

Bankruptcy Update

By: Brandon Bains

The stock market has tumbled precipitously over the last week. This is leading to many businesses having to consider bankruptcy protection. Indeed, the airline industry is projecting that it will be out of cash in a matter of months, meaning bankruptcy or a request for a government bailout. As a result, bankruptcy courts are facing unique challenges given the intersection of COVID-19 and the accompanying economic downturn. Creditors therefore need to also be sensitive to protecting their rights if it is expected that bankruptcy filings will tick upwards over the next 60 days.



One of the best facets of bankruptcy is early accessibility to the court. In most cases, parties can get before the judge literally the day after a bankruptcy filing. This is true even with the most complex bankruptcies. Thus, the courts are now facing a situation where social distancing and other protocols are in place to curb the potential spread of the virus, which is directly impacting the ability to do business when bankruptcy is perhaps more in demand than ever.

We are seeing several things happen to try and address this issue:

- Bankruptcy courts are greatly expanding the ability to participate via conference call. This is always something that was encouraged by bankruptcy judges given the variety of the bar practicing in the court. Indeed, our firm regularly practices in bankruptcy courts across the country and it does not matter where the home state is for the bar license.
- While the conference call has always been something available for lawyers, the courts are also expanding the ability of creditors themselves to participate via alternate means. For example, the Southern District of Texas entered an order yesterday noting that all creditors meetings are postponed for a month, and even then, would occur telephonically in order to relieve debtors and creditors from personal attendance.
- Similarly, Chapter 13 panels have now been switched over to telephonic hearings.



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To "Go Green", our firm uses recyclable paper or ceramic cups and no longer uses Styrofoam cups. In addition, we have adopted a less-paper office environment.

We hope that these changes make big differences in the future.

Well done is better than well said.

- Benjamin Franklin



With this changing landscape (that hopefully will be temporary), it places a premium on early dialogue with a debtor and/or an entity considering bankruptcy. Regardless of whether the bankruptcy itself is pre-packaged, there is nothing preventing a savvy creditor from starting a dialogue early to address issues cooperatively so that a bankruptcy court has an easy job of signing off on an agreed proposal as opposed to lengthy disputed hearings. This is particularly the case given a general consensus that major disputes are best advocated in person as opposed to the phone. Some real-world examples of an early dialogue include routine discussions our firm has in a surety context with a debtor, which typically results in agreed surety bond stipulations that protect indemnity rights, preserve collateral, and address repayment of attorney's fees right up front.

The Firm will continue to keep its pulse on this area and update this newsletter topic in the coming weeks.

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