

INVESTMENT MANAGEMENT



Surviving and then Succeeding: Using Chapter 11 to Restructure Your Business

Some of the best and brightest have been in bankruptcy court, including Henry Ford, Walt Disney and Henry Heinz and businesses from General Motors to Eddie Bauer. Filing for bankruptcy does not mean the end of a company, in fact, it could be an opportunity to start over by reorganizing through Chapter 11 or an out of court workout.

Some benefits of a Chapter 11 reorganization include:

- ▶ Upon filing a bankruptcy case, an automatic stay goes into effect and almost all creditors are prohibited from continuing unless permitted to do so by a judge.
- ▶ Leases that are not contributing positively can be terminated while other beneficial leases can be retained. This is important in retail reorganizations as stores that are profitable can remain open.
- ▶ A plan of reorganization can be approved by a court that reduces debt. The court can rewrite a secured loan that is secured by assets that is not the debtors personal residence as long as the rewrite is "fair and equitable."
- ▶ Unsecured obligations are typically paid a fraction of the face amount of the debt. To rewrite unsecured obligations, the debtor needs to obtain the vote of 66%



Richard Marshack

of the dollar amount owed to unsecured creditors or get the court to find that the rewrite is "fair and equitable."

Chapter 11 only works if the company can demonstrate future profitability or that there will be a capital infusion that will fund a reorganization. Once feasibility is established, the Debtor can be creative in designing a plan of reorganization as long as several requirements of the Bankruptcy Code are satisfied.

An alternative means of reorganizing is an out of court workout. This approach should be evaluated as it is considerably less expensive. The big difference between an out of court workout and Chapter 11 is that one dissent unpaid creditor can prevent an out of court workout where a court can force the terms of plan of reorganization on dissent creditors in a Chapter 11 proceeding.

This area is complex but with committed management and experienced counsel, survival and success is possible.

Contact Richard Marshack at 949.333.7777 for more information.

Richard Marshack

Richard Marshack is a founding partner of Marshack Hays LLP and has been a bankruptcy attorney for over 35 years. He is a frequent lecturer on bankruptcy and commercial law issues. He is also a Bankruptcy Trustee appointed by the U.S Department of Justice.

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Judge Peter M. Elliott served as a United States Bankruptcy Judge for the Central District of California for almost 20 years.

Mr. Marshack is a founding member of Marshack Hays LLP, and has been a bankruptcy attorney for over 35 years.

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Not Johnny Depp?

You Still May Need Asset Protection.

The actor was living a \$2 million-a-month life of luxury, but then a fallout with his manager led to an eye-popping lawsuit and countersuit.

By Jeffrey M. Verdon
as published in Kiplinger Online



A pair of multimillion-dollar lawsuits involving Johnny Depp's assets and their protection, or lack thereof, has brought to light the importance of having a strong estate plan with asset protection built in. With 15 million lawsuits filed annually in the U.S., protecting your family's legacy and assets has become increasingly important if you have high net worth.

This is what happened to Depp: In 1999, the star of "Pirates of the Caribbean," "Edward Scissorhands" and other iconic Hollywood films hired The Management Group (TMG) to handle his expenses as his business manager. By then Depp had become an established, very wealthy actor who led a lifestyle that included 14 homes, a \$75 million yacht, and \$30,000 a month for wine. Depp's lifestyle cost him in excess of \$2 million per month, which was exceeding his cash flow, his business managers later alleged in court documents.

In January 2017, Depp hired a new business manager and conducted a financial analysis of his assets. He claimed to have discovered serious investment losses incurred by his former manager, and filed a lawsuit in California Superior Court, seeking damages of about \$25 million.

TMG then hit back with a countersuit alleging that earlier in his career, Depp borrowed \$5 million from TMG to cover the expenses of his lifestyle and had allegedly defaulted on this loan. The countersuit sought to recover his loan by foreclosing on some of Depp's assets.

As an attorney looking at these law

suits, it is unclear to me as to the validity underlying the basis of the original lawsuit, given Depp's *joie de vivre*. There is sometimes speculation about why these types of lawsuits are initiated. Some lawsuits are filed to curtail the collection and foreclosure proceedings on an outstanding debt as a tactical or strategic move to settle the case for less. Was there a legal basis for the claim? The courts will have to sort that out.

Regardless, there are lessons to be learned from Depp's experiences — and it's not that the rich are different from you and me.

We understand that Depp was in debt when he first filed the lawsuit against his former manager as he previously borrowed \$5 million from him. The countersuit brought against him further endangered the ownership over his personal assets.

