditors are often deprived of an economically justified ability to conduct full-scale expert and legal work at a level comparable to

large restructurings, the trustee provides the minimally necessary infrastructure of oversight and communication. This is manifested in the organizational support of meetings, the structuring of exchanges of financial data, the fixation of the subject matter of disagreements, and the maintenance of procedural discipline in discussing plan parameters.

An additional characteristic of this institution is its role in reducing the probability of opportunistic behavior by the parties within the negotiation framework. Preservation of the DIP model leaves the debtor's management significant freedom of action; however, the presence of an independent fiduciary intermediary forms a system of checks: transparency of proposals increases, the risk of manipulation of solvency assessments and cash flow projections decreases, and the possibility of using the procedure as an instrument for delaying settlements is limited. As a result, a more predictable allocation of procedural risks is achieved, which contributes to stabilizing creditors' expectations and increases the chances of confirmation of a viable plan.

Finally, the economic effect of simplifying the institutional structure of the procedure is expressed not only in reducing expenditures on professional participants, but also in increasing the speed of decision-making while preserving proper legal protection. The reduction of procedural cumbersomeness facilitates agreement on realistic payment schedules and adjustments of obligations, because the focus shifts to practical debt restructuring rather than maintaining costly parallel representation frameworks. Taken together, this strengthens the rehabilitative potential of Subchapter V as a mechanism for preserving a functioning business and maximizing aggregate value for creditors in comparison with the alternative of a liquidation scenario.

Accelerated Timeline and Reporting

The effectiveness of procedures under Subchapter V largely relies on an imperatively set dynamics of case consideration and on a shortened calendar of key procedural actions. The judicial model presupposes early organizational intervention: a status conference is subject to being scheduled and held within 60 days from the filing of the petition, whereas the formation of the main restructuring vector is concentrated around the debtor's duty to submit a reorganization plan within 90 days. The construction for extension of the specified period has an exceptional character and is permitted only in the presence of circumstances not dependent on the debtor's will, which transforms deviations from the schedule from a normal instrument of procedural strategy into an object of strict judicial assessment [5].

Acceleration of the procedural cycle performs not only an organizational but also an economic-legal function: the longer uncertainty persists regarding the future structure of obligations and the regime of disposition of cash flow, the higher the cost of financing, the deeper the rupture of counterparties' trust, and the more substantial the risk of

erosion of the value of the going concern. Strict deadlines minimize the period of a suspended state, reducing the window for the growth of administrative expenses and decreasing the probability that negotiations will be substituted by a multitude of interim motions, appellate maneuvers, and other procedural trajectories capable of converting into a de facto blocking of reorganization decisions.

The tempo of Subchapter V also produces a disciplining effect for the creditor body: compressed time frames stimulate early crystallization of positions, accelerate information exchange, and increase the significance of preliminary verification of the plan's financial assumptions. At the same time, a practice typical of large corporate bankruptcies is eliminated, namely management of time as a resource of pressure, when delaying the process is used to redistribute bargaining power, exhaust opponents, or obtain more favorable concessions by increasing transaction costs. As a result, procedural speed becomes an independent instrument for protecting the rehabilitative objective: it restricts strategic delay and facilitates confirmation of the plan during the period when the business still retains operational viability [5].

Abolition of the Disclosure Statement

In the classic model of reorganization under Chapter 11, the debtor bears the obligation to prepare and obtain judicial approval of a Disclosure Statement, a voluminous consolidated document comparable in its function to an offering prospectus, in which the evolution of the business, the structure of assets and liabilities, the dynamics of financial indicators, and the key assumptions underlying the proposed measures for restoring solvency are set out in a consistent manner. Practice shows that it is precisely the stage of agreeing on the content of such a document that often becomes an independent node of conflicts: objections of creditors and other interested persons concentrate around the completeness, relevance, and reliability of the disclosed information, which provokes delays in the process and growth of transaction costs. Subchapter V eliminates this formal requirement: instead of a separate disclosure package, all material information, including a historical background of activities, liquidation analysis, projected financial models, and the assumptions related to them, is incorporated directly into the Reorganization Plan, thereby excluding a separate procedural step and the expenses associated with it [7].

Transferring disclosure into the text of the Plan changes the architecture of information exchange in the insolvency case: the document that previously existed as a preliminary filter for voting and for assessing the economic rationality of the proposed restructuring becomes part of a single legal-economic narrative oriented toward confirmation of feasibility and compliance with standards of good faith. As a result, the probability of procedural duplication decreases, when the same facts and calculations are repeated in different forms, generating a dispute not about substance but about the particular оболочка in which it must be presented.

Reduction of the formalized stage of approval of disclosure has a direct impact on the balance of costs in the case: the volume of procedural work connected with the preparation, expert verification, and contestation of the disclosure text decreases, and the intensity of intermediate hearings is reduced, in which the dispute is predominantly methodological in nature (sufficiency and adequacy of information) rather than touching upon the substantive parameters of restructuring. In practice, this means earlier concentration of the parties on negotiations about the key economic terms of the Plan and, as a consequence, a reduction in the share of costs driven by purely procedural barriers.

At the same time, the abolition of a separate statement does not eliminate the fundamental function of disclosure as an instrument for preventing information asymmetry. The requirement to include historical and projected data in the Plan de facto preserves the obligatoriness of presenting a minimally sufficient array of information, but shifts the emphasis from the formal certification of a separate document to the court's assessment of the quality and internal consistency of disclosure within the verification of the confirmability of the Plan. This stimulates a tighter linkage between the factual basis, calculations of the liquidation alternative, and the declared mechanisms of debt restructuring.

Finally, the institutional logic of Subchapter V presupposes that procedural economy is compensated by strengthening the role of other guarantees of transparency and control: the significance of timely submission of financial statements, correct parameterization of cash flows, realism of forecasts, and completeness of the description of operational risks affecting performance of the Plan increases.

FINANCIAL-ECONOMIC MECHANISM: VALUATION, CONFIRMATION, AND ACCOUNTING

The key financial innovation of Subchapter V is the replacement of the absolute priority rule with a fairness and equality test based on the concept of disposable income.

Projected Disposable Income (PDI) Test

Within the regime of nonconsensual plan confirmation (cramdown), Subchapter V grants the court the ability to confirm a plan even in the event of a negative vote by all creditor classes, provided that two basic constraints are satisfied: the absence of unfair discrimination and compliance with the criterion of fair and equitable treatment. The substantive content of the second criterion for the purposes of Subchapter V is disclosed in section 1191(c): the plan must provide for the application of all projected disposable income of the debtor to payments to creditors during a prescribed period of three to five years. This construction shifts the center of gravity from the formal consent of creditor classes to the economic good faith of the allocation of future cash flow and to the verifiability of the financial assumptions embedded in the plan [13].

