

# Surviving the Chapter 11 Process

HOW TO HELP EMPLOYEES SO THEY CAN HELP THE LEGAL DEPARTMENT

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Bankruptcy is one of the most Machiavellian areas of the law. For in-house lawyers at a company going belly up, being aware of the psychological impact legal processes have on corporate employees isn't just a nice thing to do; it's critical to fulfilling their duties to the company and, eventually, to the estate.

In-house attorneys need to empathize with the employees at their companies and help them through this process. Doing so helps motivate the workers to provide in-house lawyers with information critical to preparing bankruptcy schedules for the court and to providing accurate information to potential buyers of the struggling company.

In today's economy, there is no better place to witness the effect of legal proceedings than watching the impact of a Chapter 11 filing on a company, more importantly, on its personnel. In-house attorneys for the debtor-company shoulder many responsibilities while a filing is pending. How in-house counsel discharge those burdens and treat the debtor's employees greatly impacts the ability of company personnel to produce accurate information about the debtor for the court, for sales agreement schedules or for other delivery to potential buyers.

While not exhaustive, the following is a list of some of the emotions that may negatively impact in-house counsel's ability to obtain such accurate information on a timely basis:

\* *Depression*. The first issue with which an in-house attorney has to deal in these situations is the generally depressed mood and an "I give up" attitude of the people left at the company. Typically these individuals have survived a series of reductions in force so that they now are doing more work with less staff, support and, occasionally, less equipment. They also may do all of this work for less money. Walk into the headquarters of a Chapter 11 company and this heavy, weighed-down feeling immediately becomes apparent. Lack of productivity, increased errors and more company time spent on job-hunting become prevalent.

\* *Anxiety*. Most of the remaining staff typically ask when they will know what's going to happen to resolve the bankruptcy and the resultant impact on their jobs. Generally, they have kept their jobs

through the tremendous organizational changes because they are a valuable corporate asset – a phrase that actually means "expendable, but not yet." With the Chapter 11 proceeding, they feel they have no control over their futures, a situation that feeds the increased anxiety and dread. Decreased corporate performance, as well as the ability to assist in-house counsel, often results. If dispirited employees can't give the information in-house counsel must provide to potential buyers and the bankruptcy court, the estate's recovery will drop, as outside workers will have to be brought in to gather the needed data.

\* *Anger.* This is how workers often display anxiety. They may exhibit it either as direct anger – such as combative arguments in the workplace – or indirect anger – such as refusing to do assigned tasks as quickly or as well as needed. Old and new resentments against management or other staff members arise, weakening the needed spirit of cooperation among employees. In extreme cases, hatred of management results. Employees will blame management for putting the company (and themselves) in this precarious position and for firing their longtime friends and co-workers.

\* *Fear.* Perhaps nowhere is the fear of being fired more prevalent than at a Chapter 11 company that already has gone through a series of layoffs. The remaining staff has seen quality, tenured employees fired. Worries that they'll be next prey on their minds as they try to do more work with less staff. Their fear of what will happen tomorrow is palpable and needs to be addressed by regular, open discussions about the state of the company led by management, with significant input from in-house counsel. Without this communication, fear can become immobilizing and keep people from getting any real work done, which again means in-house counsel can't secure needed information and proceed to represent the company.

\* *Distrust.* Management is the key source of available information about the progress of the Chapter 11 filing. However, its perceived credibility constantly is challenged as employees compare management's predictions with how things actually play out. If management frequently changes directions, improperly citing a judge's decision or making a simple mistake in communication, it risks losing all credibility with the employees. Employees need to believe in management's integrity to continue to produce their best at work in these difficult times.

\* *Combative environment.* Many employees feel overburdened because they're doing the work of several former co-workers; however, they feel trapped in their jobs by financial or health concerns when they need their existing insurance. They may be overwhelmed by the new, unfamiliar responsibilities forced on them by the reduced workforce and may forget or refuse to do additional required tasks. Protecting their jobs – not helping the company and in-house counsel – becomes their

foremost goal. In this situation, people tend to do only those tasks that advance their ever-increasingly competitive posture in relation to other workers, as the dwindling number of jobs leads to a mentality of scarcity and survival. Employees will cover up, deny or blame others for mistakes. While a reduced workforce is inevitable in a Chapter 11 situation, attorneys for management should be sensitive to this overworked, overwhelmed and overstressed situation by carefully prioritizing tasks for workers. There comes a point beyond which people cannot be pushed and productivity evaporates. This is especially difficult when in-house counsel need substantial, immediate information from these workers.

