

# -- Bankruptcy -- Practical Considerations Before Filing

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

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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](http://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



5

# 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

6

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