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PPP AND BANKRUPTCY--UPDATE

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I recently wrote an article titled “PPP and Bankruptcy” reporting that the SBA Interim Final Rule for the PPP stated that a company in bankruptcy is ineligible to participate. There are important updates on this IFR. There are at least three challenges to this Rule, one each in the bankruptcy courts in Delaware, the Southern District of Texas and the Western District of Texas. It appears that the first ruling (albeit it, a temporary one) is from the Southern District of Texas in the Hidalgo County Emergency Service Foundation bankruptcy case.

In the *Hidalgo* case, the Court, in its Order issuing a temporary restraining order, held, in part, that “Plaintiff has shown a substantial likelihood of success on the merits on both its claims that SBA has exceeded its authority and that it violated 11 U.S.C. §525(a) with respect to SBA requiring participating lenders to consider loan applications on a form that says PPP loans will not be approved if the applicant or any owner is presently involved in any bankruptcy.”

The Court specifically did not rule on whether Hidalgo would otherwise qualify for a PPP loan. The Court stated that Hidalgo is “authorized to submit a PPP loan application to any lender with the words ‘or presently in bankruptcy’ stricken from the SBA’s form” and, if satisfied all of the other conditions in question #1 to the loan application form, mark the box answering question #1 “no.”

The next hearing on the issue will be in early May. I will continue to monitor these cases and post updates.

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