

With the correct tools, financially stressed firms can avoid bankruptcy

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Oklahoma bankruptcy litigator Steve Elliott, an attorney with Phillips Murrah, talks about dealing with market vulnerability and how to avoid bankruptcy.



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Q: There's a lot of talk about low oil prices and how it may affect the business community in Oklahoma. Do you foresee trouble?

A: While Oklahoma's economy is more diversified than it was

during past downturns in the oil and gas industry, it's hard to imagine current prices won't adversely impact the Oklahoma business community. Oil and gas is still the dominant industry driving the Oklahoma economy. When the oil and gas industry suffers, we all suffer. For example, some oil and gas companies have reportedly reduced their capital expenditure budgets, reported substantial losses, and are selling off assets. Service and drilling companies have announced major layoffs. Among other things, with increased unemployment, mortgage foreclosures are likely to increase. With a materially increased number of foreclosures, real estate values typically drop. If oil prices don't rebound soon, fallout seems inevitable. How bad the fallout may be depends largely on how debtors and creditors choose to address the current circumstances. In many instances, working together is likely to yield better results for both groups.

Q: If a company is experiencing financial stress, how can they avoid bankruptcy, and what is a "workout?"

A: In my experience, candid communication is often the key to avoiding bankruptcy and resolving financial issues through a workout. If a company is having trouble meeting its obligations, creditors want to know why, what is being done to address the situation and, ultimately, what their overall prospects for recovery are, both outside and through bankruptcy. A workout is an out-of-court process through which the parties try to reach an agreement to modify the terms of their original transaction. Workouts may involve debt forgiveness, and frequently involve changes in amortization, changes in interest rate, and changes in principal or interest payment due dates. The ultimate goal of the workout is to reach an agreement that puts the relationship on a footing consistent with existing financial conditions without the costs, delays and potential uncertainties frequently inherent in bankruptcy. If the workout would be as or more beneficial to both parties than a bankruptcy would be, bankruptcy can

often be avoided.

Q: What is the best course of action when considering restructuring?

A: Accept the reality of the situation quickly and address it rapidly. To do so, the company must know its current revenue and expenses, be able to credibly project future revenue and expenses, and reasonably quantify the current and estimated future value of its assets. Once the company has that information, a pragmatic approach to dealing with its liabilities can be formulated. Denial or inaction can result in a needless loss of value and potentially impair the reorganization alternatives that may have otherwise been available. Communication is also very important, and generally the earlier the better. The failure to communicate will often result in creditors assuming the worst and taking collection actions they might not have taken if the debtor had simply communicated appropriately. Once those collection actions have begun, the prospects of avoiding bankruptcy are frequently reduced.

Q: Under what circumstances is bankruptcy preferable?

A: The potential benefits of bankruptcy are wide-ranging. For example, the debtor and its assets are protected by the automatic stay, which stops collection efforts outside of bankruptcy court, and keeps a debtor and its assets from being picked apart piecemeal. Bankruptcy also provides the possibility of being able to rapidly sell assets free and clear of liens and over creditors' objections, which under some circumstances may be the only way to realize fair value of certain types of assets. Bankruptcy also provides the opportunity to bind creditors involuntarily to reorganization plans through which obligations are restructured and debt is discharged. This can be critical if efforts to put a workout together failed because some creditors refused or because there are too many creditors to deal with through a workout.

Court supervision of the debtor, its property, and its actions, and ready access to a judge, also tends to be viewed by most as a benefit of bankruptcy.