

Legal Issues in Times of Distress

by Shelly A. DeRousse and Elizabeth L. Janczak

A FREEBORN & PETERS LLP CLIENT ALERT

Every business, big or small, has been and will continue to be affected by the extraordinary governmental restrictions on commerce and travel, including businesses in the retail, mortgage lending, rent collection and enforcement, restaurant and other related spaces. Businesses are facing financial and logistical problems which have occurred through no fault of their own and will be making material decisions quickly.

With such an ever-evolving crisis, businesses need trusted experts to for rapid and reliable advice.



Freeborn & Peters' Restructuring Team can assist you in navigating through these unprecedented times. The choices you make today will affect the success of your business into the future. We can help.

How do we survive cash flow issues?

The COVID-19 restrictions will impair cash flow for many businesses. Even businesses in the few fortunate industries with increased sales cannot avoid potential supply chain issues and slow collections from customers. The majority of industries will not only see slowed collections, but will also see declining sales and service demands, increased expenses for supplies and payroll, and decreased productivity of employees who are working remotely, ill, or quarantined.

Our Restructuring Team can help you work with your lenders, landlords, and vendors to address your cash flow difficulties so that you may establish temporary payment terms which will work with your business' income.

How to collect from our business' customers and clients?

As a vendor or service provider, your customers and clients are experiencing their own cash flow issues, which will, in turn, affect your ability to collect from those customers and clients. Our Restructuring Team can help you negotiate with your customers and clients and protect your business interests. Establishing alternative payment terms will not only maximize your collections under the circumstances, it will help you more accurately budget your projected income.

How can we negotiate a forbearance with our lender or bank?

Various state and local governments have imposed shutdowns and travel and employment restrictions may impair your business' cash flow to the point of inability to service your loans. Lenders and banks have their own cash flow concerns, but ultimately do not want their customers to go out of business when the cause is out of the business' control. Our Restructuring Team can help you negotiate a forbearance or workout with your lender or bank which would work with your cash flow, while giving assurance to your lender or bank that your business will survive this crisis.

Shelly DeRousse, the leader of our Restructuring Team, has spent years representing banks, financing companies, and other lenders in distressed situations, bankruptcies, and out of court workouts. She also has represented business clients across many industries in negotiating deals with their lenders, ultimately leading to the survival of their distressed businesses.

What will the impact be of our customer's bankruptcy filing?

One thing restructuring professionals agree on is that the COVID-19 pandemic will result in an increased volume of bankruptcy filings-both chapter 7 liquidations and chapter 11 restructurings. Some businesses will not survive. Others will attempt to shed debt and reorganize.

Our Restructuring Team has extensive experience representing creditors in bankruptcy court. Over the past five years, Freeborn has been retained by more official committees of unsecured creditors appointed in the Bankruptcy Court for the Northern District of Illinois than any other firm. Freeborn also represents creditors' committees throughout the country. If you receive a notice that your business is one of the largest creditors of your customer's bankruptcy case, our Restructuring Team can help you apply to be appointed to the creditors' committee.

Freeborn can help you assert your rights as a secured or unsecured creditor by utilizing the Bankruptcy Code and underlying state law remedies to maximize your ability to recover against a bankrupt company, including negotiating post-bankruptcy pre-payment terms or status as a critical vendor, seeking modification of the automatic stay, asserting administrative expense claims, and other remedies.

Is chapter 11 bankruptcy the right option for our business?

Many businesses will not be able to survive the fallout from COVID-19 pandemic without help. Chapter 11 of the Bankruptcy Code contains powerful tools which can not only allow your business to withstand the crisis, but can be used to restructure your business, reject unprofitable contracts and leases, and discharge debt so that your business thrives into the future.

Chapter 11 plans are unique to each company's needs and challenges. Our Restructuring Team can counsel you on protecting your own business and educate you on the ways that chapter 11 could be used to improve the viability of your business in these challenging times.

This is a rapidly evolving situation, so stay tuned for more developments on [Freeborn's COVID-19 webpage](#). If you have questions, please contact Shelly DeRousse and Elizabeth Janczak.

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Shelly has extensive experience in the areas of bankruptcy, reorganization, litigation and asset sales. As lead counsel, Shelly has represented official creditors' committees throughout the country in chapter 11 bankruptcy cases. Additionally, she represents companies and high earning individuals in their restructurings or workout negotiations with their lenders and other creditors.



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Liz has represented creditors' committees, debtors, post-confirmation trustees, and creditors in a variety of chapter 11 proceedings including section 363 sale transactions, chapter 11 plan confirmation, executory contract litigation, breach of fiduciary duty litigation, and various chapter 5 avoidance actions.

140+ Attorneys. 5 Offices.

Freeborn & Peters LLP is a full-service law firm with international capabilities and offices in Chicago, Ill.; New York, Ny; Richmond, Va.; Springfield, Ill.; and Tampa, Fla. Freeborn is always looking ahead and seeking to find better ways to serve its clients. It takes a proactive approach to ensure its clients are more informed, prepared and able to achieve greater success – not just now, but also in the future. While the firm serves clients across a very broad range of sectors, it has also pioneered an interdisciplinary approach that serves the specific needs of targeted industries.

Freeborn's major achievements in litigation are reflective of the firm's significant growth over the last several years and its established reputation as a Litigation Powerhouse®. Freeborn has one of the largest litigation departments among full-service firms of its size – currently with more than 90 litigators, which represents about two-thirds of the firm's lawyers.

Freeborn is a firm that genuinely lives up to its core values of integrity, effectiveness, teamwork, caring and commitment, and embodies them through high standards of client service and responsive action. Its lawyers build close and lasting relationships with clients and are driven to help them achieve their legal and business objectives.

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