\* *Absenteeism*. Unless the court stipulates that the company will not pay for vacation time, more and more employees will take time off to get away from the pressure at the office or, more likely, to pursue new jobs. If the vacation days are not allowed, in-house lawyers will see an increase in sick days as employees go to job interviews or avoid the stress encountered at the office.

\* *Disappearing items*. In-house counsel may find that some employees take revenge against the company by stealing items from the workplace. Valuable goods, such as laptop computers, may be the first to go. Awards won by the company, office supplies and artwork probably also are at risk. Management needs to anticipate this shrinkage problem and lock up smaller, valuable items.

\* *Finality*. The process does indeed have an end, although it may be difficult to see that prospect while in the middle of the proceedings. For example, the auction may be scheduled for a Monday, but the results not announced until Wednesday. The court may force other creditors to work out their arrangements as they affect the debtor – a step even further removed from the control of the employees. Eventually, however, there will be a sale of some or all the assets or the conversion of the filing into a Chapter 7. Workers have waited for resolution; even if management properly and frequently advise them of what's happening during the process, they are not always pleased with the result.

## **Data and Reports**

In-house counsel must rely on remaining corporate personnel to provide important data and reports. To the extent that any of the above situations impede that process, this task becomes more difficult. These emotions, if left unchecked, also can impede in-house counsel's ability to support management and outside bankruptcy counsel. To try and bridge these resentments and emotions, in-house counsel should encourage management to do the following:

*1. Tell the truth to employees.* Sharing the real status of the company's situation with employees, subject to legal considerations, shows them respect by allowing employees to cope with the truth. While no guarantees exist that this will better the situation, employees will find out what's going on eventually, and allowing them to cope with the truth sooner rather than later will hopefully make them more productive and supportive throughout this process.

*2. Expressly grant people opportunities to look for new jobs.* Enabling the transition for each employee improves the quality of the work environment. Realize also that the manner in which a company lets people go plays to an audience broader than just the released employees; it more importantly impacts those left behind.

*3. Keep as many of the present staff as possible.* Encourage management to let employees know the company intends to work with the successful bidder, to the extent possible, to encourage it to retain as many of the current personnel. Put action into words; have the human resources department prepare a notebook in which all interested employees can place their resumes for review by interested buyers. Be proactive and supportive.

*4. Hold regular meetings with the employees.* Here is management's chance to discuss candidly what is happening in the bankruptcy proceeding and with the horde of interested buyers that have been walking around the building and inspecting the books. This builds trust, especially where poor management or misinformation previously destroyed that trust. This also is a way to handle the rumor mill by addressing concerns before they circulate too much throughout the company.

*5. Schedule some fun time activities.* This may sound odd, but it does work if only to alleviate the stress for a few moments. Once employees recognize that the outcome of the current situation is beyond their control, that management is keeping them current with accurate information and that their continued employment is a goal of this process, several of the concerns cited above lessen. Give them a little time during the workday to blow off some steam.

*6. Finally, consider initiating employee assistance programs.* These could include the use of therapists, ministers or outplacement experts. While these programs are not cheap, especially when cash is tight, companies owe it to their employees to do their best to help them get through this difficult process. Experience shows that this may be the best way to show that management cares and thereby increase productivity and better enable in-house counsel to do their job.

These are only a handful of the many emotional repercussions that employees may experience in a

company that has filed for Chapter 11 protection. All of these will impact productivity during the filing. In-house lawyers and their management clients can select methods to recognize and deal with this problem. Consider that a cooperative, productive workforce will leave a positive impression on potential bidders and could benefit everyone in the end by, among other things, providing quality information necessary to the bidding process in a timely and thorough manner.

Machiavellian or simply the right way to treat people & the bankruptcy objective is still the same: Get quality, responsive information on a timely basis.

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