

# What We Know

## ARTICLES & INSIGHTS

### ABOUT THE AUTHOR



Ron Jones is a partner at Smith Debnam and a certified specialist in bankruptcy and debtor-creditor law by the South Carolina Supreme Court. Ron concentrates his practice in the areas of commercial law and bankruptcy, including all areas of creditors' rights, such as the Uniform Commercial Code, Consumer Protection Code, the Fair Debt Collection Practices Act, Claim and Delivery, Replevin, Foreclosure Law, Real Estate and Bankruptcy. Ron represents both secured and unsecured creditors, lenders, lessors, investors, asset purchasers, creditors' committees, and occasionally, debtors.

## Bankruptcy Court Determines Who May be a Debtor Under Subchapter V

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A recent case from the Bankruptcy Court for the District of South Carolina holds that filing a case "addressing residual business debt" is sufficient to meet the requirement of "engage[ment] in commercial or business activities" under the new Subchapter V of the Bankruptcy Code. The case represents a broad view of who can qualify as a small business debtor under Subchapter V that will no doubt have a significant impact as the Nation begins to recover from the fallout of the Covid-19 pandemic. *In re Charles Christopher Wright*, Case No. 20-01035-HB (Bankr. D.S.C. April 27, 2020).

The Debtor in *Wright* is an individual who was involved in two previous Chapter 11 businesses in which he held a significant ownership interest. As a result of those cases, he retained personal liability for significant business debts. Both entities had ceased to do business prior to the filing of the case. The Debtor listed business debt of more than \$395,816.29 and consumer debt of \$220,882.42. Thus, the Debtor met the requirement under Subchapter V that more than 50% of the total debt be business or commercial debt. The only issue before the Court was whether the Debtor met the requirement of being "engaged in commercial or business activities."

The Court analyzed the plain meaning of the statute and considered the definition of "debtor" from the Code and treatises interpreting that definition. Finding that "current" debt is nowhere to be found in Subchapter V, the Court held that the business activity requirement had been met and allowed the case to proceed under Subchapter V.

This broad view expressed by the Court in *Wright* will certainly have an impact on small business cases in the future. Most analysts expect that fallout from the economic slowdown associated with the global pandemic will certainly include a dramatic increase in both personal and business bankruptcy cases. These no doubt will include many businesses and individuals who will take advantage of the recent changes to the Bankruptcy Code and elect to proceed as a small business debtor under Subchapter V.

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