

-- Bankruptcy -- Practical Considerations Before Filing

Practical considerations for business lawyers and their clients
when the client's business is facing bankruptcy.

Simon R. Mayer
Locke Lord LLP | Houston
simon.mayer@lockelord.com
(713) 226-1507

1

Presentation Roadmap

- Primary Drivers of Financial Distress
- Benefits and Forms of Business Bankruptcies
- Alternatives to Bankruptcy
- Considerations when Preparing a Client for Bankruptcy
- Issues for Counsel when Client Filing Bankruptcy

2

Some Bankruptcy Quotes

- “A bankruptcy judge can fix your balance sheet, but he cannot fix your company.”
- Gordon Bethune (Chairman Emeritus, Continental Airlines)
- “When an American declares bankruptcy, when he hits bottom, he can reinvent himself. There’s a story he can tell. We tolerate reinvention. We encourage reinvention. That’s what this country has that Europe does not. It’s not just a crisis; it’s an opportunity.”
- Michael Lewis (*Boomerang: 'Money Thrown Out in Hope, Coming Back in Anger'*). "PBS NewsHour" with Jeffrey Brown, www.pbs.org. October 21, 2011.)
- “How did we go bankrupt? Two ways. Slowly, and then all of the sudden.”
- Ernest Hemingway (Author, *The Sun Also Rises*)

3

Primary Drivers of Financial Distress

- Assessing and Identifying the Source and Severity of the Client’s Financial Situation
- Examining Income Statements, Balance Sheets, Cash Flow Statements, and Future Projections
- **Purpose:** Understand Nature of Problem to better evaluate options, mitigate risks and, if possible, take corrective action



4

Common Causes of Financial Distress

- Financial Issues
 - Cash Flow Problems
 - Insufficient Capital
 - Excessive Debt
- Operational Issues
 - Poor Management Decisions
 - No Forecasting or Planning
 - Market Performance
- External Factors
 - Economic Downturn
 - Change in Market
 - New Regulations
 - New Laws
 - Natural Disasters



Bankruptcy – Benefits / Opportunities

- Some Significant Benefits Available to Debtors in Bankruptcy:
 - Automatic Stay of Collection Activities
 - Rejection of Burdensome Contracts / Leases
 - Sale of Assets Free and Clear of Liens, Claims, Interests and Encumbrances
 - Access to New Credit

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Practical Considerations Before Filing

Also available as part of the eCourse

[Preparing for Bankruptcy: What Business Lawyers Need to Know](#)

First appeared as part of the conference materials for the
33rd Annual LLCs, LPs and Partnerships session

"Preparing for a Bankruptcy"