

Why Weinstein Company's Creditors Hired Bankruptcy Counsel

Since the onslaught of [sexual misconduct allegations](#) against Hollywood producer Harvey Weinstein, his film studio, The Weinstein Company, has wasted no time in firing its founder. Yet, the namesake studio has been unable to distance itself from Mr. Weinstein's bad press, and it is questionable how willing moviegoers will be to support anything associated with the toxic moniker. This has prompted speculation that bankruptcy is [looming](#).



Clayton D. Ketter is a Director and 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.

While The Weinstein Company has not filed for bankruptcy and denies any plans to do so, some of the company's debtholders reportedly have already retained bankruptcy attorneys. Why? At first glance, it may seem odd for creditors to hire bankruptcy counsel before a filing is even initiated. However, there are strategic reasons as to why early retention makes sense.

Often, a company facing financial pressure will attempt, prior to filing, to work with its largest lenders to craft a strategy that is mutually beneficial to all parties. Cooperation among debtors and creditors increases the likelihood of a successful bankruptcy and can significantly reduce associated attorneys' fees.

Even if the parties won't work together, bankruptcy counsel can provide vital pre-bankruptcy assistance to a creditor. It is normal for the debtor to file a number of pleadings on the day the bankruptcy is commenced or shortly thereafter. These typically include mundane items such as the authority to continue to use bank accounts, pay employees and employ legal professionals. However, it is also possible for significant relief to be requested as part of these first-day motions, including post-bankruptcy financing arrangements or even requests to liquidate assets. Having bankruptcy counsel at the ready and fully engaged allows a creditor to immediately respond to any such requests to ensure the creditor's rights are protected.

Should The Weinstein Company file bankruptcy, it is likely to begin with a motion seeking to liquidate its highly portable assets, which include its film library, and movie and television development projects. Those assets could be acquired by a rival studio and washed of the Weinstein name, thereby increasing the potential value. The Weinstein Company's significant creditors would want to ensure that they

won't get blindsided by a sudden bankruptcy filing and a first-day motion to sell. Their early retention of bankruptcy counsel will help prevent such a scenario from happening.

By Phillips Murrah Director [Clayton D. Ketter](#)

[Gavel to Gavel](#) appears in The Journal Record. This column was [originally published in The Journal Record](#) on November 16, 2017.

Clayton D. Ketter is a director and litigation attorney at [Phillips Murrah P.C.](#) who specializes in financial restructuring.