

The Impact of COVID-19 on the Bankruptcy Court System

Across the country, the COVID-19 pandemic has significantly impacted the justice system. In many State and Federal courts, jury trials have been suspended and court hearings are limited to only criminal and emergency civil matters. Yet the Bankruptcy Courts, given the unique role they play in times of financial distress, are largely open for business, relying on electronic filing and conducting hearings by teleconference. While a number of businesses may consider filing for bankruptcy protection as a result of the pandemic, the recently enacted fiscal stimulus programs might prevent a rash of bankruptcy filings in the short term. For now, the COVID-19 pandemic is having the greatest impact on existing bankruptcy cases, with many financing deals abandoned and bankruptcy sales cancelled.

The recent bankruptcy of Modell's Sporting Goods may provide a blueprint for what to expect in pending bankruptcy cases, particularly with "brick and motor" retailers and restaurant chains. Modell's filed for bankruptcy protection on March 11th, before the public health orders were issued that shut down businesses and encouraged the public to remain at home. Initially, Modell's had intended to conduct "going out of business" sales at all 134 of its stores through April 30th. Despite obtaining approval from the bankruptcy court, the state and local "safer at home" orders prevented Modell's from conducting the sales as planned.

As a result, Modell's filed an emergency motion on March 23rd making the extraordinary request to suspend its bankruptcy case for 60 days. Specifically, the motion sought to defer mandatory payments to many creditors (including landlords), and prohibit creditors from seeking relief from the bankruptcy court during the suspension. Two days later, Judge Papalia acknowledged that "this is a whole new world," and indicated he would provide some relief at the continued hearing on March 27th. At that hearing, Judge Papalia entered an order temporarily suspending the bankruptcy case until April 30th, deferring non-essential expenses, extending deadlines during the suspension, but allowing parties to seek relief based on exigent and unforeseen circumstances.

Given the significant impact of COVID-19 on the economy and the financial system, existing corporate debtors may determine they are better served by seeking to suspend their bankruptcy cases for the time being. Such requests will have substantial impacts on creditor rights set forth in the Bankruptcy Code, including payments and enforcement against collateral. As for companies approaching insolvency, they may be able to avoid or at least delay bankruptcy by taking advantage of the various federal, state and municipal laws meant to address the economic fallout of the pandemic or by negotiating forbearance agreements with creditors.

In these challenging times, business leaders will benefit from advisors with experience responding to periods of economic decline and financial distress. With over twenty lawyers, Buchalter has one of the largest financial restructuring and insolvency practices on the West Coast. We represent financial institutions and businesses across a range of industries in all aspects of pre-bankruptcy workouts and bankruptcy cases nationwide. During the Great Recession, Buchalter's Insolvency and Financial Law group helped many clients navigate a similar period of financial distress and we are here to once again assist our clients through the rough waters ahead.

If we can be of assistance and to discuss various options and specific situations, please feel free to contact any of the Buchalter Insolvency and Financial Law attorneys below.

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