

Avoiding the b-word: The many faces of financial restructuring

Guest column, Gavel to Gavel, [originally published in The Journal Record](#) on Mar. 11, 2015.



Clayton D. Ketter is a litigator whose practice involves a wide range of business litigation in both federal and state court, including extensive experience in financial restructurings and bankruptcy matters.

By [Clay Ketter](#)

The current price of crude oil is sure to make people use language that is inappropriate in polite conversation. As news of idled rigs, layoffs and credit defaults becomes a daily occurrence, the use of the b-word is sure to come up more and more. Of course, I'm referring to that nasty little 10-letter word, bankruptcy.

The stigma that once surrounded a bankruptcy filing has subsided as multiple high-profile companies such as American Airlines, General Motors and the Los Angeles Dodgers have entered the bankruptcy process and emerged as stronger, more viable businesses. Despite these successes, one group that has been gradually shunning the use of the b-word is, surprisingly, bankruptcy attorneys. Yes, the people most familiar with the ins and outs of the Bankruptcy Code, rather than announce themselves as bankruptcy experts, are instead asking to be referred to as financial restructuring specialists. This is particularly true for those attorneys that focus on businesses, as opposed to individuals, facing financial difficulties.

At first glance, it would appear that a rebranding effort is the motivation for this shift. Bankruptcy may suggest failure, death, layoffs and closings. Financial restructuring, comparatively, signifies repair and rebirth of a business. Although marketing has played a part, it fails to explain the whole story. The use of the phrase "financial restructuring" reflects the reality that debtors and creditors facing financial stress have many options at their disposal, not just bankruptcy.

Workouts, divestitures, mergers and asset sales are just some of the tools that a financial restructuring professional may utilize to assist debtors and creditors in resolving financial difficulties. Options also include a bankruptcy filing, whether it be a Chapter 11 reorganization or a Chapter 7 liquidation. However, a bankruptcy filing is not always the right choice. Depending on the circumstances, it often makes

sense to avoid the time and expense of a formal proceeding, and instead resolve matters out of court. The title of financial restructuring attorney reflects the fact that multiple options are available to address and repair economic trouble, not just bankruptcy.

Should crude oil prices remain depressed, we are certain to see the b-word used more frequently. However, it's important to remember that, depending on the circumstances, a more conservative approach may be better.