A Quick Restructuring Fix Can Be Costly Later

Bankruptcy done well can give a struggling company breathing room as it solidifies its financial footing. Moving through the process too quickly, however, could mean a company is setting itself up for a return to Chapter 11.

Speakers from a panel at the 31st Annual Bankruptcy & Restructuring Conference of the Association of Insolvency & Restructuring Advisors renewed the debate about the issue of fast restructuring, through methods such as "prepack" filings, earlier this month. As reported by various media outlets, panelists suggested that a quick exit could significantly raise the risk of a return trip to the bankruptcy court for the company involved. This could be attributed to the use of hedge funds and other alternative investors instead of traditional banks due to regulatory tightening as a factor for the shortened length of time for Chapter 11 proceedings (to less than a year) in 2014.

A number of attorneys who have served as frequent NACM contributors had their own take when asked for their analysis on the trend of rapid restructuring. Participants should not use length of time as a measure of success, said Karen Hart, Esq., a partner with Bell Nunnally & Martin LLP. "The quality of time spent on the plan of reorganization and the quality of the plan should be the measure of a likelihood of success. Rushing to confirm may very well be a recipe for disaster down the line." Six months, for example, might be sufficient for a small- to medium-sized company, but it may not be enough for a large company with a large, complex debt load, she noted.

While businesses often organize a prepack bankruptcy where major parties cut deals before filing, in other instances a structured disposition—where the assets are sold to a buyer—enters into play, said Lynnette Warman, Esq., of Culhane Meadows PLLC. In these situations, bankruptcy is much faster.

"A bankruptcy used to take up to two years," said Bruce Nathan, Esq., a partner with Lowenstein Sandler LLP. "Now, that is the exception." Navigating in and out of bankruptcy court too fast often resembles an effort to make a quick fix to a balance sheet without a proper effort to actually fix problems ailing the business overall, he added.

Robert Bernstein, Esq., a partner with Bernstein-Burkley, P.C., said the expense and risk of being in Chapter 11 serves as a pressure point. "Companies and courts try to move cases along and get them out of Chapter 11 quickly," Bernstein said. "That often results in either getting money from people who are not in for the long term because of their goals, or because of the interest rate expense, or kicking issues down the road which, if not resolved, can cause the second filing."

The Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) has also contributed to shortened restructuring proceedings, said Wanda Borges, Esq., of Borges & Associates. Even with the federal provisions, Borges believes that many Chapter 11 cases today are simply liquidating as opposed to reorganizing. There are simply fewer surviving debtors than in the past.

- Diana Mota, NACM associate editor