In the financial-accounting dimension, the category of disposable income is understood as that portion of receipts that is not required to maintain and ensure the continuity of business operations. Consequently, the key subject of proof shifts into the domain of substantiating operating expenses (OpEx): it is necessary to demonstrate which expenditures are truly necessary to preserve productive capacity, perform contracts, comply with regulatory requirements, and retain personnel, and which in fact mask excessive consumption of resources or value extraction. Unlike the GAAP logic, where net profit functions as the final indicator, in the bankruptcy model PDI constitutes a calculated cash-flow figure available for servicing restructured debt and therefore is subject to reconstruction through the lens of liquidity, working capital, and the needs of the operating cycle [13]

The normative effect of section 1191(c) also transforms the traditional corporate-law matrix of risk allocation between creditors and owners. In classic restructurings under Chapter 11, retention of an ownership interest by owners in the face of creditor opposition is usually associated with the absolute priority doctrine and the new value requirement, which presupposes an additional capital contribution.

Table 1. Comparative analysis of plan confirmation standards (compiled by the author on the basis of [13-15]).

Parameter	Traditional Chapter 11	Subchapter V (Cramdown)
Preservation of equity	The absolute priority rule is applied. Owners lose control if creditors are not paid in full.	Owners retain 100% of equity provided that PDI is paid within 3-5 years.
Creditor voting	At least one impaired class must accept the plan.	The plan may be confirmed without the consent of any class of creditors.
Plan term	Indefinite (depends on negotiations).	Fixed period of PDI payments (3-5 years).
Administrative expenses	Must be paid in full on the effective date of the plan.	May be paid over the duration of the plan.

Orientation toward PDI as a cash resource for debt service increases sensitivity to corporate governance and to internal spending policies. In plans proposed for confirmation despite creditor voting, the focus of attention becomes management compensation schemes, transactions with affiliated persons, lease and service agreements, as well as any elements capable of reallocating cash flow outside the framework of obligations to creditors. Within this logic, accounting statements function as the initial material, whereas the legally significant PDI figure is formed as the result of normalizing adjustments aimed at separating truly necessary costs from costs not justified by the objectives of business preservation and plan performance.

Valuation Issues and Debates On Adjustment (True-Up)

Linking plan payments to projected income inevitably increases valuation and methodological risks, because the calculation base is formed on the basis of assumptions that, at the moment of plan confirmation, may be well grounded but remain probabilistic. When actual indicators subsequently diverge from the model, a key dilemma arises regarding the

Subchapter V permits a different balance: upon fulfillment of the obligation to apply all disposable income to payments to creditors, owners may retain 100% of the equity capital without contributing personal funds, which constitutes a fundamental shift from traditional approaches based on rigid subordination of capital interests to creditor interests under conditions of insolvency [13-15].

An additional complexity is that fairness and equality in Subchapter V are in effect tested through a projected horizon rather than through a one-time valuation of enterprise value. This increases the significance of assumptions regarding market conditions, demand structure, financing availability, supply-chain stability, and concentration risks of the customer base. In disputed cases, the contours of the process converge with a viability assessment: the more aggressive the assumptions regarding growth and margin, the higher the probability of challenging the plan as built on speculative expectations, even if the plan formally declares the application of all PDI to creditors [13].

Table 1 below presents the results of the conducted comparative analysis of the existing standards for plan confirmation.

allocation of economic upside: when real cash flows exceed those embedded in the projection, an argument emerges in favor of creditors' participation in the excess result, whereas the debtor appeals to the fixation of the parameters of obligations at the moment of judicial confirmation.

Judicial approaches to this problem demonstrate heterogeneity. In *In re Staples* (M.D. Fla. 2023), the permissibility of including in the plan structure mechanisms of subsequent adjustment (true-up clauses) was recognized, allowing the volume of payments to be linked to actually achieved financial results. By contrast, in *In re Packet Construction, LLC* (Bankr. W.D. Tex. 2024), the court refused to impose on the debtor an obligation to implement such conditions, emphasizing that the normative construction operates precisely with projected income, assessed and fixed as of the date of plan confirmation [14].

The indicated collision reflects a broader conflict of the reorganization regime's objectives: on the one hand, maximizing creditor recoveries by capturing part of unexpected profit; on the other hand, ensuring predictability and manageability of the plan as a legally binding road map

for exiting crisis. The refusal to forcibly impose true-up may be regarded as an institutional bet on outcome certainty and on reducing subsequent grounds for disputes over redistribution of economic effect, which correlates with the idea of finality and a fresh start for the entrepreneur.

At the same time, the permissibility of adjustment mechanisms as a contractual option retains practical significance: such conditions serve as an instrument for balancing interests in negotiations and may reduce creditor resistance driven by concerns about understated projections. The most common functional analogues of true-up are contingent payments, earn-out elements, additional tranches upon reaching threshold indicators, as well as so-called equity or value kickers, allowing partial compensation to creditors for the risk of underestimation of business prospects without undermining the baseline feasibility of the plan.

Embedding such constructions requires heightened discipline of financial modeling and a clear procedural design. To minimize subsequent conflicts, the plan text usually incorporates transparent standards for determining the actual result (which metric is applied, how one-off effects are normalized, how capital expenditures and seasonality are taken into account), rules for reporting and audit verification, as well as boundary parameters of adjustment (upper and lower limits) preventing transformation of the mechanism into a source of uncertainty incompatible with the requirements of feasibility and good faith.

Finally, the difference in judicial conclusions underscores that the dispute is conducted not so much about the fairness of distributing unforeseen profit as about the legal nature of the projected base: whether it is merely an initial estimate permitting ex post clarification, or instead constitutes a value fixed as of the date of confirmation, ensuring closure of the issue of the amount of obligations over the plan horizon. Within this logic, preference given to the fixed nature of the projected indicator forms a more rigid framework for creditors' post-confirmation expectations and simultaneously increases the significance of how fully and correctly the projection assumptions are substantiated at the moment of confirmation.

Accounting of Obligations and Debt Discharge

The moment at which discharge of obligations occurs in Subchapter V is structurally tied to the procedural configuration of plan confirmation and, thereby, to the nature of the agreement reached with creditors. Upon confirmation of a consensual plan under § 1191(a), the discharge effect arises immediately following judicial approval, which legally completes the reorganization stage and moves the company into a post-confirmation performance regime without preservation of the prior debt anchor. Upon confirmation of a nonconsensual plan under § 1191(b), discharge is deferred until the moment of full performance of the payments

provided by the plan, which in a typical construction means a horizon of approximately three to five years [15].

This distinction forms two fundamentally different trajectories for reflecting restructured debt in accounting. In the immediate discharge scenario, the economic effect of restructuring, namely reduction of the debt burden and release from part of obligations, is fixed early in the financial statements, which can substantially change indicators of financial stability, covenants, and counterparties' perception of credit risk. Under deferred discharge, obligations retain legal vitality throughout the entire period of plan performance, as a result of which a debt position continues to be present on the balance sheet, albeit modified by plan terms, and recognition of part of the benefits is shifted to a later moment coinciding with actual completion of settlements [15].

The choice of model affects not only the timing of recognition of benefit but also the structure of risk disclosure: under deferred discharge, increased sensitivity to delinquency and to default under the plan persists, because the legal mechanism of release from obligations remains conditional until completion of payments. This increases the significance of compliance with plan metrics, reporting procedures, and internal controls ensuring stable performance of obligations over the entire horizon. By contrast, immediate discharge increases the degree of certainty of the legal result and reduces the probability of return disputes over the fate of claims, focusing the subsequent control contour predominantly on current payment discipline and operating indicators.

