

Covering bankruptcy court

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Understanding how bankruptcy court works and why businesses file for bankruptcy protection is important for any reporter, not just those working on the business desk. Bankruptcy plays out in a federal court system that allows individuals and companies to seek to reorganize the debt they owe – the goal, generally, is to find a way to keep the company going by renegotiating some debt. Why does a company file for bankruptcy protection? Because bankruptcy court provides protection from creditors – it automatically halts all judgments, collection activities, foreclosures and repossessions.

Do NOT write that the company is bankrupt. Do NOT write that the company is going out of business. (Four of the six largest airlines in the U.S. have been through bankruptcy in recent years.)

There are Web sites like www.bankruptcydata.com that follow major company cases.

Bankruptcy comes in different flavors. The most common that journalists deal with is Chapter 11, a reorganization in which the debtor maintains control of the business unless the court appoints a trustee. Another is Chapter 7, a liquidation in which all assets are sold to repay creditors. A Chapter 11 filings can be converted to Chapter 7 by the judge if no reorganization plan can be agreed upon. (Others are Chapter 9, for municipalities; Chapter 12, for farmers and fishermen; Chapter 13 is when person believes that she can repay all debt within reasonable time period.)

Sometimes, the decision to file is made not by the company but by its creditors. This is called an **involuntary bankruptcy**. At least three creditors can join together and force a company into bankruptcy court.

Documents filed by companies in a bankruptcy reorganization can be valuable resources for reporters. They often have names and phone numbers, and information about the company's inner workings. The **initial filing, or petition**, will list the company's assets and debts. Companies will shop for a preferred venue – i.e., a friendly judge. Winn-Dixie created a New York subsidiary simply to file in that jurisdiction.

Any public company that files for bankruptcy must file a Form 8-K with the S.E.C. – one more reason you should have a news alert set up with whatever financial news Web site you use.

A later filing, called the **debtor's list**, contains all the parties the company owes money, as well as their addresses and phone numbers. Many of them are happy to talk to the press.

The business will have to develop a **reorganization plan** and file it with the court. This plan will detail how much it plans to repay creditors and must be approved by those owed money. This often details store closings, layoffs and so on. The repayment is expressed in cents for each dollar owed – so the higher the ratio, the better the deal for the creditors.

A **committee of creditors** may also come up with a reorganization plan. These creditors can often be valuable sources. **Secured creditors**, such as bondholders, are more likely to get repaid some money than **unsecured creditors**, such as stockholders.

In some case, a company first negotiates a reorganization plan with its creditors, then files for bankruptcy court protection; this is called a **pre-packaged bankruptcy**.

Some bankruptcy court proceedings last for years, some for months. Stay on top of the case. Regularly check the docket in the case file.

Companies in bankruptcy court protection typically need what is called **debtor-in-possession financing**. These are typically loans from banks and other lenders, and each must be approved by a judge. Regularly check for these documents. They detail the hidden cost behind bankruptcy court.

When a company files for bankruptcy court protection, its assets are frozen.

- ◆ After the filing, there are hearings to decide whether a company can spend large amounts of money.
- ◆ There are always documents filed before the hearings. Get those, and you'll know what's going on.
- ◆ For example, a judge typically reviews how much a company in bankruptcy court is paying its executives and its attorneys.
- ◆ A judge may cut that pay if he or she thinks it's too much.

- ◆ Don't ignore these hearings regarding how a company is spending its money.
- ◆ There will also be hearings if a company in bankruptcy court wants to sell part of its operation to raise cash.
- ◆ The judge has to approve the transaction.
- ◆ The hearing for transactions often results in a bidding war there in the courtroom of the subsidiary has value.
- ◆ Check for bids in the case file before the hearing.
- ◆ A judge will also hold hearings about the reorganization plan if there is a disagreement between the company and creditors.
- ◆ And there will be hearings to approve the reorganization plan as well.
- ◆ Judge may not issue a ruling at the end of a hearing, but he will take testimony from attorneys and others.
- ◆ The final hearing can be the most important one because it means that the company is leaving bankruptcy court protection.
- ◆ Often, the company executives will attend, and you can grab them outside of the courtroom.

