



JUST IN CASE

Email newsletter from Bovarnick & Associates

Media

Rob is going to be a guest on Small Business Trends radio (<http://www.smbtrendwire.com/>) hosted by Anita Campbell on Tuesday, April 14 at 1:30 p.m. Rob will be talking about "**How to Save Your Business When Bankruptcy Is Your Only Option.**"

What is a Pre-Packaged Bankruptcy?

The Bulletin
"Ask the Attorney"
by:
Robert M. Bovarnick

Business bankruptcies come in two flavors—chapter 7 (liquidation) and Chapter 11 (reorganization). In a chapter 11, the end game is to have a business plan approved by the bankruptcy court; this is known as a plan of reorganization. From beginning to end, the average chapter 11 case can take well over a year. Of course, there are numerous benefits for a company in getting in and out in months, rather than years. One of the ways to accomplish a quicker reorganization is through a pre-packaged bankruptcy, known as a Prepack.

Prepacks are a combination of two methods of reorganizing troubled companies: out of court workouts and bankruptcy. They combine the lower costs of an out of court workout with the benefits of court approved reorganization. Prepacks came into vogue about 20 years ago. A Prepack is where a company negotiates a reorganization plan with creditors and solicits acceptances of the

Quick Links

[Forbes.Com](#)

["The Billable Hour"](#)

["Ask the Attorney"
The Bulletin](#)

[Newsletter
Archives](#)

[Firm Website](#)

plan, all prior to filing for bankruptcy.

Implementing this strategy, the company files for Chapter 11 and simultaneously files a plan of reorganization. Given the advance negotiation with creditors, a confirmation hearing can be scheduled quickly, leading to a quick exit from bankruptcy. There is a risk however of the Court determining after the fact, that the pre-petition solicitation process did not meet the requirements of the Bankruptcy Code, thereby causing the company to start from scratch. A successful outcome of a Prepack should result in a substantial savings in time and minimize the disruption in the company's operations.

Another type of bankruptcy often confused with a Prepack, is known as a Pre-negotiated bankruptcy. In a Prepack, the votes have already been solicited and agreed to before the filing. In a Pre-negotiated case, the company has negotiated with its major creditors and hopes that they vote as they said they would.

Without going through the nuts and bolts of the differences between the different types of cases, suffice it to say that a Prepack can be done within 3 months, a Pre-negotiated case 6-9 months and a regular case well over a year.

Some of the more famous Prepacks have been Donald Trump's Taj Mahal Casino in Atlantic City, Zenith Electronics, Mrs. Fields Cookies and TWA. If GM goes into bankruptcy, a Prepack would provide its best chance of success, as it would be in and out quickly.

Answers to Major Compensation and Benefits Issues

by:
Marc Kramer

Will Leahy is a shareholder at Littler, a Center City Philadelphia law firm, which provides assistance with all issues pertaining to employer-employee relationships. Mr. Leahy specifically handles employment-related disputes through trial and appeal. His litigation experience includes claims under Title VII, the Americans with Disabilities Act, the Family and Medical Leave Act and the Pennsylvania Wage Payment and Collection Law. Mr. Leahy has also represented companies in a wide variety of industries, and in numerous matters relating to trade secrets, ad confidential information, and non-compete covenants. Mr. Leahy has a BA in English and Philosophy from Boston College, and a JD from Villanova University School of Law.

Why did you become a lawyer?

In college, I majored in Philosophy and English. That was because I enjoyed writing and examining logical arguments to see where I could take them apart. I ended up practicing labor and employment law because it is something to which everybody can relate. Everybody works, and it is easy to identify with one person

or another in a workplace dispute. I should probably add that reviewing a harassment complaint is always more interesting than writing a will or drafting a contract!

The burning question: Can the government take back the money they gave to companies who then used it to pay bonuses?

There has been a lot of controversy over this issue now with regard to the AIG bailout. The original legislation contained a provision that actually allowed the payment of the bonuses at issue. After the recent protests, Congress and the White House are looking at ways to get the money back. As the law stands now, there is not an easy way to do that. There have been proposals to tax most, if not all, of the bonus payments to the employees. But that would require new legislation, and it might be challenged in court.

Are laid off employees still bound by non-competes?

In Pennsylvania, employees who have signed valid non-competes can still be bound by them after they are laid off. As long as the non-compete is limited in time and geographic scope, and it actually protects a legitimate interest of the employer, it can be enforced. The issue that comes up with laid off employees is whether the non-compete would still serve any legitimate interest of an employer. If an employer has left a business line, and the employee is laid off as a result, the employee could contend that the non-compete is not necessary to protect the former employer's interests.

Are there laws requiring employers to pay severance regardless of how long an employee has been with the company?

There are no laws that specifically require severance for employees. Some employees have contracts that give them severance rights. Additionally, some employers have severance plans that require payments.

Is it ever wise for an employer to pay severance even if it isn't required?

If an employer is terminating an employee, it can use severance payments to get a release of claims from an employee. This eliminates the possibility (or greatly reduces it) that the employee can then sue the employer. To be done properly, a release must comply with the applicable laws. These are very specific, particularly if the employee is over the age of 40 or if several employees are being terminated at the same time.

What is the biggest Cobra Law change that employers need to be aware of?

Minimally, COBRA provides employees with the opportunity to continue their health insurance after they have been terminated, so long as they elect coverage and pay the premiums themselves. The recently-passed American Recovery and Reinvestment Act

modified COBRA rights. Now, employees who are involuntarily terminated on or after September 1, 2008, but before December 31, 2009 do not have to pay the entire COBRA premium to continue their coverage. Rather, employees and their dependents need only pay 35% of the premium. Employers are obligated to cover at least 65% of the premium for these employees. The federal government then gives the employer a tax credit for that portion of the premium.

I enjoy being able to share with everyone the Firm's continuous growth and development. Whenever you get the chance, pick up the phone or send me an email and let me know how you are as well.

Sincerely,
Rob

✉ [SafeUnsubscribe®](#)

Email Marketing by



Bovarnick and Associates, LLC. | Two Penn Center Plaza | 1500 J.F.K. Boulevard | Suite 1310 | Philadelphia | PA | 19102


