

## Tip # 2: Reach out early to preserve the most options.

By Kim Fineman

If you are a small business exploring a bankruptcy or restructuring options for the first time, there is probably at least one crisis looming on your short-term horizon. You have likely tried everything but seem to be out of options. It is a stressful and uncomfortable place to be, which often leads small businesses to avoid addressing the problem as long as possible. Unfortunately, the longer the business avoids addressing the problem, the more potential options will diminish.

So, at what point should you reach out to a Bankruptcy and Restructuring attorney for help? Take that step as soon as a likely impasse that will significantly impact your business operations is identified. Do not wait until it reaches an actual business crisis, if possible. If you put off talking with the Bankruptcy and Restructuring attorney until after you receive an official Notice of Default or, even worse, Notice of Termination of a contract, then you will have fewer legal avenues available and, therefore, far less leverage. Negotiating before the crisis hits allows time for coordination. Creditors are generally more receptive if you proactively involve them in the solution. In addition, decisions made as to one business problem often have a direct impact on your ability or inability to address others.

Not only will reaching out to a Bankruptcy and Restructuring attorney early provide greater benefits for your struggling business, it can also help eliminate a lot of the stress and discomfort you are feeling. If it is too early to involve a Bankruptcy and Restructuring attorney, your prospective attorney will let you know. They have years of experience in similar business crisis situations and can be an invaluable resource as you navigate your business obstacles. Your Business and Restructuring attorney will work with you to identify key turning points for your specific business. As discussed in [Tip # 1](#) of this series, reaching out early may also help you avoid bankruptcy.

Many small business professionals are surprised to learn they may have a fiduciary obligation to creditors as soon as the problem is, or should have been, known. Ignoring the issue is, therefore, not an actual option. Officers and directors traditionally owe fiduciary duties to the business and its owners. Once the business is insolvent, however, those fiduciary duties extend to also include the creditors of the business. At that point, those fiduciary obligations may be in conflict. There is no clearly defined line for when a business is insolvent, and various standards have been applied. Unfortunately, the point at which a company became insolvent generally will be determined in litigation after the fact, with the benefit of hindsight. That risk is not always easy to identify, but your Bankruptcy and Restructuring attorney can provide guidance to help avoid this potential additional liability.

Sometimes, however, business obstacles come up with little or no warning. If your small business is already in the midst of a business crisis, a Bankruptcy and Restructuring attorney can still help. The key is if you do see a potential problem on the horizon, you will be best served by reaching out early.