From the perspective of financial engineering of plans, the difference in the timing of discharge influences negotiation dynamics and risk pricing: under the nonconsensual model, creditors in effect obtain a longer period of legal protection, which may reduce willingness to concede on the amount of claims, but simultaneously increases the probability of conflicts under cash flow volatility. In a consensual construction, the incentive for creditors is acceleration of legal certainty and reduction of procedural costs, whereas the debtor obtains the advantage of early cleansing of the balance sheet and a stronger signal to the market regarding the completeness of restructuring [15, 16].

COMPARATIVE LEGAL ANALYSIS: GLOBAL RESTRUCTURING TRENDS

The United States experience under Subchapter V is not unique in its aspiration to simplify procedures for SMEs; however, its mechanisms differ substantially from European and Asian counterparts.

United Kingdom: Restructuring Plan (Part 26A)

The United Kingdom restructuring plan, introduced in 2020 by Part 26A of the Corporate Insolvency and Governance Act (CIGA), institutionally established the possibility of cross-class cramdown, enabling the overcoming of dissent by

individual creditor classes where judicial grounds exist to impose the plan. At the same time, the structure differs from Subchapter V not so much in the set of available instruments, but in the scope of application and the procedural cost of entry: formally, the mechanism is open to companies of any scale, yet in practice it proves economically burdensome for SMEs due to strong reliance on complex valuation procedures and expert evidence [16].

A key element of the United Kingdom model is the no worse off test, implemented through a comparison of the consequences of the proposed plan with the relevant alternative, which is most often identified as administration or liquidation. This logic requires not only a formal description of the alternative scenario, but also a persuasive justification of the probabilistic picture of outcomes: distribution of value across classes, assessment of transaction costs, temporal structure of receipts, and legal feasibility of alternative procedures. As a result, the central weight of the dispute shifts into the domain of valuation expertise and assumptions, rather than exclusively into the domain of normative legal qualification.

The high cost of the procedure for SMEs is explained not by an abstract complexity of law, but by the need to form an evidentiary basis that withstands the judicial standard of persuasiveness: valuation of the business and assets, cash flow modeling, analysis of the recovery horizon, calculation of distributional effects across classes, and, often, verification of the correctness of assumptions by independent specialists. At the procedural level, this leads to an extended preparatory stage, increased expenditures on experts and lawyers, and a higher risk of challenges relating to valuation quality and the selection of the relevant alternative [16].

An additional factor of uncertainty is the broad discretion of United Kingdom courts. Even when formal criteria are satisfied, the court retains the right to refuse confirmation of the plan on grounds of fairness, assessing, in particular, the good faith of the negotiation process, the absence of abuse in class formation, the adequacy of value distribution, and the degree of procedural integrity toward dissenting groups. Such an architecture increases the role of judicial equity assessment and reduces predictability of the outcome compared with regimes dominated by more formalized quantitative thresholds.¹⁶

The comparative contrast with United States Subchapter V is manifested primarily in the nature of the controlling criterion: the United Kingdom no worse off test inevitably relies on the valuation of a counterfactual scenario and its probabilistic parameters, whereas the mathematical PDI test in the United States is conceptually oriented toward calculating projected disposable income and its distribution within a predefined normative framework. In the United Kingdom model, the reference point (the relevant alternative) becomes an object of adversarial contestation, which expands the space for expert disagreements and procedural tactics.

The presence of cross-class cramdown under conditions of a high valuation burden generates a paradox for SMEs: an instrument that is potentially capable of overcoming fragmentation of the creditor structure and accelerating restructuring in fact remains accessible mainly to those entities that already possess resources to finance an expensive judicial and expert framework. Thus, formal universality of the mechanism is achieved, but its practical mass applicability in the segment of smaller companies is not ensured, where the cost of proof may exceed the expected benefit from the restructuring outcome.

In practical terms, this leads to increased significance of pre-court agreements and soft restructuring solutions for SMEs, because the threat of resorting to Part 26A as a negotiating pressure instrument is limited by its budgetary and evidentiary weight. At the same time, for large debtors and complex capital structures, the United Kingdom model provides a flexible judicial framework that allows addressing cross-class conflicts and fixing a compromise, but the price of this flexibility is expressed in greater variability of judicial discretion and, consequently, in a broader range of outcomes under similar factual inputs [16].

European Union: Directive 2019/1023 and the Rule of Relative Priority

The European Union Directive on preventive restructuring закрепляет the Rule of Relative Priority (RPR) as a compromise model of value distribution when imposing a plan on dissenting creditor classes. Unlike the United States approach of absolute priority, where junior stakeholders do not receive economic value until senior stakeholders are fully satisfied, RPR requires only that a dissenting class be in a more favorable position than any more junior class. Thus, a situation is permitted in which a junior class receives a certain (even if limited) distribution before the senior class is fully repaid, provided that the relative ladder of preferences is preserved.

Such a softening of priorities reflects the normative orientation of the European legislator toward increasing the likelihood of plan feasibility and reducing barriers to early intervention. Within the logic of RPR, the core is not a binary prohibition on redistribution in favor of junior stakeholders under incomplete satisfaction of senior stakeholders, but control to ensure that the dissenting class does not end up in a position worse than structurally subordinated groups. In practice, this shifts the emphasis from a rigid rule to the assessment of proportionality and to the quality of justification of the distributional outcome through business valuation and alternative scenarios, which increases the role of value assumptions and discounting methodologies.

United States Subchapter V demonstrates an even more pronounced departure from classical priority orthodoxy with respect to owner interests. The traditional logic of absolute priority, limiting the retention of control by

shareholders under incomplete satisfaction of senior classes, in effect bypasses the ownership layer: retention of control is permitted not through the contribution of comparable new capital, but through an obligation to make future payments for the benefit of creditors within the plan model. As a result, priority as an instrument of redistributive discipline yields to a structure in which the key value is continuity of management and stimulation of continued entrepreneurial activity under the condition of long-term payment performance.

A comparison of RPR and Subchapter V shows that in both regimes the same problem is addressed, namely prevention of value destruction due to procedural and negotiating blockage, but this is achieved by different means. The European model softens priorities while preserving them as a mandatory comparative framework between classes, whereas Subchapter V radicalizes the functional approach, minimizing the significance of capital hierarchy as applied to owners and transforming future cash flow into the primary currency of restructuring. The consequence is a different configuration of conflicts: in the European Union, the dispute more often concentrates around valuation and the fairness of relative distribution, whereas in Subchapter V it concentrates around feasibility of the plan and the correctness of parameters for future payments.

In Germany, implementation of the Directive through the StaRUG Act (2021) formed a preventive, in essence out-of-court (pre-insolvency) procedure with a limited judicial framework and limited openness to public observation, which reduces reputational costs and the stigmatization effect. However, empirical data indicate slow expansion of application practice (84 cases in 2024), whereas Subchapter V in the United States demonstrates a consistently high scale of filings, expressed in thousands of filings annually. This gap is commonly associated with differences in accessibility and standardization of procedures, as well as with the relative cost of proof, primarily in the area of valuation expertise and negotiating infrastructure, without which preventive mechanisms often lose practical attractiveness [14].

