FINANCIAL SERVICES

LAW ALERT

Spring 2009

As seen in

Long Island BusinessNEWS

May 15, 2009

# Making the tough decision to file for bankruptcy

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Many say this is the most challenging economic time since the Great Depression. Credit is tight and businesses as well as individuals are feeling the pain. As one rides down Main Street one can't help but notice the growing number of vacancies, both in retail and commercial space. Business failures are up and, as a result, more and more businesses are seeking bankruptcy protection.

Where the bankruptcy courts once served as a haven for distressed businesses to obtain a "time-out" during which time they could regroup and reorganize, changes in the bankruptcy code have accelerated the Chapter 11 process. Thus, in order to better assure that a company will emerge from bankruptcy, it is advisable that, before filing a bankruptcy petition, a go-forward plan is already in place. That plan may be a traditional settlement with creditors, the infusion of new capital or the sale of all or part the business.

Many critics have commented that the bankruptcy courts are no longer the place for companies to reorganize. In point of fact, most Chapter 11s today result in liquidations, either through Chapter 7, a liquidating plan under Chapter 11 or the sale of substantially all of the company's assets to "new owners."

Why are there fewer reorganizations than in the past? Because too often, by the time business owners come to the realization that their companies are in serious distress, the problems are too massive to be overcome. As a result, the company arrives at the doorsteps of the bankruptcy court "DOA."

Accordingly, it is important to recognize early signs of business distress and not procrastinate in the process of filing a bankruptcy until it is the last resort. It is rare that a single sign of distress will necessitate a bankruptcy filing. However, as these signs continue to add up over time, the business owner must face the reality that his company may be better off by commencing a bankruptcy reorganization. Some of the signs of distress include:

- Slow payments by customers. Just like you, your customers are feeling the pain and are unable to pay their obligations on a timely basis.
- Increase in receivables. Of course, if this is due to an increase in sales and the receivables are performing, this is a good thing. However if the increase in receivables is because of slow or nonpayment by customers, that is a sign of distress.
- Drop in sales.
- Eroding profits.
- Concentration. Reliance on a single customer for most of your business can be dangerous.
- Decrease in production. Especially if this is a result of late payments to vendors causing the withholding of shipments of raw materials to you.
- Loss of key salespeople.
- Difficulties in shipping to customers.
- Increase in competition.
- Increase in payables.
- Increased lag time in paying vendors.
- Increased concentration of vendors.
- Increased cost of raw materials.
- Overexpansion over a short period of time.
- Noncore growth.
- The need for external cash infusions.
- Overadvanced revolving line of credit.
- Balloon payment to bank coming due.
- Overstated inventory.
- Increase in intangibles.
- Labor issues.
- Unexpected outside events.

None of these signs alone would necessitate a bankruptcy filing. However, as more and more of these elements come into play, a smart business owner should be forthrightly assessing the benefits and risks of the bankruptcy process. Too often, companies have an unrealistic assessment of their ability to weather an economic storm and, as a result, wake up too late to save their companies. Acting early by consulting with insolvency counsel and engaging the services of a consultant that specializes in advising distressed businesses will enhance the opportunity to fix and save the business. The smart move is to get to the bankruptcy court early enough to save your company – not to use it as a vehicle to liquidate it.

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