

BY DESTINEY PARKER-THOMPSON

## Rejection Damages and the Ongoing Battle over What Constitutes a “Noncontingent Liquidated Debt”

Before a debtor can claim the coveted protections of subchapter V, it must first satisfy the statute’s eligibility requirements. To claim this powerful protection, among other things, a debtor’s “noncontingent liquidated” debts — both secured and unsecured — must not exceed the prescribed statutory limit as established under § 1182 of the Bankruptcy Code, which incorporates the definition of “small business debtor” set forth in § 101(51D). The calculation is straightforward in theory but treacherous in practice, and there is one question that repeatedly draws challengers: Should a landlord’s lease-rejection damages be included in this calculation?

The stakes of this question are high. On the one hand, if rejection damages are included in the calculation, this inclusion could tip the scales and drive a debtor beyond the subchapter V debt limit, barring entry to the streamlined process. On the other hand, if they do not count, the debtor may retain subchapter V’s coveted protections. Meanwhile, landlords risk being relegated to the margins of a fast-track restructuring.

Courts largely agree on the contours of the battlefield and have established that a debt is noncontingent if “all events necessary to give rise to liability” occurred prior to the filing of the petition.<sup>1</sup> A debt is “liquidated” if its value is “easily ascertainable.”<sup>2</sup> Nonetheless, general agreement on the meaning of these terms has not prevented courts from reaching different conclusions in applying them; some have even arrived at the same conclusion for different reasons.<sup>3</sup> The decision in *Parking Management* sets the stage.

### Conflict Across the Nation’s Bankruptcy Courts

#### *In re Parking Management Inc.*

In 2020, the U.S. Bankruptcy Court for the District of Maryland in *In re Parking Management Inc.* held that a debtor’s lease-rejection damages claims were “contingent as of the date of the filing

and, therefore, should not be included in the eligibility calculation.”<sup>4</sup> In its decision, the court explained that in order to trigger the landlord’s claim, a debtor must file a motion for rejection, and the court must approve it. Therefore, liabilities associated with the rejection of a lease are contingent and remain so until the court approves the debtor’s request to reject the lease.<sup>5</sup>

#### *In re Zhang Med. PC*

In 2023, the U.S. Bankruptcy Court for the Southern District of New York held that future lease obligations for a Manhattan fertility clinic were contingent and unliquidated as of the petition date because the debtor had not moved to reject the lease until after the petition date.<sup>6</sup> In reaching its conclusion, the *Zhang* court identified the contingency as the debtor’s election to assume or reject the lease and reasoned that until the debtor decided to assume or reject the lease, future lease obligations are contingent and unliquidated. The *Zhang* court also questioned whether obligations assumed post-petition could be considered “debts” given that assumption requires a determination that the assumed lease is a net asset that is beneficial to the estate.<sup>7</sup> Ultimately, the court determined that the debtor’s future lease obligations were contingent and unliquidated.

#### *In re Macedon Consulting Inc.*

Also in 2023, but prior to the *Zhang* decision, the U.S. Bankruptcy Court for the Eastern District of Virginia adopted a different approach to evaluating subchapter V eligibility. In *Macedon Consulting Inc.*, the court held that a debtor’s future liability under unexpired leases is considered “noncontingent liquidated debt” for purposes of subchapter V eligibility and should be included in the eligibility calculation.<sup>8</sup> Unlike the *Parking Management* and *Zhang* decisions, which focused on contingencies affecting the timing and amount of future obligations, *Macedon* instead focused on the definitive obligations that were created the moment the parties executed the



**Destiney Parker-Thompson**  
Michael Best  
& Friedrich LLP  
Raleigh, N.C.

Destiney Parker-Thompson is an associate with Michael Best & Friedrich LLP in Raleigh, N.C. She primarily focuses on complex commercial litigation, bankruptcy and appellate matters.

1 *In re Zhang Med. PC*, 655 B.R. 403, 408-09 (Bankr. S.D.N.Y. 2023); *In re Macedon Consulting, Inc.*, 652 B.R. 480, 485 (Bankr. E.D. Va. 2023); *In re Parking Mgmt. Inc.*, 620 B.R. 544, 554 (Bankr. D. Md. 2020).

2 *Zhang Med. PC*, 655 B.R. at 409 (citation omitted).

3 Compare *Parking Mgmt. Inc.*, 620 B.R. at 553-54, with *Zhang Med. PC*, 655 B.R. at 412.

4 See *Parking Mgmt. Inc.*, 620 B.R. at 549.

5 *Id.* at 553.

6 See *Zhang Med. PC*, 655 B.R. at 413.

7 *Id.* at 412.

8 See *Macedon Consulting Inc.*, 652 B.R. at 486.

lease. The *Macedon* court explained that the debtor’s liability was established pre-petition upon execution of the lease agreement, and any calculable measure could be ascertained by the terms of the lease agreement and statutory cap.<sup>9</sup> Thus, the future lease obligations were noncontingent and liquidated. As a result, the court revoked the debtor’s subchapter V election but allowed the case to proceed as a traditional chapter 11.

## What Does Congress Say to a Renewal of the Debt Cap?

“Not today.” While courts wrestle with statutory interpretation, Congress’s decision to let the temporary debt cap increase expire provides a telling policy cue.

In response to the COVID-19 pandemic, Congress temporarily raised the subchapter V debt cap to \$7.5 million under the Coronavirus Aid, Relief and Economic Security Act. This increase expired on June 21, 2024. With no renewal, the threshold reverted to its original limit of \$3,024,725, which was adjusted to \$3,424,000 as of April 1, 2025, per 11 U.S.C. § 104 of the Bankruptcy Code.

Although bipartisan legislation (S. 4150) was introduced in April 2024 seeking to extend the higher limit for another two years, Congress declined to act. The lapse strongly suggests a deliberate narrowing of subchapter V’s reach.

Some courts resisting the inclusion of future rent obligations toward the eligibility cap often cite policy concerns

that such an inclusion would “greatly restrict subchapter V eligibility.”<sup>10</sup> However, Congress’s decision to let the temporary increase expire suggests a different policy judgment: The restored lower threshold serves as a deliberate filter, reserving subchapter V for truly small businesses, not mid-sized enterprises capable of navigating standard chapter 11 proceedings. Such decisions as *Macedon Consulting*, which include full future lease liabilities as noncontingent, liquidated debt, align with this intent by applying the eligibility cap as a meaningful limit rather than an expansive gateway.

## Conclusion

As courts continue to interpret eligibility through varying lenses, Congress’s silence looms large. For debtors and creditors alike, understanding both judicial precedent and legislative posture, as well as intentional planning, is more important than ever. For debtors: If you are approaching the subchapter V cap, analyze your leases and working with the counterparties before filing, as rejection may bring you closer to or over the threshold. Thus, timing and venue matter. For creditors: Track subchapter V filings carefully, and if possible, assert rejection-damage claims early, and consider objecting to eligibility if your claim tips the scale.

Whatever side one may choose, this split creates strategic terrain for debtors and creditors alike. Depending on jurisdiction, a debtor may either rise to subchapter V eligibility — or be cast from its protective walls. **abi**

---

9 *Macedon Consulting Inc.*, 652 B.R. at 485-86.

---

10 *Zhang Med. PC*, 655 B.R. at 411.