India: Pre-packaged Insolvency Resolution Process (PPIRP)

The Indian PPIRP structure for the SME segment is oriented toward accelerated restructuring within a rigid procedural horizon (120 days) while preserving the Debtor-in-Possession model, that is, with formal retention of operational control by the debtor. At the same time, the key institutional difference is manifested in the governance architecture of the procedure: the dominant role is закрепляется to the Committee of Creditors, which holds a decisive vote on consequential issues, from approval of the candidate professional resolution professional and plan parameters to consent to key transactions and the results of voting on the restructuring decision. In United States Subchapter V, by contrast, the committee of creditors is deliberately excluded

from the standard structure, and control and supervisory functions are concentrated in a neutral trustee, which strengthens the debtor-oriented character of the regime [21].

Preservation of the centrality of the Committee of Creditors in PPIRP forms a different balance of negotiating power compared with models where oversight is institutionally relieved from an active collective creditor body. The Committee serves not only as a platform for coordination of interests, but also as a mechanism for disciplining the debtor: managerial autonomy de facto becomes conditional and mediated by creditor approval. Under such a structure, the speed of the procedure is ensured not so much by minimizing conflicts as by their early embedding into a formalized framework of creditor control, where the ability of the debtor to retain initiative depends on the willingness of creditors to support the proposed recovery trajectory.

The United States approach, by contrast, reduces the probability that the procedure will become an arena of inter-creditor competition, where classes and individual creditor groups use the committee as an instrument for redistribution of influence and pressure. The neutral trustee in Subchapter V functionally replaces the committee, but without a mandate to represent any private interests; priority is given to monitoring performance, verifying information, and procedural correctness rather than to collective political governance. As a result, the number of points at which creditor conflicts can be institutionally закрепляется and delay negotiations is reduced, which increases predictability for the debtor and promotes more consistent movement toward confirmation of the plan.

Comparison of these regimes reveals different understandings of the source of legitimacy of the restructuring decision. In PPIRP, legitimacy is to a significant extent built on a creditor mandate: the Committee of Creditors becomes the bearer of the economic sovereignty of the procedure and, in essence, approves the permissible level of concessions, risks, and assumptions. In Subchapter V, legitimacy shifts toward institutional neutrality and judicial-administrative control: retention of управление by the debtor is perceived as a means of protecting business continuity, rather than as a concession requiring постоянное creditor approval.

The difference in centers of power also affects the incentives of the parties when forming the plan. Under dominance of the Committee of Creditors, the risk of conservative structuring increases: creditors tend to maximize protective mechanisms, demand stricter covenants, and increase plan sensitivity to deviations from forecasts, which can reduce entrepreneurial flexibility in the recovery phase. In the debtor-oriented model, by contrast, the importance of safeguards that ensure trust in forecasts and good faith performance increases: transparency of reporting, verifiability of cash flow, realism of the business plan, and управляемость of risks become

key arguments that compensate for the absence of a constant creditor veto through the committee.

Table 2 reflects, for greater clarity, the results of the comparison of SME restructuring regimes.

Table 2. Global comparison of SME restructuring regimes (prepared by the author on the basis of [16-22]).

Characteristic	United States (Subtitle V)	UK (Part 26A)	EU (Directive/StaRUG)
Target audience	SMEs (Debt < \$7.5M)	All companies (expensive for SMEs)	Viable debtors
Cramdown mechanism	PDI test (Disposable income)	Test not worse than in the alternative	Relative priority rule (RPR)
Payment priority	PDI: Equity is preserved subject to payment of income. APR is eliminated.	Court discretion: The court assesses the fairness of the distribution of the surplus.	RPR: Junior classes may receive payments if senior classes are in a more favorable position.
Creditors' committee	None (functions are performed by the Trustee).	Often created ad hoc.	Depends on the country.
Management status	DIP (under the supervision of the Trustee).	DIP (directors retain control).	DIP.

Thus, differing institutional configurations allocate transaction costs in different ways. The committee of creditors, as a collective body, requires coordination of interests, voting procedures, and negotiating infrastructure, which is capable of increasing complexity even under formally short time limits. The model with a neutral trustee seeks to reduce precisely coordination costs and to achieve procedural economy by reducing the number of actors possessing formalized influence. Therefore, the difference between PPIRP and Subchapter V is reduced not only to the question of retaining control with the debtor, but also to who exactly is considered the primary holder of supervisory competence and through which mechanism a balance is achieved between speed, creditor protection, and the sustainability of post-crisis recovery.

BEHAVIORAL FINANCE AND THE PSYCHOLOGY OF THE SME CRISIS

Understanding the effectiveness of Subchapter V is impossible without analyzing the behavioral determinants of decision-making by entrepreneurs. A financial crisis of SMEs is not merely a cash shortfall; it is a psychological dead end.

Sunk Cost Fallacy and Escalation of Commitment

The postponement of filing an insolvency petition among entrepreneurs is often driven by a cognitive bias known as the sunk cost fallacy: costs already incurred, financial, temporal, and reputational, are erroneously perceived as an argument in favor of continuing the project, although from the standpoint of rational choice they should not affect the evaluation of future decisions. As a result, attention shifts from prospective efficiency to the need to justify past investments, which increases tolerance for losses and reduces readiness for a timely transition into formalized restructuring while there remains room to preserve asset value [22].

In the SME segment, this effect is amplified by the specific motivational structure of the owner. Empirical studies indicate that owners of small and medium-sized companies often perceive the business as an extension of their own

personality and social status, accumulating what is referred to as socioemotional wealth. Such attachment removes managerial decisions from the plane of exclusively economic rationality: the loss of the business is experienced as a loss of identity, autonomy, and symbolic capital, which increases the subjective cost of acknowledging failure and, consequently, strengthens the tendency to postpone legally significant steps aimed at protecting creditors and reorganization [22].

Under these conditions, the phenomenon of escalation of commitment is formed, in which the owner continues to increase investments, often at the expense of personal funds, loans secured by personal guarantees, or informal borrowing from family capital, despite deteriorating financial indicators. The psychological mechanism here is dual: on the one hand, hope for a turning point in the situation and the desire to recoup losses operate; on the other, there is avoidance of cognitive discomfort associated with acknowledging the erroneousness of prior decisions. The practical outcome is a late initiative for restructuring, when liquidity is depleted, assets are devalued, and the space for an agreed plan is substantially narrowed [22].

Delays in turning to reorganization procedures have predictable economic and legal consequences: arrears accumulate, financing costs grow, information asymmetries between the owner and creditors intensify, and the probability increases of a chaotic sale of assets instead of a managed preservation of the going concern. As the point of insolvency approaches, the quality of available reporting deteriorates, counterparties' trust declines, and the risk increases of actions that are subsequently qualified as preferential payments or value-diverting transactions. Thus, cognitive delay transforms into a legally significant degradation of the insolvency estate and reduces the expected level of satisfaction of claims [22].

Reducing the influence of the described biases in corporate practice is usually associated not so much with appeals to reasonableness as with institutional mechanisms for early recognition of crisis. The most effective are considered to

be procedures that create external anchors for decision-making: standardized early warning triggers (for example, sustained decline in profitability, covenant breaches, recurring cash gaps), independent financial diagnostics, and legal regimes that create a minimally stigmatized and relatively inexpensive entry into preventive restructuring. In such a design, restructuring ceases to be perceived as an acknowledgment of personal defeat and begins to function as a managerial instrument for value preservation before psychological factors lead to irreversible depletion of resources.

