

Distressed Employer Survival Guide

Communications
Workers of America

Introduction



Distressed Economy

CWA Companies in Distress

- The Deep Recession
- Effects on CWA companies
 - Newspapers
 - Yellow Pages
 - Manufacturing
 - Airlines
 - Telecom
 - Public Sector

The Goals of the Webinar

- Inform
- Empower
- Communicate
- Mobilize
- Strength in Unity

Employers in Distress



Crying wolf or serious distress?

- Easy to be cynical when employer cries poverty
- What is the employer really saying?
 - Revenue changes
 - Cash flow
 - Medium-term future
- Need to understand the business
- Distress
 - Difficulty in meeting financial obligations
 - Difficulty in meeting terms of loan covenants

Acting within Distressed Situations

- Create “bargaining” committee in case company makes demands
- Request data from the company that allows assessment of employer claims
- Prepare groundwork for potential mobilization
- Ensure communication structure intact
- Give members information on status of company, industry

Overview of the Bankruptcy Process



A Quick Introduction to Bankruptcy

- Employers end up in bankruptcy for two broad reasons
 - Voluntary vs. involuntary
- Types of bankruptcy
 - Chapter 11
 - Chapter 7
- Terms of art
 - Haircut
 - Cram Down
- Key Players within Bankruptcy Court
 - Judge
 - U.S. Trustee
 - Debtor with its estate
 - Creditors – secured and unsecured

Reorganization Under Chapter 11

- Creditors cannot demand immediate payment of debts
- Time frame – long (measured in months if not years)
 - Quicker if “pre-packaged”
- Goal: find a way for debtor to continue operations
 - May include:
 - Sale of assets
 - New Ownership
 - Re-structuring contracts
 - Voiding existing labor contracts and negotiating new ones

Reorganization Does Not Prioritize Jobs and Communities

- Protection of jobs per se is not a concern of bankruptcy process
 - Likewise, as focus on finances, work rules of little importance to court
- However, wages and benefits are a **LIABILITY** for company

Priority of Claims

- Rank ordering
 - Administrative
 - Tax
 - Secured
 - Unsecured
 - Estate interest
- Secured creditors paid off first
- Wage and benefit claims before bankruptcy filing are pre-petition and unsecured

Unsecured Creditors' Committee

- Appointed by U.S. Trustee
- Usually seven largest creditors but can be larger
- UNION can be appointed to serve
- Powers to investigate Debtor's assets, liabilities, conduct
- Powers
 - Hire attorneys, financials advisors, etc.
 - Ability to force disclosure
- Creditors' Committee can play significant role in reorganization
- Union should try for seat on Unsecured Creditors' Committee to increase leverage
 - Seat on Committee gives: 1) information and 2) ability to influence others



Phase 1

- Automatic stay of all claims due
- First day motions
 - Motions to pay employees and vendors
 - Motions to approve financing
- Selection of Unsecured Creditors Committee

Phase 2

- Administering the estate
- Bar date – deadline by which creditors file claims
- Executory contracts
 - Collective bargaining agreements handled under Section 1113
- Debtor can implement interim changes w/o rejecting CBA
- Debtor must provide information

Section 1113

- Debtor may petition to void CBA only after
 - First making contract proposal to Union containing changes
 - Then providing information to union so it can evaluate proposal
 - While negotiating in good faith
 - If agreement reached, members must ratify;
- If no agreement reached, debtor can file an application under Section 1113 to reject existing CBA
- For court to grant Section 1113 application, Company must show
 - Changes necessary to reorganization and are equitable to other parties
 - Union provided with sufficient information to evaluate proposal and that union rejected contract proposal without good cause
- Timing
 - Hearing within 14 days of application; decision 30 days after hearing

Phase 3

- Debtor must prepare Plan of Reorganization
 - Business plan going forward
 - How claims of each class of Creditors to be treated
 - Class of creditors determines priority
 - Amount to be paid + schedule for paying claim + form of payment
- Impairment
- Approval of Plan
- The Discharge

Preparing for Bankruptcy



Computing Claims

- Go through collective bargaining agreement to calculate everything employer might owe to workers and union
 - Wages, incentive pay, commission
 - Unused leave or vacation pay
 - Contributions to savings plans and education plans
 - Review benefit plans – pension, savings, health, disability
- Determine which claims are “pre-petition” and “post-petition”
- Need for speed
- Contact CWA for forms to compute, local by local

