# Bankruptcy is an American Business Tradition

# That Can Help Troubled Companies Reorganize for Profitability

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Chapter 11 bankruptcy is an American business tradition, particularly in times of industrial change. While not necessarily the most welcome of business customs, the reorganization of a company's debt has enabled many organizations to emerge from fiscal disaster better-equipped to survive another day and, often, prosper over the long haul. This is evident among U.S. industries ranging from airlines to automobiles, building materials, electronics, retailing, publishing and virtually every other industrial sector.

Six different forms of bankruptcy are defined in the United States Code, each with different fundamental applications. Chapter 7 and Chapter 13 bankruptcy proceedings are generally considered by deeply-indebted individuals who want or need either to totally liquidate their assets or restructure their debt payments, whereas Chapter 11 bankruptcy is generally considered for debt-heavy businesses and corporations.

Chapter 11 bankruptcy proceedings have shored up many troubled U.S. companies, large and small. Chapter 11 reorganization is applied by corporations and businesses swollen with fiscal obligations (such as for employee benefits or debts for necessary vendors, supplies or services) or heavily leveraged acquisitions that impact their ability to function as a going concern and attain or sustain profitability.

The Chapter 11 process enables such companies to develop a plan to reorganize their fiscal obligations, cut costs, re-address instruments of debt and negotiate new arrangements with product or service vendors, or with unions, while designing a roadmap and schedule to emerge from bankruptcy and return to profitability. For example, Chapter 11 reorganizations have:

- Helped large companies recover from the effects of accumulated business mistakes of the past;
- Reduced massive debt among large businesses and corporations by enabling a restructuring of corporate organizations and transforming creditors into shareholders by paying debt with stock;
- Given companies time to revamp union contracts and, sometimes, offer union employees ownership stakes in the companies, creating new business momentum;

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- Allowed companies with excessive debt to be sold in efficient auction processes that would not have been possible outside of bankruptcy;
- Eliminate obligations to retirees

Chapter 11 bankruptcy is a multi-step process that can be time-consuming and expensive. For debtor companies it begins with filing a petition with a U.S. Bankruptcy Court seeking Chapter 11 bankruptcy protection, which means that creditors cannot continue collection efforts against the debtor company without approval by the court. The filing process enables the debtor company to develop its reorganization plan and negotiate new payment terms with its creditors while continuing to operate its business. During these procedures the debtor company must file regular financial reports with the court.

To achieve its goal of returning to profitable business operations after filing a Chapter 11 petition, the process generally begins by renegotiating, for example, lease payments, vendor contracts, employee salaries or benefits, and the company may work to develop a plan to partially repay its debt to creditors. Creditors are generally prioritized and classified in the reorganization plan. Secured Creditors (those who hold a legally enforceable claim against a debtor company's assets and Unsecured Creditors (those without specified assets as loan collateral) are placed in different classes, and their claims may be addressed by the debtor company in different ways.

When developing its proposed reorganization plan in the Chapter 11 process, the debtor company can suggest modifying or renegotiating payments-due amounts. Creditors may be willing to accept a portion of total amounts they are owed, or to negotiate new payment agreements, if facing alternatives of receiving very little or nothing at all. When a debtor company's reorganization plan is complete, it must be voted upon by the creditors and shareholders and approved by the court. If one or more classes of creditors approves the plan and one or more classes rejects the plan then the court can still approve the plan, but the rules are complicated.

If a reorganization plan has been prepared in compliance with bankruptcy laws and is accepted by the creditor organizations, in most cases the Bankruptcy Court will approve it, and generally will release or discharge debts that existed before the date that the plan was approved. Once a reorganization plan has been approved by the Bankruptcy Court, the debtor company is obliged to operate within its agreements and schedule.

What should a debtor company considering Chapter 11 expect from a bankruptcy attorney?

First, an experienced bankruptcy attorney should be capable in matters of Capital Recovery, Insolvency and Business Turnarounds, and should maintain a practice in all phases of loan workouts and business restructuring and related bankruptcy proceedings, as well as state court loan enforcement litigation.

In addition, your bankruptcy attorney's skills should include, but not be limited to:

- Representing debtors and creditors in negotiating, preparing and implementing Chapter 11 reorganization plans and disclosure;

- Be experienced in preparing financial statements and asset sale or purchase agreements through bankruptcy and all phases of bankruptcy-related litigation, including defending preference actions;
- Be experienced in out-of-court workouts, state court receiverships, creditors' rights law, creditor's rights litigation and preference recovery litigation, as well as foreclosure proceedings;
- Negotiating and drafting loan-restructuring agreements for lenders and borrowers;
- Negotiating and implementing voluntary surrender agreements and forbearance agreements for lenders;
- Litigation in the multitude of issues that may arise.

Chapter 11 bankruptcy reorganizations have helped build financial bridges for companies that are forward-thinking and efficient. Well-managed bankruptcy proceedings can float companies out of potential default and postpone their day of reckoning. Chapter 11 does give troubled companies time to address needful changes. Long-term outcomes are virtually impossible to predict, yet will depend on the quality of company management and healthy doses of good luck, along with a well-developed reorganization plan that "covers all the bases" and strives to minimize potentials for additional financial risk.

*Mr. Lander is noted by many authorities for his expertise in Bankruptcy & Creditor/Debtor Rights. In 2011, Chief Justice of the U.S. Supreme Court John G. Roberts, Jr. appointed Mr. Lander to serve a second, three-year term on the influential Advisory Committee on Bankruptcy Rules, a unit of the nation's Judiciary system whose members develop policy and recommendations generally impacting all U.S. bankruptcy courts and their procedures. Mr. Lander has represented secured creditors, mortgagees, unsecured creditors, debtors and unsecured creditors' committees in out-of-court workouts, Chapter 11 reorganizations and enforcement of creditors' rights. He also has represented purchasers of businesses in financial distress. He has authored many articles focusing on bankruptcy topics. He has been recognized as a Missouri Super Lawyer since 2005. Mr. Lander can be reached at 314.615.6000 or via email at David.Lander@GallopLaw.com. Gallop, Johnson & Neuman, L.C., is a full service law firm that has provided legal services to clients in diverse industries since its founding in 1976 and is one of the largest law firms in St. Louis. The firm serves public corporations; privately-held companies; entrepreneurs and start-up enterprises; individuals and families; trustees and trust beneficiaries; charities; and non-profit entities. For information, see the website www.GallopLaw.com.*

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