Bankruptcy court sources

- ◆ Lawyers, accountants, investment bankers, turnaround consultants and even company executives often receive millions of dollars in return for their services in helping steer the company through the bankruptcy maze.
- ◆ These groups of interested parties often clash with each other and the company during bankruptcy court proceedings. Therefore, it's important to understand what role they play in the process – and what information they can give a reporter.
- ◆ All bankruptcy cases are overseen by a **judge**.
- ◆ A U.S. bankruptcy judge is a judicial officer of the U.S. district court who is appointed by the majority of judges of the U.S. court of appeals to exercise jurisdiction over bankruptcy matters.
- ◆ The number of bankruptcy judges is determined by Congress. The Judicial Conference of the United States is required to submit recommendations from time to time regarding the number of bankruptcy judges needed.
- ◆ Bankruptcy judges are appointed for 14-year terms.
- ◆ Judges rarely talk on the record about pending bankruptcy cases.
- ◆ But if you get to know them, they often will tell you how they plan to rule on certain matters in a company case.
- ◆ Judges can also steer you in the right direction for stories.
- ◆ Sometimes, a judge will appoint a **trustee** to oversee a company filing.

- ◆ A trustee often will act in the same role as the CEO of a company.
 - ◆ A trustee can be assigned if creditors or others argue that the company management is unfit to manage its operations.
 - ◆ In some occasions, the trustee will object to something that the company wants to do.
 - ◆ **Attorneys** for the company, the creditors and other parties will crowd the courtroom during any hearing.
 - ◆ Find out who they are and check in with them regularly.
 - ◆ Attorneys representing creditors are more likely to talk than those representing the company.
 - ◆ Often, an attorney will be appointed to represent the creditor's committee.
 - ◆ This is the person who typically negotiates with the company on the reorganization plan.
 - ◆ Become this person's best friend. Call them repeatedly.
 - ◆ They often know what the reorganization plan will be before it is filed with the court.
 - ◆ The **clerk** of the bankruptcy court is often a good source as well.
 - ◆ Think about it. They have all of this juicy information, but no outlet for it.
 - ◆ They know all of the good filings.
 - ◆ Attorneys will call them and warn them when a big case is about to be filed.
 - ◆ Don't forget about the **people** at the company.
 - ◆ Once followed a car dealership bankruptcy case where the **owner** was my best source.
 - ◆ Other times, **employees** will be more than happy to discuss what's going on because they believe they're going to lose their job.
 - ◆ How do you find these employees?
 - ◆ Check Internet message boards.
 - ◆ Run a Google search of the company name and resume to see who's looking for a new job already.
 - ◆ Lexis-Nexis search of announcements of new employees or new employees at other companies who have left the company now in bankruptcy.
 - ◆ Two sources that you may not think about initially can be extremely valuable:
1. The judge's **clerk or administrative assistant** often knows what rulings are about to come down and what cases he or she has been reviewing.

2. The **court workers** who actually process the filings on a daily basis can tell you if anything juicy has come through that day. (Always check right before court closes at 4:30 p.m.)

Bankruptcy court resources

- ◆ All bankruptcy court districts have an online Web site.
- ◆ A list is available at http://www.bankruptcydata.com/Courts/Bankruptcy_Links.htm
- ◆ While few have actual documents available online, most do post the court dockets for each judge.
- ◆ The federal courts have a number of electronic public access systems available for business reporters.
- ◆ They include Voice Case Information System (VCIS), modem-based Public Access to Court Electronic Records (PACER), the U.S. Party/Case Index (USPCI), Internet access to dockets (which sometimes includes document imaging) (PACER/RACER), and Electronic Case Filing (ECF).
- ◆ Go here to find what you're looking for: http://www.bankruptcydata.com/Courts/Bankruptcy_PACER_Links.htm
- ◆ <http://www.bankruptcylawfirms.com/> is a nice resource of information, but is run by bankruptcy attorneys.
- ◆ There is some good background on the history of bankruptcy and an overview of the process.
- ◆ Also links to regional resources for each state.
- ◆ <http://www.uscourts.gov/bankruptcycourts.html> is the home page for the U.S. bankruptcy court system.
- ◆ It has statistics on the different types of cases filed by quarter and by geographic area.
- ◆ Also has samples forms so you can see what the filings look like.
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- ◆ The SEC also has a good site explaining the impact for investors of bankruptcy court filings on public companies.
- ◆ <http://www.sec.gov/investor/pubs/bankrupt.htm>
- ◆ SEC has limited role in bankruptcy cases, but will step in if it thinks that company filed for bankruptcy court protection to avoid securities fraud litigation.

The end

- ◆ Covering bankruptcy court is all about knowing what to look for and who to ask for the information.
- ◆ It's also about being in the right place at the right time and showing up for important hearings.