Grievances and Pending Arbitrations

- Make a list
- Estimate amount of back pay and other amounts
- Determine which items “pre-petition” and “post-petition”

Information Requests

- Submit information request
 - Census of current employees – age, seniority, job title, shift, hourly rate
 - Copies of all documents filed with bankruptcy court

Union Strategy



Build Relationships

- Meet with Company to collect information
 - Formulate specific information requests
- Try to work with company
 - Union wants the company to succeed
 - Lobby company to recommend union for Creditors Committee
 - Success should not be on backs of the workforce
 - Lobby against filing 1113
 - Negotiate agreement that can work for company and members

Keep Good Records

- Track events in press
- Keep notes of all meetings with management
- Retain copies of proofs of claims filed
- Keep copies of all correspondence
 - Print out e-mail correspondence

Bargaining by Another Name

- Bankruptcy forces uneven playing field
 - Not give-and-take
 - Rather, judge with absolute power
- Costs
 - How to lower costs for company while preserving history of contractual gains
- Company future
 - How to ensure company can survive in the short- and medium-term

Educating the Bargaining Unit

- Help members understand bankruptcy process
- Place situation of company within larger context
- Distribute union analysis and news articles that portray balanced view of the situation
 - Distill essentials from stock analysts or ratings agencies

Member Communication

- Keep members aware of process
 - Web postings
 - E-mails
- Members will be paid during post-petition Chapter 11 reorganization
- Be honest and don't exaggerate – either on the upside or downside
 - Don't project your fears
- Keep members updated
 - Make schedule of proceedings available
 - Answer questions from members

Bargaining Section 1113

- Education and communication key to overcoming psychological warfare that may come from employer
- Try to bargain “snapbacks” or “build backs”
- Try to ensure management also takes a haircut

Survival



Resources

- Web site – www.uniteinstrength.com
 - Resource Center
 - “Distressed Employer Survival Guide” (this slide show)
 - Warning Signs
 - Bankruptcy Preparation Checklist
 - Corporate Bankruptcy Basics
 - FAQs
 - Legal Information on Section 1113
 - Role of the Unsecured Creditors’ Committee
 - Bankruptcy in Telecommunications – Regulatory Concerns
 - Pensions and Chapter 11
 - Company Web Pages

Resources 2

- Web pages for individual companies
 - Company news
 - Company documents
 - Court filings (if in bankruptcy)
 - Collective Bargaining Agreement
 - CWA Leadership statements
 - Links to bankruptcy resources
- Example: <http://idearcnews.wordpress.com>

IdearcNews

Idearc News - Windows Internet Explorer

http://idearcnews.wordpress.com/

File Edit View Favorites Tools Help

Idearc News

Reorganization Plan Due Out Today

May 15, 2009 · No Comments

The Unsecured Creditors Committee met with senior management in Dallas on May 14th. A lively discussion took place reviewing various options available to the groups. Follow up discussions are planned.

At the meeting, the company repeated its publicly announced intention to submit an official plan of reorganization today. Once the plan is filed, the judge and other parties will review and vote on the plan. Because the bankruptcy code sets forth minimum time periods for review and voting, it usually takes approximately two months for this process to be completed. The company hopes that this process will go as quickly as possible allowing them to emerge from bankruptcy in August. It is unusual for a plan to be filed so soon after the bankruptcy was started, and a number of parties could request more time for this review process to be completed.

Another development we are waiting for is the hearing on May 21st to consider the company's motion to assume the Local 1301 contract. As noted earlier, on May 7th, the Court orally permitted the company to assume all union contracts with the exception of Local 1301, which represents sales people in New England. They have been represented by CWA since 1960 making them the most senior local within the company. After the bankruptcy filing the company approached

WELCOME TO THE IDEARC NEWS BLOG

We are working to build a stronger company through the talents and energies of Idearc employees. During bankruptcy, CWA is sitting on the Unsecured Creditors' Committee where we will help the company get back on its feet and prosper for its many stakeholders.

We will be using this group to send out news to Idearc workers, union members, supporters, and interested observers about the bankruptcy process. If you wish to receive postings regularly to your e-mail account – and we will try not to stuff you inboxes with postings – please send a request to Tony Daley (tdaley@cwa-union.org) in the CWA Research Department.

To search, type and hit enter

TOPICS



Conclusion

- Manage fear of members
- Communicate with reps and sector/district officials
- Educate and communicate with members
- Plan early and keep good records
- Bankruptcy can be both bad and good for employees/members