

## **BAPCPA AMENDMENTS**

### **FIRST DAY MOTIONS**

S 507 amended to expand the scope of the priority

Extends the time period from 90 to 180 days before the earlier of the petition date or ceased business as the period within which unsecured claims for earned wages, salaries and commissions, including vacation, severance and sick leave are entitled to administrative priority treatment

Increases the amount of the claim from \$4,925 to a maximum of \$10,000

S 1114 regulates the payment of insurance benefits to retired employees

Amends S 1114 to provide that if a debtor modified retiree benefits during the 180-day period prior to the filing and was insolvent at such time, the court will, upon motion of a party in interest, reinstate such benefits as of the date of modification unless the court finds that modification was equitable

Amends S 366 to permit a utility to alter, refuse or discontinue service to a Chapter 11 debtor if the utility does not receive, within 30 days after the bankruptcy filing, adequate assurance of payment "that is satisfactory to the utility"

Adequate assurances defined as (i) a cash deposit, (ii) a letter of credit, (iii) a certificate of deposit, (iv) a surety bond, (v) a prepayment for utility consumption or (vi) some other form of security agreed to by the debtor and the utility

The court cannot base any modification of the form of adequate assurance on the debtor's pre-petition payment history, the debtor's timely payment of utility charges or the availability of administrative expense priority

Amends S 328 to add "on a fixed or percentage fee basis" as a reasonable term or condition upon which a professional can be retained

Previously could be on an hourly basis or on a contingent fee basis

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A professional cannot be retained to represent a Chapter 11 debtor if it holds or represents an interest adverse to the estate, or is not a "disinterested person"

Previously: not a "disinterested person" had some per se disqualifications, including for investment bankers for any outstanding security of the debtor or an investment banker (or its counsel) in connection with the offer, sale or issuance of such security within three years of the filing of the Chapter 11 petition

Now: definition amended to delete all references to investment bankers

Amends S 503 to address specifically the facts and circumstances under which Key Employee Retention Plans are permitted

No stay bonus-transfers or obligations to an insider designed to induce insider to remain unless court finds:

Essential because of a bona fide competing job offer at the same or greater rate of compensation

Amount of payment < 10x mean transfer of a similar kind given to non-management employees for any purpose during the prior calendar year

No severance payments to an insider unless;

Part of a program generally applicable to all full-time employees

Amount of payment < 10x mean severance payment given to non-management employees during prior calendar year

Specifically adds transfers to an insider under an employment contract not in the ordinary course for a period of 2 years prior to the petition date to the general list of transfers that may be avoided as a fraudulent conveyance  
Regardless of the debtor's financial condition

Does not allow post-petition transfers to officers, managers or consultants hired post-filing outside the ordinary course and not justified by the "facts and circumstances"

## **BAPCPA AMENDMENTS**

### **POR**

Amends S 1121 to provide that:

The 120-day exclusive period for filing a plan cannot be extended beyond a date that is 18 months after the filing date  
The 180-day period for soliciting acceptances cannot be extended beyond a date that is 20 months after the filing date

### **Liquidity in Bankruptcy**

Reform Act will increase the liquidity needs of Chapter 11 debtors with a number of new expenses

Adequate assurance for utilities now needs to be funded with cash, LOC, CDs or surety bonds  
Enhancement of trade creditors' reclamation rights may require sufficient cash to pay off such claims  
Cure payments for non-residential leases being assumed will need to be paid no more than 210 days post-filing  
Debtors no longer permitted to allow businesses operated in spaces subject to nonresidential leases to "go dark"  
if they wish to assume and assign such leases  
Additional cash will be needed for operations

Critical for retailers, in particular, to have a sense of which properties to keep, given 210 day tight timeline on plan solicitation

Monetary obligations under a lease assumed and subsequently rejected will be entitled to an administrative expense priority, subject to a two-year cap

### **Priority Tax Claims**

Now: Must be paid in regular instalments, over no longer than five years from the filing date  
And, in general, on terms no less favorable than the most favorable general unsecured claims

Requires enhanced liquidity  
Could increase exit financing requirements

### **Trade Claims**

Have an administrative claim for the "value" of goods delivered in the ordinary course within 20 days of filing date

If not paid in cash at the beginning of the case, there will be more reclamation claims entitled to administrative status

Administrative claims must be paid in full in cash as a condition to exit





