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Communications Considerations and Lessons from the "First Wave" of Restructurings Amid COVID-19

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The restructurings commenced between March 15 and June 30 by companies with $1 billion or more in debt represent a "first wave" of filings that present an opportunity to take stock of lessons learned. This initial group of companies from across the consumer, retail, travel and energy sectors that filed for Chapter 11 protection included those that had significant debt loads or other financial challenges pre-dating COVID-19. The business deterioration due to the pandemic, in essence, accelerated their previously existing process and paths to bankruptcy court. The anticipated "next wave" of filings, even more directly tied to COVID-19, are on the way. In some cases, the restructuring situations to date present somewhat new, and, in other cases, amplify existing communications challenges for companies and advisors to consider as the current restructuring cycle advances.

1. Prepare for a faster pace of distress "triggers"

A major challenge posed by the COVID-19 environment has been the rapid deterioration of business conditions leading up to the bankruptcy filing. This, in turn, significantly speeds up the progression of the visible "distress" indicators and triggers that presage an in-court or out-of-court restructuring. These triggers include retention of restructuring advisors, change in payment terms to vendors, de-listings, earnings warnings, ratings downgrades, employee furloughs or reductions, issuance of WARN notices and DIP loan negotiations, among others. Companies must very quickly put in place a communications plan that includes company response statements, approaches for handling media inquiries on-the-record and on-background and strategies for handling employee, customer and vendor concerns. This planning is core to establishing that companies are working with their stakeholders to manage their businesses and financial challenges. Media speculation is quick to build, and reporters will often corral lenders, vendors and others as sources. A good communications plan enables the company and advisor team to move quickly and mitigate the risk of losing control of the narrative.

2. Trade-off of COVID-19-causality with management control

Notwithstanding the impact of COVID-19 on companies' business circumstances, companies must set the tone before and throughout the restructuring, making clear that management and the board are in control of the process and are working with lenders and other stakeholders to navigate the pandemic in the context of solving the financial challenges for the long term. Firms with preexisting capital structure issues, in particular, should carefully consider the messaging balance between emphasizing the disease and its macroeconomic effects, and clarifying that there has been a process previously underway to address the capital structure. To be sure, there will be a significant population of companies in the future for which COVID-19 will be the driving factor precipitating the bankruptcy, however, companies should understand the nuance between "COVID-19 as accelerant" of a prior process and "COVID-19 as direct cause." Managements and boards must adapt communications strategies that project having control over a tumultuous process under these extraordinary circumstances and convince employees, customers, suppliers and media that companies have a plan to adapt their businesses and emerge, especially when so much remains unknown about the path of the virus and when the economy will fully rebound.

3. "Normal course business" is not currently "normal"

Projecting that operations will continue in ordinary course is among the most important messages during an in-court restructuring. But the pandemic poses a unique challenge: at the time of commencing a bankruptcy, many companies will have been operating at significantly decreased capacity, with furloughed or reduced employee bases, closed locations, significantly delayed payments to suppliers and landlords and having made other liquidity-enhancing moves. In some locations, companies may have reopened with social distancing measures in place, and in others, this return to "normal" may still be far off. Thus, "normal" or "ordinary course" language won't suffice. Companies will need to reassure stakeholders about how they intend to proceed under current conditions and provide convincing messaging about how and when they plan to return to regular operations. Companies should describe their "normal course" as the explanation of how the in-court restructuring process will allow them to *continue to implement* their business resumption plans, including reopening facilities or reactivating employees. To help get that message across during the in-court process, companies should consider how to sequence, combine or separate communications about store re-openings or other business recovery developments from updates on the legal aspects of the restructuring, such as lease rejections or planned asset sales. There is a discernable art and science to determining whether, when and how to sequence communications to various stakeholders within and across the various business and restructuring milestones.

4. Leave no stakeholder group unturned

Special attention must be given to how communications will be rolled out to certain stakeholders because normal channels may not be available or new working conditions may create hurdles. For example, furloughed employees may not have access to company emails or intranets. Town halls may become too challenging to orchestrate if there are too many employees working from home for a video conferencing service to handle. And teams that engage with vendors and suppliers need to ensure they are aligned on the messaging they need to deliver now that they are working apart from one another at home. Companies must adapt their communications processes to ensure they can achieve desired outcomes. For example, use of CEO video messages and other digital channels are an important means for covering disparate audiences.

One other important lesson for consumer-facing businesses undergoing restructurings has been the importance of proactively addressing a bankruptcy with their consumers. In more traditional periods, out of a concern that a restructuring will damage the brand, companies may opt to curtail discussing the restructuring with customers. In today's environment, companies must proactively reach the consumer community through email and social media channels and prepare to adjust and respond to questions around customer programs, gift cards, etc. Explaining the details of "the B-word" is critical, and making sure customers understand what is happening outweighs the risk of consumers changing their behavior due to confusion on the company's future.

5. Close coordination between communications, legal and financial advisors is always key

Communications planning must entail close coordination between communications, legal, financial and restructuring advisors. The speed at which restructurings are moving, combined with the practicalities of working completely remotely, pose a challenge to these situations. The message to the marketplace must match the content of the declarations and other legal filings so reporters see no daylight between the two. Statements must protect the company's position in lender negotiations. Vendors must hear a unified message from across the company. Journalists developing speculative stories need to have guidance to make sure they report accurately. All of this requires a unified effort to ensure that communications support all aspects of making a successful restructuring come together.

A deliberate and thorough communications strategy is important in any restructuring. But the COVID-19 pandemic has introduced and amplified challenges that highlight the need for careful communications planning as part of the overall restructuring effort.

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