If Depp had established an asset protection plan he could have ensured that his personal wealth was protected from any potential lawsuits. In effect, it would have placed Depp's assets under the ownership of a trust.

Depp would not legally own the assets, as they would be owned by the trust itself — protected from any lawsuits brought against him.

Since we know just how litigious our country can be if you have significant assets, it is prudent to create effective asset protection for them. Consider placing them into a protective trust. There are many to choose from.

- A Dynasty Trust: a trust established to remain in effect over multiple generations.
- A Directed Trust: a trust where the trustee may delegate the investment activities to investment professionals.
- A Foreign Asset Protection Trust: a self-settled trust established in a non-U.S. jurisdiction under laws that are more protective than domestic trusts from lawsuits and other third-party claims.

Make certain that the trustee has hired a reputable investment manager for its assets. It is always best to separate your financial dealings with your investment professionals from a personal manager to avoid any conflicts of interest. After all, a manager may not be an investment expert.

When establishing an integrated estate and asset protection plan, be mindful that

the professionals and fiduciaries selected by the client have the requisite checks and balances.

- The trustee should not also be doing the asset management for the trust.
- Selecting a state that allows for Directed Trusts (e.g., Nevada, South Dakota and Alaska to name a few) will ensure that the fiduciary (trustee) will be providing oversight of the asset managers and vice versa.
- Avoid the trustee/asset managers entering into personal loans and other dealings with conflicts of interest so that if the personal relationship goes sour, the assets being managed and administered do not get tied up in the fracas.

There's a lesson in the Johnny Depp saga. Protecting your assets and family's legacy should always be an important part of any comprehensive estate plan.



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Jeffrey M. Verdon, Esq. is the Managing Partner of the Jeffrey M. Verdon Law Group, LLP, a Trusts & Estates boutique law firm located in Newport Beach, Calif. With more than 30 years of experience in designing and implementing comprehensive estate planning and asset protection structures, the law firm serves affluent families and successful business owners in solving their most complex and vexing estate tax, income tax, and asset protection goals and objectives.

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How Insolvency Laws Can Be Used to Improve Your Company's Profitability

Has your company or client been hit or about to be hit with a big judgment? Having difficulties obtaining financing because of a weak balance sheet? Having difficulty paying debts? Have unprofitable stores that should be closed? Want to get out of unprofitable contracts? Need to stop litigation or collection efforts?

Using Chapter 11, an Assignment for the Benefit of Creditors ("ABC"), or a credible threat of either can help you get out of contracts and restructure and/or eliminate your debt to create a healthy company and pave the way toward financial success.

While often misunderstood, bankruptcy is just another tool a company has to use to make it stronger and more profitable. Not being aware of the value that can be realized through bankruptcy and bankruptcy alternatives is like not being aware of technology that could make your business more efficient and profitable. An informed owner is a successful owner.



Garrick A. Hollander

The Bankruptcy Code provides extraordinary benefits to companies, which can drastically improve companies' debt structure and income, and even save companies from going out of business. And better yet, actually filing a bankruptcy petition is not required to obtain the benefits from the Bankruptcy Code, as the power and rights provided under the Bankruptcy Code can be used to leverage and improve your negotiation power with creditors to

accomplish the same results, without the cost (e.g., through an out-of-court workout).

If a company is experiencing financial difficulty, it should first consider using the leverage of a potential bankruptcy to negotiate an out-of-court workout with its creditors. If creditors are not cooperative or an out-of-court workout is not otherwise feasible, companies should consider whether an ABC is a viable option to accomplish its goals without the cost of a bankruptcy. ABCs can often serve as a cost efficient means to eliminate company debt¹. If an ABC, out-of-court workout or other bankruptcy alternative is not practical, then filing Chapter 11 may be the best or only option for the company.

Insolvency strategies are complex and should only be implemented after consulting with appropriate insolvency counsel and other appropriate professionals.

¹ For more details about the availability, pros and cons of an ABC, consult with an insolvency lawyer expert in ABCs.

Garrick A. Hollander

Garrick A. Hollander, Esq., a founding partner of Winthrop Couchot Golubow Hollander, LLP, is an attorney who devotes his practice to representing primarily corporate debtors in out-of-court workouts and Chapter 11 reorganizations. Mr. Hollander, also a CPA, has owned, operated and advised companies on corporate turnarounds, from operational, financial and legal perspectives. Contact Mr. Hollander at 949.720.4100 or ghollander@wcghlaw.com. Visit www.wcghlaw.com for more information.



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