



Opinion 545

Published on District of Utah (<https://www.utb.uscourts.gov>)

Opinion Title: 12/09/2010 UNPUBLISHED In re Childs, 09-33970, Judge Thurman.

Body: Under the BAPCPA, chapter 11 debtors may be categorized as small business debtors depending on their type of business and amount of debt. Debtors may not voluntarily elect to be a small business, but must disclose their existence as a small business if they qualify. In this case, a designation by Debtors to be considered small business debtors was erroneous because Debtors did not qualify under 11 U.S.C. § 101(51D)(A). Upon a subsequent objection by Debtors to their designation as small business debtors under Federal Rule of Bankruptcy Procedure 1020(b), the Court entered an order finding the original designation incorrect. Such a finding and order made the designation void ab initio. Thus, although Debtors had failed to present and confirm a plan within the deadlines that pertain to a small business debtor, because Debtors were not small business debtors, those deadlines no longer applied and Debtors could continue their efforts toward confirmation.

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Judge: [Judge William T. Thurman](#) [2]

Date: Thursday, December 9, 2010

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