Optimism Bias

A high level of optimism is a structural characteristic of entrepreneurial behavior: precisely the readiness to overestimate the probability of success and underestimate the intensity of risks facilitates the launch of a new enterprise under uncertainty. However, in the phase of a financial crisis the same cognitive disposition becomes destructive, because it prevents timely recognition of deteriorating solvency and reduces readiness for early legal actions aimed at preserving business value [23].

A stable tendency to discount negative financial signals is observed. Declining revenue, growing arrears, falling profitability, and worsening lending terms are often interpreted as short-term fluctuations caused by external factors: seasonality, market conditions, the behavior of particular counterparties, or temporary disruptions in supply chains. Such attribution allows maintaining internal coherence of the managerial narrative, but simultaneously leads to delays in managerial decisions, including decisions on restructuring of obligations [24, 25].

From a behavioral perspective, this involves a combination of optimistic bias, confirmation bias, and motivational selection of information: signs of distress pass through a normalization filter, whereas isolated positive indicators, a short-term contract, a one-time profit, a successful month, acquire disproportionately high evidentiary force. Under conditions of high personal involvement of the owner and close intertwining of corporate and personal finances, these biases intensify, because acknowledging the crisis is perceived not only as an economic fact, but also as a threat to status and control.

Against this background, the stigmatization of bankruptcy acts as an additional behavioral barrier. Traditional insolvency procedure is associated with loss of managerial autonomy, publicity of financial problems, and закрепление of a label of failure, which strengthens the desire to hold out to the last and solve the problem informally, through personal loans, deferrals, and point arrangements. For this very reason, the moment of entry into the legal regime is often shifted to the stage when assets are already devalued and the space for preserving the business as a going concern is sharply reduced [25].

Subchapter V conceptually addresses this psychological knot through a different packaging of restructuring: the procedure is constructed as an accelerated and less reputationally toxic route in which operational control is preserved and the number of conflict procedural nodes that turn classical insolvency into a prolonged dispute is reduced. In behavioral terms, an alternative to the funeral framing of bankruptcy is formed: restructuring is positioned as a quick fix instrument that allows reworking the debt structure before the crisis becomes irreversible.

The effect of such framing consists in lowering the psychological cost of acknowledging the problem and in transferring the decision from the plane of self-evaluation into the plane of a manageable procedure. When the legal mechanism is perceived as a corrective instrument rather than as a final sanction, resistance to early обращение decreases, and the tendency toward heroic удержание of the project at any cost is weakened. As a result, the probability increases of entering restructuring at a stage when liquid assets still exist, the customer base is preserved, and contractual reconfiguration of obligations is possible without разрушение of the operational contour.

Algorithmic Lending and the Liquidity Trap

On the side of institutional creditors, including banks and fintech providers, automated strategies for managing limits on revolving products are increasingly applied, conventionally designated as low and grow. Their logic is built on behavioral and transactional metrics: regular use of the credit line, partial repayment, and repeated utilization of the limit are interpreted by the algorithm as a signal of healthy demand and manageable risk, which triggers automatic expansion of available financing [26]. Externally, this forms in the debtor a stable sense of payment maneuverability, although the real nature of cash flows may remain unfavorable.

Such dynamics create the phenomenon of artificial liquidity, when access to a revolving resource substitutes for the operational capacity to generate sufficient cash flow. In accounting and financial terms, structural insolvency is masked through constant refinancing of current needs: cash gaps are closed not by restoring profitability, but by increasing debt with a short turnover cycle. As a result, deterioration of key parameters, declining debt service coverage, growing share of overdue obligations to suppliers, deterioration in the quality of accounts receivable, may for a long time not lead to an immediate cessation of activity, because the credit line performs the role of a cushion not supported by a sustainable business economics.

The risk becomes acute at the moment when the algorithm, reacting to updated data (declining account turnover, rising returns, deterioration of behavioral indicators, changes in macro risk parameters or internal policy tightening), suddenly restricts or completely cuts off financing. Unlike

classical bank lending, where limit contraction is often preceded by a negotiation stage and warnings, automated contours can act abruptly and without a transition period, because the decision is aggregated and executed technically. The transition from apparent solvency to a liquidity deficit occurs discontinuously: within a short period the business finds itself in a situation of deep insolvency, where termination of access to the revolving resource simultaneously exposes the accumulated debt pyramid and paralyzes working capital [26, 27].

In such conditions, the nature of the crisis also changes: it acquires features of event-driven insolvency, triggered by a one-time interruption of financing, rather than a gradual deterioration of indicators. This increases the likelihood of destruction of going concern value: the rhythm of procurement is disrupted, a cascade of defaults on текущие payments arises, cross-default provisions are activated, and counterparties begin to demand prepayment or cease supplies. In parallel, the risk grows of uneven payments to individual creditors and hasty sales of assets, which reduces the overall insolvency estate and worsens the prospects for an agreed restructuring.

Precisely for this reason, the accelerated parameters of Subchapter V, including the 90-day deadline for filing the plan, functionally correspond to the modern algorithmic nature of liquidity shocks. The normative design in effect proceeds from the assumption that, under an abrupt termination of credit oxygen, what is required is not prolonged maturation of the parties' positions, but a rapid transition to a formalized framework solution that stabilizes expectations, fixes the rules of settlements, and creates a legal corridor for continuation of operational activity. Shortening the time window reduces the probability that a liquidity crisis will grow into an irreversible loss of the business as a going concern.

EMPIRICAL ANALYSIS AND STATISTICS (2023–2025)

An analysis of data for the last three years demonstrates high demand for and effectiveness of Subchapter V, correlating with macroeconomic cycles.

Filing Dynamics

In the 12-month period ending on December 31, 2024, bankruptcy statistics in the United States recorded a noticeable acceleration: the total number of filed cases increased by 14.2% and amounted to 517,308 cases, reflecting expansion of both the consumer and corporate segments of insolvency [28].

The commercial segment demonstrated an even more pronounced dynamic. The number of business bankruptcies increased by 22.1%, to 23,107 cases, which became the highest value since the period ending on December 31,

2017 (23,157 cases). Thus, a return is confirmed to a level of corporate load on the insolvency system comparable to the pre-COVID peak of the last decade [28].

The growth of filings under Subchapter V developed in unison with the overall expansion of commercial filings, which is logical under rising capital costs and deterioration of short-term liquidity among small-scale companies. However, in the second half of 2024, a sharp structural break was observed, driven not by macroeconomic fluctuations, but by a change in access criteria to the procedure itself: on June 21, 2024, the term of the temporarily increased debt limit expired, and the permissible indebtedness threshold for Subchapter V returned to the baseline value, indexed to \$3,024,725.

This return of the limit manifested in statistics as a step effect. In July 2024, the number of Subchapter V elections decreased by approximately 45% compared with June, which in analytical reviews is directly associated with the sudden narrowing of the permissible debt window after the expiration of the expansion to \$7.5 million [16].

