

BANKRUPTCY BLOG

Five Reasons to Consult Employees Before Filing Chapter 11

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One of the first and most important questions we receive as Chapter 11 counsel is whether and when to tell employees that a Chapter 11 bankruptcy is imminent.

Today, we're going to focus on companies that plan to reorganize and five important reasons they should consult with employees before, or at the time of filing.

First, and perhaps the single most important thing an employer can do is NOT surprise employees with a bankruptcy filing. The reasons are many:

- Employees don't understand bankruptcy and think it means the company is dying;
- Employees typically are invested in the company and want to see it succeed. Not telling them about the pending bankruptcy makes them feel disregarded; and
- The first person an employee should hear from should be the employer. Not a creditor. Not a union. And certainly not the bankruptcy court.

Second, a potential bankruptcy debtor can provide employees with LOTS of positive information before, or at the time the case is filed, such as:

- The company plans no layoffs;
- If layoffs are necessary, the employee likely will be eligible for unemployment if laid off, and the company will re-hire as soon as possible, as soon they work out a few details with creditors;
- The company will be a much stronger company, better able to meet employee needs by reorganizing (and this is a big one - right now everyone gets the economy is tough, so making the company stronger should inspire more employee confidence); and

- The company will continue benefits post-bankruptcy filing.

Third, if you have more than 100 employees, the law says you need to give at least 60-days' notice of large-scale layoffs. So, some pre-bankruptcy planning is important. We cannot tell you with legal certainty how this law would impact a bankruptcy, as the law is not super clear, other than to say good employment counsel (for your employees) likely would be smart enough and aggressive enough to make this issue a thorn in the side of a debtor's reorganization.

Fourth, good employees expect good, fair and honest communications from employers. Details include, often:

- Potential changes in the way the company operates (often none noticeable to employees);
- What to expect in terms of regular updates on the status of the bankruptcy; and
- Short- or long-term concessions that might be expected from employees to keep the company running.

Bottom line, respect for employees, in our experience, equals equal respect for the employer. Employees are invested. Treat them as such.

Fifth, and this one may be more controversial because it could cut against the client, but also improve employee moral:

- Detail what to expect on unpaid wages. Most Chapter 11 cases skip no beat in payment of wages unless you are a decently high income earner;
- However, what if the employee thinks s/he might have a claim against the company? Telling the employee that you (honestly) believe they have been paid in full, but advising employees they have the right to their own counsel, in our experience, garners good will and offers a better outcome. If the employee does not feel you are trying to steal income or wages, that's never a bad thing. Key word in that point was "honestly". Never lie to employees. If you think you have trouble on income issues, engage the appropriate counsel to address directly.

Obviously, there are other employee concerns, but today we think these are probably the big five. Though that changes from time-to-time. If you take anything away from this argument, especially if you plan to reorganize, it is VERY important to not surprise employees with a bankruptcy filing. Unless you're like us and live, breath and eat bankruptcy, then your understandings likely misinformed.

At Sandberg Phoenix, we recognize these issues and help you stay ahead of the curve, with the goal on the best outcome possible.

If you need assistance with bankruptcy matters, please contact Larry A. Pittman, II, at lpittman@sandbergphoenix.com or 816.210.9680 or Sharon Stolte at ssolte@sandbergphoenix.com or 816.627.5543.