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Practice Update

Short-Term Liquidity Solutions Available in Chapter 11

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As the COVID-19 financial turmoil escalates, many businesses are asking themselves, “but for the virus, I had a profitable and successful business. What can I do to survive a short term liquidity crisis?” Businesses may be able to utilize a litany of remedies in Chapter 11 to assist in weathering the current, but hopefully, short lived recession.

- **The Automatic Stay:** A bankruptcy filing acts as an automatic injunction against all creditors and other parties from the continuance of litigation, actions against a company’s assets, or other collection remedies. If a company is at risk of self-help remedies, foreclosures, or other re-possessions or garnishments due to the COVID-19 crisis, implementation of the automatic stay may assist.
- **No Debt Service Payments:** A debtor is generally not required to pay pre-petition debts during the pendency of a Chapter 11 case.
- **No Prepetition Vendor Payments:** A debtor is not required to pay vendors or other providers of goods and services for amounts due prior to the filing of the case.
- **Delay Performance on Leases and other Contractual/Legal Obligations:** A debtor is not required to perform under leases of personal property for the first 60 days of the case, and that period can be extended for cause. For real

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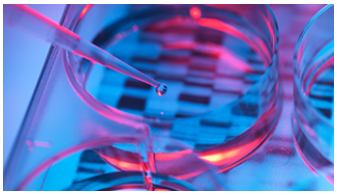

property leases, a court can extend the time to perform under them for up to an additional 60 days. For all other contractual and legal obligations, the bankruptcy code generally provides an automatic 60-day extension of any deadline under a contract or other legal requirement.

- **Sale of Assets Free of Disputed and Undisputed Claims:** The bankruptcy code allows a debtor to convey the highest marketable title by allowing the sale of assets free of any claims, liens, and encumbrances asserted by creditors or shareholders of the debtor.
- **Obtain Financing on a Super-Priority Basis:** The bankruptcy code allows a debtor under certain circumstances to obtain additional credit with favorable priming liens to potential lenders that would prime all existing debt. This is often a material condition for any lender to advance credit during a substantial recession where capital availability is limited.
- **Expedite Ownership Disputes over Disputed Assets:** Bankruptcy proceedings typically allow for expedited adjudication as to a company's legal and equitable rights into any disputed property.
- **Estimate Disputed, Contingent, or Unliquidated Claims:** Chapter 11 also allows a debtor to estimate disputed, contingent, or unliquidated claims in summary proceedings to effect a reorganization and avoid potential costly and lengthy litigation.
- **Turnover of Property:** Chapter 11 grants debtors the ability to obtain court assistance in obtaining the immediate turnover of debtors' property in the possession of a third party.
- **Single Venue to Resolve All Disputes:** Chapter 11 generally allows debtors to reconcile all claims by or against a debtor in a single venue.
- **Bankruptcy Courts are Courts of Equity:** Bankruptcy Courts are courts of equity and are given broad powers to assist as needed in a company's restructuring and survival. Debtors, in

this financial environment, will find sympathetic courts that will strive to assist a troubled company during these extraordinary times.

- **How to Exit Chapter 11:** Once filed, and if the COVID-19 storm can be weathered, then exiting chapter 11 quickly should be a viable option. Courts recently have adopted a concept called "structured dismissal." It allows the debtor to obtain the relief it needs during the case, and then rather than go through a formal plan process the debtor merely dismisses its case. Here, the debtor may be able to take advantage of some of the short term relief, weather the storm, so to speak, and then dismiss the case. Alternatively, under a plan, a debtor can restructure its debts or otherwise reinstate them, and then confirm its plan and exit. Either way, courts should be willing to give debtors the runway they need in these extraordinary times, and Akerman's bankruptcy lawyers would expect courts to be open to novel ideas and relief as the country is facing new challenges not seen in years past.

Akerman's restructuring attorneys are available to meet with you to discuss whether Chapter 11 is an option that can address your financial difficulties in these trying times.

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