

Top Ten Signals That Your Company is or May be a Candidate for Bankruptcy

Key Points:

- In most circumstances, the bankruptcy court should be a court of last, not first, resort.
- In certain circumstances, outlined in this article, the commencement of a bankruptcy case makes good sense.

In most circumstances, because of the costs and uncertainties associated with the commencement and prosecution of a bankruptcy case, the bankruptcy court should be a court of last, *not first*, resort. There are circumstances, however, in which the commencement of a bankruptcy case is necessary and/or desirable. In some situations, it may even be the most efficient and economical way for a beleaguered company to proceed. I have listed below, in no particular order, ten “signals” that your company is or may be a “good” candidate for bankruptcy.

1. Because your creditors are too numerous and/or too disparate in circumstances and attitude (perhaps too cantankerous or litigious), the hope of achieving a fair and evenhanded, consensual, out-of-court restructuring is faint.
2. One or more of your creditors is about to obtain a judgment and to seize the company’s bank accounts and/or other critical assets.
3. After debt restructuring negotiations have “failed,” a secured creditor is about to foreclose (on a judicial or non-judicial basis) its security interest in company assets.
4. Your business is a tenant under one or more “above market” leases that you would like either to renegotiate and “keep,” or to “jettison” as economically as possible.
5. Your business is a tenant under one or more, potentially valuable, “below market” leases that you would like to assign (*i.e.*, sell) notwithstanding the existence of a clause or clauses in such leases prohibiting assignment without landlord consent.
6. You own an otherwise profitable business that has encountered a temporary liquidity crisis (by virtue of the COVID-19 pandemic and/or other factors) and needs some relief (in the form of a payment moratorium or an extended installment payment plan, or both) from the cash demands of creditors as well as creditor lawsuits.
7. You would like to keep the business intact in order to sell it



by Neal L. Wolf

as a going concern, free and clear of the claims of creditors, to preserve jobs and benefit company vendors.

8. You would like to “bind” a few recalcitrant creditors to a restructuring plan that has already been approved by most creditors.
9. You own a small business (with aggregate debt of \$7.5 million or less) and would like, with or without creditor consent, to (a) maintain your ownership interest in the business, (b) pay creditors projected net income of the business over a three to five year time period, and (c) discharge unpaid debt at the end of that period.
10. Sadly, your business is failing and cannot be resurrected, and you would like to wind down and “conclude” the business in a way that is likely to bring an immediate end to all creditor demands, threats, and lawsuits.

Needless to say, every company is unique and every situation is unique. You should consult a highly qualified bankruptcy specialist before determining whether your company should commence a bankruptcy case.

For more information, please contact:

Neal L. Wolf, Partner
415-995-5015
NWolf@hansonbridgett.com