Such a decline has important applied significance for assessing demand for restructuring. Sharp sensitivity to the debt threshold indicates that a significant share of potential filers is concentrated in the range between the ordinary limit of about \$3 million and the temporarily expanded boundary of \$7.5 million: when the accessibility criterion is narrowed, precisely these companies lose the right to accelerated low-budget reorganization and are either forced into the more costly configuration of Chapter 11 or postpone the legal formalization of the crisis [16].

Consequently, the observed statistical downturn is not a random fluctuation, but an indicator that Subchapter V, in practical terms, serves a substantial segment of business with a medium level of debt burden, for which traditional reorganization is excessively expensive, while out-of-court negotiations often do not provide sufficient protection against a liquidity break and fragmentation of claims. In this sense, the dynamics of July 2024 allow the debt threshold to be interpreted as a regulatory lever that directly affects the accessibility of rehabilitative procedures and the distribution of cases among forms of bankruptcy protection [6].

Success Indicators: Plan Confirmation

Statistical summaries of the Executive Office for U.S. Trustees (U.S. Trustee Program) record that Subchapter V demonstrates substantially higher effectiveness compared with traditional configurations of small-business reorganization. The share of cases ending in plan confirmation reaches approximately 52%, whereas for ordinary small-business procedures the comparable indicator is estimated at about 31%. At the same time, the median time to confirmation is noticeably reduced: approximately 6–7 months versus 10–11 months characteristic of prior practice [30].

Associated indicators of procedural sustainability also appear more favorable: the share of conversions to liquidation or dismissals of cases is substantially lower. Taken together, these parameters reflect not only acceleration of the procedural trajectory, but also a reduction in the frequency of organizational failure of the reorganization attempt, when the case ends without a *закрепленный* payment mechanism and without an institutionally formalized exit from crisis [27, 28].

The factors supporting such dynamics usually have an institutional nature. Subchapter V minimizes the number of intermediate procedural stages and points of conflict that in classical Chapter 11 often turn into independent nodes of costs and delays (including multiple hearings, contestation over disclosure of information, and protracted disputes over procedural architecture). The fewer formal gates, the lower the probability that the liquidity deficit of small business will be spent on servicing the process rather than on stabilizing the operational contour and preparing an executable plan [29, 30].

Of particular importance is the redistribution of the control function. In Subchapter V, the supervisory role of a neutral trustee and a simplified regime of interaction with creditors reduce coordination costs and the risk of capture of the procedure by individual interest groups. At the same time, the possibility of *оперативный* monitoring of the realism of the plan's assumptions and performance discipline is preserved, which reduces the probability of confirmation of deliberately non-viable structures that subsequently lead to conversion or dismissal of the case.

Acceleration of the time to confirmation has not only a procedural, but also an economic dimension. The shorter the window of uncertainty, the higher the probability of preserving going concern value: the customer base is retained, supply chains are maintained, the probability of cascade defaults on current obligations is reduced, and the manageability of working capital is preserved. From this perspective, the median shift to 6–7 months functions as a value-preservation instrument rather than exclusively as an indicator of administrative efficiency [30].

Recoveries for Creditors

Empirical studies conducted using regression methods and multiple-conditioning models show that the expected recovery level for unsecured creditors within Subchapter V is at least not inferior to traditional Chapter 11, and in a number of specifications proves statistically higher. This result persists under control for key case characteristics (debt scale, industry affiliation, structure of claims, presence of ongoing operations), which indicates the robustness of the effect and reduces the probability that the observed difference is fully explained by simple selection of more viable debtors [31].

The main mechanism explaining this dynamic is associated with transaction costs of reorganization. In classical Chapter 11, a substantial share of the value of the insolvency estate is spent on administrative payments, fees of attorneys, financial consultants, investment bankers, appraisers, and other professional participants, whose work becomes especially intensive in prolonged negotiations, disputed hearings, and multiple iterations of the plan. The reduction of these expenses in Subchapter V means that a larger portion of economic value remains available for distribution among creditors rather than turning into procedural consumption of value.

The reduction of the administrative burden in Subchapter V has not only a quantitative, but also a structural dimension: the number of procedural nodes that generate the need for costly support decreases, and the very logic of the procedure makes it less likely that the case will transform into a protracted dispute over interim documents, expert examinations, and procedural rights. For unsecured creditors this is especially significant, because their satisfaction occurs from residual value after coverage of administrative expenses and priority payments; consequently, any increase in the cost of the process disproportionately consumes precisely the part of the estate from which payments on unsecured claims are formed [31, 32].

An additional explanation is associated with the time horizon. In protracted cases, the effect of value dilution manifests through growth of indirect losses: deterioration of supply terms, decline of counterparty trust, loss of customers, decline of staff motivation, and growth of the cost of financing working capital. Shortening duration and simplifying procedural stages in Subchapter V limits these losses, thereby increasing the probability of preserving the business as a going concern and supporting cash flow from which plan payments are financed. Ultimately, this also transforms into a higher expected recovery for unsecured creditors.

From a methodological standpoint, the conclusions of regression studies emphasize that a comparative evaluation of recovery is not reduced to nominal percentages of repayment: it is fundamentally important to take into account the cost structure and the order of distribution. With a high share of administrative expenses, even a moderately successful reorganization can yield a weak result for the unsecured class, whereas procedural economy can improve their position without changing the debtor's baseline solvency. In this sense, Subchapter V functions as a mechanism for converting procedural efficiency into a distributive effect in favor of residual creditors.

In Figure 1, for greater clarity, we will demonstrate the effectiveness of bankruptcy procedures (2020-2023 FY).

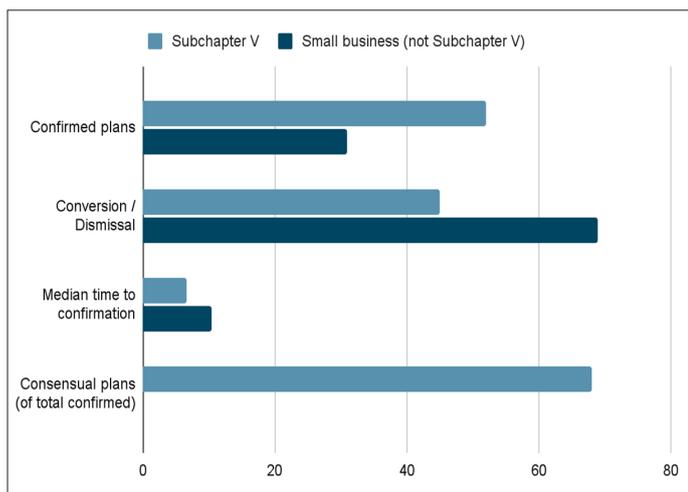


Fig. 1. Statistics on the effectiveness of bankruptcy procedures (2020-2023 FY) (compiled by the author based on [30]).

The identified dependence has applied significance for assessing the incentives of the participants. If the risk of a zero residual for unsecured creditors decreases, arising due to excessive escalation of the cost of the process, the rationality of supporting the plan increases and the inclination toward blocking tactics aimed at extracting concessions through delay decreases. At the same time, for the debtor, the incentive strengthens to choose a procedure in which savings on professional expenses do not undermine confidence in information disclosure and plan feasibility, but, on the contrary, increase the likelihood of a distributive outcome perceived as acceptable.

