

Tip # 1: First Goal is not to file Bankruptcy.

By Kim Fineman

The first goal of any Bankruptcy and Restructuring attorney is to help your struggling small business avoid bankruptcy. This may seem counter-intuitive, but bankruptcy is not the only, or necessarily best, option. “Bankruptcy” is a technical term for when a financially distressed company is unable to restructure on its own and files for a court-supervised restructuring. So, what exactly is a restructuring?

***Restructuring** (noun) a reorganization of a company with a view to achieving greater efficiency and profit, or to adapt to a changing market.*

A restructuring that occurs outside of court is sometimes called a “workout” or “corporate reorganization.” It is often in the best interests of both the company and its creditors to reach a mutual compromise if possible. Your attorney can work with you to negotiate agreements with your creditors, tailored to the specific needs of your business. “Creditors” include investors, secured lenders, equipment lessors, landlords, employees, governmental taxing authorities, suppliers, customers or even pending lawsuit adversaries.

If you are unable to reach an agreement with your creditors, then a bankruptcy filing may be appropriate. However, a successful bankruptcy requires planning. A bankruptcy case can be expensive with both additional fees and operational demands. A good Bankruptcy and Restructuring attorney will, therefore, advise you on how to avoid or limit your time in a bankruptcy case, rather than simply rushing you to file. Your attorney will also help you decide whether a reorganization or liquidation—either of which can be accomplished outside or within a bankruptcy case—best fits your business needs.

It is important to remember that a bankruptcy filing is not a magic pill. It does not pause all collection efforts indefinitely. While your company will have a short breathing spell imposed by the “automatic stay” upon filing of a reorganization case, there are strict deadlines that come up quickly. You must remain current on all expenses arising after the filing of your reorganization case. If you can do so, you may be able to confirm a plan which eliminates or extends the terms of some debts. Bankruptcy does not eliminate existing contracts, but it does allow you to alter some provisions or even reject certain agreements. There are a lot of specific rules depending upon the type of debt and your attorney will advise you on your options. If you enter bankruptcy without an overall exit strategy in place, however, it is difficult to formulate a successful one in the limited time given. Without pre-filing planning, you may lose control of your bankruptcy case and find your reorganization converted to a liquidation you never wanted, overseen by an independent court-appointed trustee.

That does not mean you must have all the answers ahead of time. In fact, as is typical for small businesses generally, things frequently change or evolve. You may start your restructuring through a workout but find a bankruptcy filing is required to overcome an impasse. Or you may think a walk-away liquidation is the answer but find a sale of assets through a reorganization case is possible. The better handle you and your attorney have on your financial condition and needs before negotiations and/or filing, the more efficient, and likely successful, your restructuring will be. The key is to be prepared and understand your options. This is the value a Bankruptcy and Restructuring attorney brings to a struggling small business.