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## HOUSTON BUSINESS JOURNAL

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Bankruptcy

# Bankruptcy attorney can lend helping hand to everyone involved

Houston Business Journal - May 25, 2007 by Trent Rosenthal

When businesses face financial trouble, they usually wait until they have no other options before consulting a bankruptcy attorney. However, proper counsel can actually help companies remain profitable and out of court. Understanding how bankruptcy attorneys can add value to a business in many ways can be critical to success.

Business to Business

First, it's common for businesses to find themselves as creditors of other companies experiencing financial distress, filing for Chapter 11 reorganization or even bankruptcy. Engaging a bankruptcy attorney early in this situation can benefit creditors greatly.

For example, creditors do not always have to wait until their debtor files bankruptcy to take action. In some situations, a bankruptcy lawyer can help the company maximize its recovery or minimize its risk by tightening credit terms, requiring payment of current open invoices, or even requiring cash payment upon the delivery of the goods to minimize credit risk. Liens or security interests might also be available to increase the prospects of collecting what is due.

Once the business actually files bankruptcy, a lawyer can defend the creditor who may be sued by the debtor or bankruptcy trustee for avoidance actions. One good example where defense is necessary, is in the case of a legal cause of action where a debtor tries to recover money or property transferred to the creditor prior to bankruptcy.

Recovering debts

So how can a businesses really recover what's owed? Often, a business that holds a claim against a bankrupt company thinks its collection efforts are pointless and simply writes off the debt.

Businesses forget that the new bankruptcy laws provide some valuable protections for creditors in this case, such as increasing the right of a creditor to reclaim certain goods sold before the bankruptcy and special protections which require payment for goods delivered to the debtor within 20 days of the filing date. The law is tricky in this area and a creditor should consider legal counsel on these issues or it may forfeit valuable rights.

Working with debtors

A company that is having financial difficulties should consider an "out-of-court work-out" to help the company stay in business and restructure its indebtedness outside bankruptcy. This is when an attorney helps a company's management identify problems and provides recommendations to improve their financial position to make it more viable, for example, by reducing debt, cutting costs or increasing revenue.

There are also numerous cases where creditors, including banks and landlords, become more open to working with debtors when they know a bankruptcy attorney is involved who will take actions to protect the value of the business.

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This can include the negotiation of work-out agreements, where the creditor agrees to restructure the debt to something the company can afford while allowing them time to make it happen. Flexibility arrangements like these can help the company stay in business and preserve employee jobs.

In most cases, an out-of-court work-out should be attempted before a company files bankruptcy because it's less expensive and lets the parties control their own destiny by negotiating a solution rather than fighting in court.

#### Bargain Buys

Business can also receive help from attorneys to purchase assets at a discount from other companies, such as their competitors facing financial difficulty or, on the other hand, help sell non-core assets to raise badly needed capital.

A bankruptcy lawyer can also help raise additional funding for the business by negotiating with non-traditional lenders or assist in obtaining subordinations or waivers from current lenders.

Other deals may be out there, but businesses have to be careful in structuring the transaction correctly. For example, companies that desire to purchase a business that is having financial problems must carefully structure the transaction to minimize the risk of being sued. The structure may include requiring the selling company to file bankruptcy first in order for the bankruptcy court to approve the sale -- meaning the assets are sold to the purchasing business free and clear of all liens, claims and encumbrances in the title.

#### Working with Banks

Banks and financial institutions should also contact their counsel as soon as they discover a problem with a loan. Bankruptcy lawyers represent banks in connection with forbearance agreements, out-of-court work-outs, lawsuits to recover the debt and actions that need to be taken to preserve the bank's rights in the event the borrower files Chapter 11 reorganization or Chapter 7 bankruptcy liquidation.

Overall, business owners and executives must understand the legal perils, even when their business is operating well, in order to maintain focus on the bottom line. A strong relationship and advice from competent bankruptcy counsel early on means better outcomes down the line.

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