ANALYSIS OF JUDICIAL PRACTICE: PRECEDENTS AND CONFLICTS

The emerging case law reveals grey zones of legislation that require careful analysis by lawyers and financial consultants.

In Re Village Oaks Senior Care LLC: Ethics and Eligibility Criteria

The decision in Village Oaks (Bankr. E.D. Cal., 2024) acquired the meaning of a fundamental signal for practice: the court emphasized the inadmissibility of constructing eligibility for Subchapter V through artificial understatement of debt indicators. In the situation under review, three related companies initiated proceedings under Subchapter V, presenting themselves as meeting the established debt limits. However, the objecting creditor, the former spouse of the owner, presented evidence that the aggregate debt of affiliated persons exceeded the \$7.5 million threshold, and that the debtors' reporting contained systemic distortions [33].

The factual side of the dispute was built around accounting discipline and the completeness of disclosure of obligations. A significant part of debt positions was reflected as unknown or was fragmented in such a way as to dilute the overall

amount of indebtedness. A separate layer consisted of guaranty obligations and other contingent debts, which were either not included in the calculations or were presented in a form that did not allow the court and creditors to correctly assess the real burden. The court characterized such conduct as a targeted attempt to obtain the advantages of Subchapter V in the absence of material grounds.

The court's reaction proved harsher than a simple correction of procedural status. The debtors were deprived of the right to proceed under the Subchapter V regime, and at the same time the appointed trustees were dissolved, which symbolically and procedurally fixed the loss of trust in the initial construction proposed by the debtors. Such a linkage of consequences reflects an approach under which unreliability of initial disclosure is treated not as a technical error, but as a defect undermining the very legitimacy of the chosen regime and the possibility of relying on the procedural advantages of accelerated reorganization [33].

Of particular importance in the reasoning was the position regarding the doctrine of waiver. The court directly indicated that waiver is incapable of shielding bad faith: even if certain objections were not raised immediately or if the process developed under the formal absence of challenge at an early stage, this does not transform distortion of information into permissible conduct. In other words, procedural passivity of the other party does not legitimize material unreliability of disclosure when the issue concerns eligibility criteria and the honesty of the presented data.

The legal meaning of this conclusion goes beyond the specific case. Eligibility criteria in Subchapter V perform not only a filtering function, but also set the foundation for the distribution of procedural advantages: accelerated deadlines, a simplified dispute structure, a different allocation of control and costs. Therefore, manipulation of entry parameters is perceived as an attempt at unlawful redistribution of procedural benefits to the detriment of creditors and the purposes of the regime. Within such logic, the sanction for distortions predictably acquires the character of restoring the institutional integrity of the procedure rather than merely correcting debt arithmetic.

The Village Oaks case also demonstrates that the question of accuracy in accounting for obligations has a dual nature, accounting and legal. An error or omission in the classification of debt, especially with respect to guarantees, suretyships, and other indirect obligations, transforms into a legal risk of losing the chosen regime and the protection associated with it. Where financial reporting serves as the evidentiary basis for admission to a special procedure, accounting ceases to be an internal function and becomes an element of procedural good faith affecting the fate of the entire case.

Finally, the court's emphasis on the aggregate debt of affiliated persons is indicative. In situations where economic reality is represented by a group of interdependent companies, formal

separation of legal shells should not be used to circumvent limits and restrictions. Judicial intervention based on verification of interconnections and the aggregated debt profile effectively закрепляет the principle of the priority of economic substance over form, especially in the context of special regimes designed for a certain scale of debtor and level of debt burden [33].

Arbah Hotel Corp: The Trustee as a Crisis Manager

In Arbah Hotel (Bankr. D.N.J.), the functional flexibility of the Subchapter V trustee and the ability to go beyond a narrow supervisory mandate manifested особенно clearly. The debtor, a company owning a hotel asset, was in effect paralyzed due to a corporate conflict between the person exercising day-to-day management and the guardian of the beneficial owner suffering from dementia. Under conditions where a managerial deadlock blocked decision-making, the Debtor-in-Possession regime itself ceased to function as a mechanism for value preservation, because operational continuity required a legitimate and verifiable framework of corporate will.

In this context, the Subchapter V trustee acted not merely as a procedural observer, but as an institutional mediator capable of transforming a conflict of interests into a manageable procedure. A decision-making protocol was developed that set the order for approving key actions, the allocation of competencies, and a mechanism for documenting the parties' consent on issues critical to preservation and disposition of the asset. Thus, a legally robustly оформленная operational infrastructure of management was created, reducing the risk of spontaneous блокировки, transaction challenges, and subsequent erosion of value due to uncertainty of authority.

An important feature of the case was the linkage of the corporate conflict with the vulnerability of the ultimate owner. The presence of guardianship in dementia moves the managerial dispute into the plane of heightened standards of good faith and procedural meticulousness: any action affecting the asset potentially becomes an object of enhanced control from the standpoint of protecting the interests of an incapacitated person and соблюдение of fiduciary duties. In such circumstances, a neutral trustee performs the role of reducing legal friction, enabling the parties to move toward an economically rational result without the constant threat of delegitimization of decisions due to conflicts of authority.

The procedural framework сформированный by the trustee was used to organize the sale of the hotel asset. It is of fundamental significance that a sale in a situation of managerial deadlock is rarely a purely technical action: it requires coordination of marketing strategy, buyer selection criteria, the order of access to information (data room), the structure of security, timelines, and, often, a mechanism for cleansing the asset of disputed claims. When these elements are blocked by corporate dysfunction, the transaction price

becomes a hostage not to market conditions, but to internal transactional barriers.

The result of active procedural management was expressed in an increase in value: according to the presented data, the sale price increased from the initial \$9 million to \$24 million. This gap indicates that economic value added was created not by improving the asset itself, but by eliminating factors that reduced the market's willingness to pay: uncertainty of management, the risk of challenge, opacity of the procedure, and the probability of delay in closing. In the logic of bankruptcy law, this is a typical example of how reduction of legal risk is converted into a price premium, because the buyer evaluates not only the object, but also the probability of completing the transaction within predictable time limits [34].

This case also demonstrates an important difference between Subchapter V and classical models, where the role of professional participants is often perceived as a purely cost item. Here, the trustee functions as a producer of value, because the trustee is able to unblock corporate governance and restore the minimal управляемость of the debtor necessary for implementing a strategic decision. In the conditions of small and medium-sized business, where corporate conflicts are often closely interwoven with the personal circumstances of owners, such a mediative-organizational role acquires systemic significance: it allows preventing a scenario in which legal dysfunction of management leads to the disintegration of the business and the sale of assets at a forced-sale price.

In Re Lunya: Retail Trade and Speed

The Lunya case (2023) became an illustrative example of how Subchapter V instruments can operate in retail, especially where significant revenue (about \$50 million) is combined with a high quasi-fixed burden of lease obligations. In a situation where the debt structure is compressed by long-term lease agreements and associated guarantees, the traditional inertia of negotiations with landlords and other creditors often leads to rapid exhaustion of liquidity. In this case, an accelerated reorganization trajectory was chosen, making it possible to obtain plan confirmation within approximately five months even with a negative vote of creditors, that is, relying on the mechanism of nonconsensual confirmation [35].

