Jason W. Johnson, a shareholder at the law firm of Roetzel & Andress, LPA in Winter Park, is a former president of the Central Florida Bankruptcy Law Association. (Courtesy photo)

Our economy is cyclical, with alternating periods of growth and recession. The recent period of growth since the Great Recession was the largest period of economic expansion in United States history.

There was general agreement among most economists that we were overdue for the next recession, with the debate centered around the cause. No one predicted that the next recession would be caused by a global pandemic. Arguments will continue over whether the COVID-19 pandemic is truly a "black swan event," but one thing is certain: its impact on the economy is going to be significant, and even more severe for our local economy than many other areas.

While all businesses that shut down during the pandemic will be harmed, the hospitality and tourism-related businesses in Central Florida will feel the ripple effects of COVID-19 for many months — if not years — to come.

A major avenue of relief for these struggling businesses will be bankruptcy. The public has a general misconception about business bankruptcies — thinking that when a business files for bankruptcy, it is going out of business.

The reality is most business bankruptcy cases are Chapter 11 reorganization cases, in which businesses attempt to restructure and exit bankruptcy as reorganized *and surviving* businesses, rather than shutting down. They involve the approval of plans of reorganization, by which the businesses will often restructure their secured debts (loans for which they have pledged collateral), shed unwanted contracts and leases, and pay unsecured creditors small amounts of what they are owed.

The problem with Chapter 11 for most small businesses is that it was too expensive, involving significant litigation, quarterly fees owed to the United States Trustee (a component of the Department of Justice tasked with overseeing the integrity of the bankruptcy process), contending with Official Committees of Unsecured Creditors, and spending time and money preparing required filings.

The good news for these businesses is that the bankruptcy laws were recently changed to make the process both more efficient and less expensive. Congress' timing could not have been more fortuitous, as the new Small Business Reorganization Act (the "SBRA") went into effect Feb. 19 — less than a month before the COVID-19 pandemic began to impact our economy.

With the new SBRA, businesses with non-contingent, liquidated debts of no more than $2,725,625 may choose to reorganize under the new Subchapter V of Chapter 11. Because of the COVID-19 pandemic, this debt limit received a one-year increase to $7,500,000, greatly expanding the universe of businesses that can seek relief under the SBRA.

The SBRA removes many of the procedures required under the "normal" Chapter 11 process and will greatly reduce the cost of Chapter 11 to small businesses, while increasing the efficiency of the reorganization process. For example:

- It eliminates the requirement of United States Trustee quarterly fees.
- It eliminates the possibility of an Official Committee of Unsecured Creditors — instead appointing a new kind of trustee to assist with the confirmation process and ensure that payments to creditors commence under a confirmed plan.
- It eliminates the requirement of a Disclosure Statement.
- The disposable income of not less than 3 years and *no longer than 5 years* funds the plan.
- It eliminates the possibility of a competing plan by creditors.
- It makes cases more efficient— requiring that a status conference be held within 60 days of filing, and a plan be filed within 90 days of filing.

The SBRA will not have much impact on the "mega case" districts like the District of Delaware and the Southern District of New York, but it will have significant impacts on the way business bankruptcy cases are conducted in most of the country, including Florida. The timing of its passage could not have been better for many Florida businesses.

The prevalence of PPP loans and the governor's extended moratorium on foreclosures is currently helping many small businesses stave off disaster, but the storm is coming. It does not have to mean the death of your small business, though.

There are options to help you weather the storm. For some basic information, the Administrative Office of the United States Courts **has a helpful page**. For more specific help, seek advice from competent business bankruptcy counsel.

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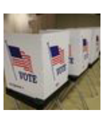

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