

Today's Economic Realities: Planning Ahead for a Bankruptcy Filing...To Potentially Avoid One



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In these turbulent economic times, when everyone is anxious to collect on their receivables in an effort to keep their heads above water, most business owners will experience one or more aggressive creditors demanding payment. The resulting process of dealing with angry creditors can often lead down a tight spiral to the dreaded—and generally misunderstood—bankruptcy filing.

It is at the very beginning of the sometimes painful process of dealing with creditors—when it becomes difficult to pay vendors and/or maintain steady working capital—that business owners should contact competent counsel to discuss the issues, ramifications, and available options regarding bankruptcy planning. Waiting too long to contact counsel can not only severely weaken one's position, but sometimes makes an otherwise avoidable bankruptcy

unavoidable. Early attorney contact is especially helpful in that it can help the business avoid dwindling its remaining resources: an often fatal action for an already floundering company. That is, if a struggling business spends its last dime attempting to avoid a bankruptcy, and then enters bankruptcy only as a last ditch effort, said business may not have the resources necessary to fully

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benefit from the bankruptcy filing. It is often far better for a business to prepare a reserve for the future than to factor its receivables, cut against its margins, and ultimately deplete all of its working capital before finally throwing in the towel.

Furthermore, businesses often fall into the trap of bargaining with the "wrong" creditors, possibly wasting resources that could make or break successful bankruptcy reorganization. Counsel can help their clients to understand the priority payment scheme of bankruptcy payouts upfront and help

ensure the company fulfills its potential duties to creditors as well as shareholders.

Additionally, all businesses must understand the realities of bankruptcy if they are to have a successful reorganization and come out stronger than they went in. Bankruptcy, unfortunately, is not a panacea: it is a long process and it has its limitations. Without a firm grasp

of what a bankruptcy entails—including how long it may last and what it can and cannot fix—it is difficult for a business to determine whether filing bankruptcy is a good option.

And bankruptcy is not just a one-trick pony; sometimes just the possibility of a bankruptcy filing can be enough to give a business the breathing room it needs to recover in tough times, and counsel may help one to understand and use this concept as a bargaining tool rather than just a last-ditch effort. However, if a business waits too late to contact coun-

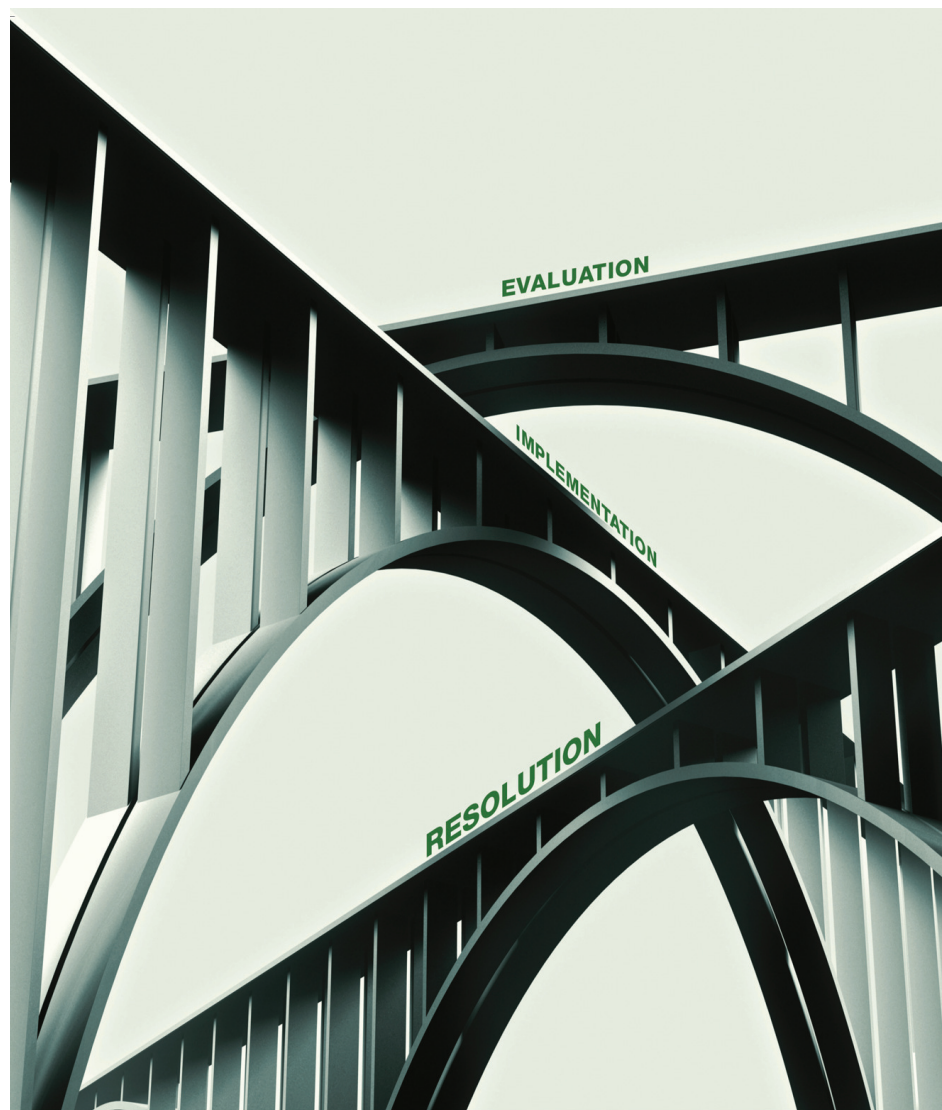
sel, the threat may not be as effective, or it may be too late to avoid bankruptcy even with the additional breathing room.

Finally, while contacting experienced counsel prior to filing bankruptcy is an obvious necessity if the business has no options left but to file, there are other benefits that should not be overlooked. Most notably, in addition to helping a business plan for bankruptcy, the experience and insight that bankruptcy counsel brings to the table can often help a business avoid bankruptcy altogether—but only if they are contacted before it's too late!

Written by Stephanie D. Curtis, Managing Partner (pictured), Mark A. Castillo, Attorney (not pictured), Christopher W. Elsberry, Attorney (not pictured).

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