

Bankruptcy Primer for the CRO

1. RETENTION of the CRO

a. Scope of Authority

- Financial Restructuring, creditor negotiations, cash management, financial projections, asset sales, customer negotiations, operations, personnel

b. Assessment of Initial Personal Officer Liability

- Trust fund payments, payroll and sales tax payments, environmental, ongoing litigation risk
- D&O Insurance
- Contractual Indemnification

c. Chapter 11 Retention Application Issues

- Disinterestedness
- Disclosure of connections
- Jay Alix Protocol
- Potential objections to retention

d. Compensation Structure

- Hourly, weekly or monthly
- Transaction or percentage fees
- Success fees
- CRO staff from same firm and controlling staff work scope and fees
- Code sections to be retained under
- Time reporting and potential fee objections

e. Reporting Relationship

- Co-existence with CEO
- Board relationship
- Primary shareholder(s) relationship
- Attorney/client privilege
- Written reports
- Communicating with secured lender(s) verbally and in writing

f. Relationship with Other Professionals

- Debtors Counsel(s)
- Debtors Investment Banker
- Lender(s) or Creditors Counsel or Financial Advisor

g. Financial and Turnaround Plans

- Financial and cash projections
- Alternative options for company
- Proposals to secured lenders
- Valuation estimates – going concern or liquidation valuations
- Actual vs. projection reporting

h. Documents

- Loan Amendments and Forbearance Agreements
- Customer
- Supplier
- Employee – employment, retention, incentive

i. Non-Ordinary Course Transactions

- Sale of business unit
- Sale of significant asset
- Settlement of claim
- Reduction in Force (RIF)
- Business or facility closure

j. Governance

- Board meetings and minutes
- Periodic updates and disclosures
- Handling conflict of interests at Board
- Legal representation of Directors and Officers
- Handling disagreements between CRO and the Board

k. Liability During Case

- State of Incorporation importance and Businessman Judgment Rule
- Employee and Trust Fund
- WARN Act and accrued vacation

l. Termination of CRO

- Lender documents
- For cause
- For dissatisfaction

m. Unusual Circumstances

- Discovery of illegal act or lack of legal compliance
- Discovery of financial misreporting
- Noisy withdrawal of CRO

n. The Zone of Insolvency

- **Define Zone of Insolvency and background**
 - Solvency – protect value of shareholders
 - Insolvency – expand to protect creditors
 - Counsel briefing to Board
- **Define Responsibility:**
 - Creditors
 - Lenders
 - Customers
 - Equity
 - Sarbanes-Oxley (404-302)
 - Reliance and indirect

8. HOW TO CLOSE a CHAPTER 11 CASE

- a. Plan of Reorganization or Liquidation, conversion to Chapter 7 or Dismissal***
- b. Employee issues – health and benefit plan closure***
- c. Claims resolution***
- d. Litigation – preferences, fraudulent conveyance, D&O, professional claims***
- e. Liquidation trust***
- f. Administrative claims – 503(b)9, professional fees, post-petition expenses***
- g. Administrative insolvency***
- h. Tax returns***
- i. Long-term and final stub assets***