

I am interested in filing a chapter 11 to keep my business going, what does it cost?

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Quick Answer: A lot. The filing fee is \$1,046.00, administrative costs will likely be thousands, and one can expect to pay five figure amounts in attorneys' fees. Further, there are costs that can be unexpected that make a precise estimate impossible, one which is discussed below, but first, a brief introduction.

Frequently small business owners face temporary setbacks where they believe a reorganization may be a good move. However, in the long run, many of these businesses either find a way to carry on or simply go out of business. One reason is the complexity, costs, and obligations that come with a chapter 11 reorganization.

One obligation of the debtor in a chapter 11 will exemplify this point. It is the concept of an entity, often a creditor, to be entitled to its expenses (from the bankruptcy estate – yes that is you small business) for its “substantial contribution” to the case. Although the definition of and what constitutes a “substantial contribution” is subject to differing interpretations, the basic gist is that if an entity can show that it incurred expenses in order to benefit the case that it did not incur to serve its own interests and there indeed was a demonstrated benefit to the case, then the entity is entitled to its reasonable expenses. The specific statute permitting this is 11 U.S.C. 503(b)(3)(D) which reads:

Allowance of administrative expenses

    . . . .  
(b) After notice and a hearing, there shall be allowed administrative expenses . . . including –

    . . . .  
(3) the actual, necessary expenses, . . . incurred by –

    . . . .  
(D) a creditor, an indenture trustee, an equity security holder, or a committee representing creditors or equity security holders other than a committee appointed under section 1102 of this title, in making a substantial contribution in a case under chapter 9 or 11 of this title;

As you can see, these administrative expenses are only permitted after “notice and hearing,” which means the bankruptcy court must approve them. However, even though there is some protection in the fact that the bankruptcy court must approve these expenses, the concept of having to pay another entity’s expenses, even if they were incurred presumably to benefit the case, can be difficult for a small business to accept, especially one that is experiencing financial difficulty. Thus, a small business should not rely on the prospect of reorganization for its business turnaround until it realizes all that is involved in taking this path.

In the event that you own or run a small business and are seeking input on whether the bankruptcy code can provide the help you need, feel free to give us a call.

Contact: George E. Bourguignon, Jr., Esq.

Phone: (508) 769-1359 or (413) 746-8008

Email: [gbourguignon@bourguignonlaw.com](mailto:gbourguignon@bourguignonlaw.com)

Website: <http://www.bourguignonlaw.com>