

Long Island BusinessNEWS

Making Bankruptcy Part of Your Growth Plan

By Claude Solnik

RONKONKOMA - When Atkins Nutrition-als Inc. filed for bankruptcy July 31, the troubled company actually trumpeted the move as "the final phase of restructuring." The low-carb diet firm already had a lot of its ducks in a row: It obtained \$25 million in financing, and lenders had agreed to reduce debt in return for equity.

In the words of Atkins CEO Mark Rodriguez, the company was downsizing and positioning itself "more broadly for consumers who are concerned about health and wellness."

Yes, there's risk and spin in practically every Chapter 11 filing. And experts estimate that only one in five firms that file for Chapter 11 reorganization actually reorganize and survive.

But many companies like Atkins are heading into Chapter 11 with a well-planned and even "prepackaged bankruptcy," in which they've worked out agreements with many or all parties and begun reorganization.

That's a big change from the fabled

rush to file to avoid the creditor's insistent, death-knell like knock at the door.

In Atkins' case, "a lot of the pieces were in place before they filed," explains Leslie Berkoff, a partner at Moritt Hock Hamroff & Horowitz in Garden City. "They had a game plan."

A filing gives a firm the right to abrogate leases and contracts and pay a percent on the dollar without the fear of lawsuits. A company may even be able to sell itself easier by shedding debt.

But a filing that includes financial planning and a view to the future is growing more common, experts point out. Bankruptcy is being used as a strategy rather than just as a way of carving up a company.

Some examples:

- Hearing Innovations of Melville had a reorganization plan in place when it filed for Chapter 11 last year.
- National Radiator in Mt. Vernon hammered out an agreement with unsecured creditors.
- Colad, a well-known printer up in Buffalo, went into Chapter 11 with a plan already in place to sell to a specific buyer.
- And among the giants, when K-mart filed, its plan included paying critical vendors, forestalling the danger of being cut off.

"If I have a message to get out to companies that are in distress, it's that the earlier you plan for the bankruptcy, the better the result," insists Jeffrey Wurst, partner and chair of the Financial Services, Banking and Bankruptcy Department at Ruskin

Moscou Faltischek in Uniondale.

In a "prepack" and deals like it, the troubled firm gets started on a road map toward reorganization before it files.

"When you go in, you take the process that can run months to years and shorten it," says Berkoff.

Planning and negotiation can lead to a "good bankruptcy," but reassuring people and spin as well as a financial strategy does matter, insists Berkoff. Wise firms fire off "rah-rah letters" explaining their strengths, especially if they deal directly with the public. Their suppliers matter a lot: "You send out one of those letters and hope people will buy into it," says Berkoff. "It's really the people you buy from that you have to worry about. You want them to have confidence to do business."

Business oxymoron

Does a successful bankruptcy sound odd? Here are some other business oxymoron courtesy of www.oxymoronlist.com

Almost done
Business casual
Calculated risk
Committee decision
Common sense
Corporate family
Exact estimate
Friendly competitor
Working vacation
Zero deficit