

Arizona Bankruptcy Court Rulings Facilitate PPP Loans for Business in Chapter 11

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Many businesses have suffered from the ongoing COVID-19 pandemic. Those attempting to restructure in Chapter 11 are no exception. However, the SBA has refused to permit applications for PPP loans to be processed if the applicant is in bankruptcy. Two Arizona bankruptcy judges have taken significantly different approaches to enable Ch. 11 debtors to qualify for a PPP loan.

In *Starplex*, Judge Collins ruled that the bankruptcy code's anti-discrimination statute did not apply to the SBA's lending decisions on a PPP loan. It was as troubling as the SBA's bankruptcy-based denial of the loan application was, the SBA's decision was within its discretion. The very next day, Judge Collins granted an emergency motion to dismiss the bankruptcy case so that Starplex could apply for a PPP loan and check the "not a bankruptcy debtor" box on the loan application. With the case dismissed, Starplex obtained a PPP loan and moved to reinstate its Chapter 11 case.

By contrast, in *Andes Industries, Inc.*, Judge Sala ruled that the SBA did not have the discretion to deny PPP loans to bankruptcy debtors, citing non-bankruptcy SBA statutes. Judge Sala enjoined the SBA from denying the PPP loan application for any bankruptcy-based reason.

Both decisions reflect a recognition that businesses working on reorganizing their affairs and the employees of those businesses have been affected by the pandemic and deserve an opportunity to survive and hopefully prosper as the economy returns to normal.