

BANKRUPTCY STRATEGIES AND OPTIONS

Clinton E. Cutler
Fredrikson & Byron, P.A.
(612) 492-7070
ccutler@fredlaw.com



"Not scared yet? Just wait until I
get to Chapter 11!"

USES OF BANKRUPTCY

- Breathing Spell to Renegotiate and Reorganize; or
- Bridge to a Transaction (e.g. Sale)
- Used to Conduct Orderly Liquidation

BASIC CONCEPTS

- Petition
- Automatic Stay
 - Relief from stay
 - Adequate protection
- Cash Collateral
- Single Asset Real Estate
 - Definition: Single project or property constituting substantially all of the gross income of the debtor
 - Special rules for SARE

BASIC CONCEPTS CONT'D

- Section 363 Sales
 - All or part of assets
 - Outside ordinary course of business
 - Free of liens if:
 - Lienholder consents
 - property sells for more than value of liens
 - Bona fide dispute
 - Liens attach to proceeds
 - Auction process

BASIC CONCEPTS CONT'D

- Plan of Reorganization
 - Exclusivity
 - Classification of claims
 - Negotiations
 - Class voting – 2/3 in dollars and 1/2 in number
 - Binding effect

BASIC CONCEPTS CONT'D

3 Key Tests for Confirmation

- “Best Interests” of Creditors
- Feasibility
- Accepting Impaired Classes

BASIC CONCEPTS CONT'D

- Cramdown
 - Used to gain confirmation where class rejects plan
 - Test for secured claim – receive “indubitable equivalent” of secured claim i.e.:
 - retain lien
 - cash payments equal to present value of secured claim

ADVANTAGES - BORROWER

- Breathing Spell
- Suspend Cash Payments of Interest
- Write Down Secured Debt to Collateral Value
- Restructure Payment Terms
- Facilitate Sales

ADVANTAGES - LENDER

- Forum for Resolution of Dispute
- Coordination – Stops Race to Dismember Debtor
- Asset Sales Without Foreclosure
 - No redemption
- Bind Recalcitrant or Holdout Creditors

DISADVANTAGES - BORROWER

- Transactional Expenses
- Credit Bidding
- Financial Reporting
- One Way Street – Either Reorganize or Liquidate

DISADVANTAGES - LENDER

- Delay (Perhaps of Inevitable)
- Restrict Ability to Exercise Remedies
- Unsecured Creditor Rights
 - Committee
- Surcharge



“I’d thought the battle for your loan was over, but I see you’ve since suffered some collateral damage.”