Critically important was the fact that the legal procedure was used not as a way to postpone the inevitable, but as a means of оперативный rebuilding of the contractual base. Rejection of economically inefficient lease relationships and associated payment tails changed the company's cost profile and restored the manageability of cash flows. For retail operating under жесткой price competition and pressure from e-commerce, the speed of such correction is of paramount importance: a delay of a quarter is often

equivalent to loss of market, and the preservation of loss-making locations becomes a systemic factor of degradation of operating margins.

A substantial advantage of Subchapter V in this context was the preservation of operational control, allowing restructuring to proceed without a managerial rupture and without replacing the engine while moving at a critical moment. For companies with an omnichannel model (offline locations, logistics, digital sales), managerial continuity constitutes an independent asset: any disruptions in procurement, merchandising, marketing policy, and supply chains immediately translate into revenue decline and crisis acceleration. The presence of a legal corridor for continuation of operations while simultaneously revising obligations created conditions for stabilizing the business before the onset of irreversible loss of value.

Separate attention is warranted for the evidentiary framework that ensured judicial confirmation of the plan. The key factor was the demonstration that all future income available for distribution within the plan horizon would be directed to creditors. Such a structure removes a typical objection under cramdown about redistribution of economic value in favor of owners or individual groups: under a correctly constructed cash-flow model and realistic assumptions, the court receives a basis to recognize that the creditor class obtains the maximum possible result within the chosen regime. In other words, a persuasive configuration of future payments functioned as a functional equivalent of plan fairness, overriding the negative voting outcome.

Circuit Conflict on Dischargeability

The most conflict-generating collision in Subchapter V remains the question of whether the exceptions to discharge listed in Section 523(a) apply to corporate debtors. The classical structure of Chapter 11 proceeds from the assumption that a corporation that has confirmed a plan receives an almost complete discharge, whereas the list of nondischargeable obligations under 523(a) has historically been addressed primarily to individuals. The problem is intensified by the wording of Section 1192: upon nonconsensual confirmation (cramdown), it refers to debts of the kind specified in 523(a), while the preamble of 523(a) contains a qualification regarding an individual debtor. A tension arises between a typological reference to categories of debt and a personal qualification regarding the subject of discharge [15].

Courts of the 4th Circuit in *In re Cleary Packaging* and of the 5th Circuit in *In re GFS Industries* resolved this tension in favor of an expansive reading: the reference in 1192 was interpreted as importing precisely the list of kinds of obligations from 523(a), rather than a limitation by debtor type. As a result, the exceptions to discharge were recognized as applicable also to corporate debtors if the plan is confirmed through the cramdown mechanism. This approach effectively transforms

Subchapter V into a regime in which legal cleansing of the balance sheet for a corporation ceases to be guaranteed with respect to debts arising from fraud, intentional torts, and other qualified wrongful acts [15].

The normative consequences of such an interpretation extend far beyond a private dispute about statutory grammar. Discharge as the economic-legal finality of reorganization in corporate bankruptcy traditionally ensures the predictability of business restart: after plan confirmation, a minimal tail of obligations remains, which facilitates restoration of creditworthiness, work with counterparties, and attraction of financing. Embedding 523(a) into corporate discharge under cramdown undermines this presumption and turns certain categories of liability into a debt shadow that persists after completion of the procedure and is capable of burdening the company's activity in the post-confirmation period.

Particular acuity is manifested precisely in small business, where institutional boundaries between corporate action and the personal behavior of a manager or owner are often blurred. Operational decisions are made by a narrow circle of persons, corporate compliance policies are often underdeveloped, and transaction documentation is fragmentary. Under these conditions, the risk of qualifying an obligation as connected with fraud or intentional harm increases, and the corresponding creditor claims acquire additional value: even after completion of the procedure, it becomes possible to preserve an enforcement prospect, bypassing the finality effect characteristic of ordinary corporate discharge.

The negotiating configuration of plan confirmation also changes. If the guarantee of discharge disappears for certain claims, creditors holding such debts obtain a strengthened leverage and can demand separate settlement, stricter security conditions, or priority servicing. This increases fragmentation of the creditor field and may reduce the overall compromise potential of plans, especially in cases where tort claims, claims concerning inaccurate disclosure, disputes over preferential payments, or conflictual relationships between former partners and family members are present.¹⁵

An additional layer of risks is associated with corporate governance and insurance architecture. As the probability of nondischargeable obligations increases, the importance of correct allocation of liability between the company and controlling persons increases, and the role of D&O insurance, contractual indemnification clauses, and internal фиксация of authority becomes more salient. Errors at the stage of accounting and qualification of disputed debts can have not only procedural consequences, but also long-term effects on the ability to conclude M&A transactions, obtain loans, and maintain relationships with landlords and suppliers.

Finally, the very logic of Subchapter V, as an accelerated and comparatively mild regime of reorganization, acquires

a more complex profile: procedural advantages in the form of speed and reduced costs coexist with potentially more severe material consequences for the debtor in the presence of qualified wrongful debts. Therefore, for corporate filers, early legal and financial audit of claims becomes critical: identification of obligations that potentially fall under the categories of 523(a), assessment of the evidentiary record, the probability of establishing intent, and structuring a plan strategy with consideration that cramdown may not eliminate all problematic tails. In this sense, the risk map of small business in Subchapter V changes fundamentally: the reliability of discharge begins to depend not only on the economic feasibility of the plan, but also on the tort-law nature of part of the obligations and the quality of corporate compliance.

CONCLUSION

Subchapter V of Chapter 11 of the United States Bankruptcy Code has confirmed its practical viability as an effective legal regime of financial rehabilitation, closing a previously existing regulatory gap in the reorganization toolkit for small and medium-sized enterprises. The отказ from the rigidity of the absolute priority doctrine in favor of a more functional construction of the projected disposable income test, as well as the reduction of procedural complexity and associated transaction costs provided by the SBRA, have formed a workable mechanism for preserving viable businesses while simultaneously protecting the interests of creditors. Empirical observations for 2023–2025 indicate a set of applied advantages of this regime: an increased probability of plan confirmation, a reduced duration of the procedure, and more устойчивое preservation of value for the creditor body, which makes Subchapter V the preferred choice for the SME segment. At the same time, zones of legal uncertainty are identified that may reduce the predictability of outcomes, including volatility of the debt limit and emerging judicial conflicts, in particular on issues of the permissibility of discharging corporate obligations and the parameters of adjusting payments during plan performance, which objectively актуализирует the need for further legislative calibration. In a comparative legal perspective, the United States model stands out for a pronounced pro-debtor orientation that allows the retention of equity capital without mandatory привлечения of new funds, which contrasts with the more restrained approaches characteristic of the United Kingdom and European Union legal orders. Under conditions of increasing economic turbulence, professional competence in finance and law increasingly presupposes an in-depth understanding of the architecture of Subchapter V, including the methodology for calculating PDI, the procedural logic of plan negotiation, and the behavioral parameters of bargaining that influence the achievement of a sustainable reorganization outcome.

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