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COVID-19 AND BANKRUPTCY: WHAT YOU NEED TO KNOW

After the beginning of the COVID-19 pandemic, bankruptcy attorneys and lenders both assumed an increase in bankruptcy filings was on the horizon due to the financial troubles businesses and individuals experienced as a result of the pandemic. The prevailing logic is that filings increase approximately six month after an adverse economic event. While 2020 saw established businesses such as Brooks Brothers, JC Penny, and Neiman Marcus, to name a few, seek Chapter 11 relief, bankruptcy filings did not increase sharply towards the end of 2020 as was initially anticipated. This delay is likely, in part, attributable to relief legislation as well as the friendly posture lenders adopted in response to an unprecedented pandemic with harsh, widespread financial effects.

Looking forward, bankruptcy filings are expected to increase in 2021 and into 2022 as individuals and business lose the lifelines afforded to them in 2020 in the form of eviction moratoriums, government stimulus, and friendlier than normal lenders. Add those losses to the fact that the COVID-19 vaccine is not likely to be available until mid-2021, many individuals and businesses will find themselves in need of the protections afforded by the Bankruptcy Code. Hopefully, for both future debtors and their creditors, those filings will be reorganizations under Chapters 11 and 13 in an effort to absorb the detrimental financial effects of the pandemic as opposed to liquidations under Chapter 7. While the form in which financially distressed individuals and businesses will file bankruptcy is unknown, it is a safe assumption that filings will spike.

Creditors should be proactive in planning their response to the anticipated increase in filings and consider how best to protect their interests. An analysis of whether a business partner’s financial troubles were truly caused by the pandemic or whether that partner was struggling beforehand will assist creditors in reaching the most desirable outcome in an undesirable situation. For the debtors who were timely in their loan payments pre-pandemic, restructuring that debt and repayment schedule or offering forbearances may be advantageous for both the debtor and its creditor. On the other hand, for debtors that experienced difficulties before the effects of the pandemic were truly felt, creditors may have no other choice but to pursue more aggressive remedies.

These fact specific decisions creditors will face in the coming year are not easy and, in some instances, will have lasting effects. However, with proper planning and a full understanding of the remedies available to creditors under the Bankruptcy Code, lenders will set themselves up to emerge from the wave of bankruptcy filings in the best position possible under the circumstances. Johnston Allison Hord has expertise in representing and advising creditors who are faced with navigating the complexities of bankruptcy. Whether you already have a relationship with the firm, or whether you are seeking new representation, we invite you to reach out if you find yourself dealing with a party in bankruptcy.

If you are in need of council in regards to bankruptcy, contact a member of our **Creditors' Rights Group**.