



U.S. Bankruptcy Courts Adjust to Business Unusual; Debtors Seek to Use Chapter 11 to Mothball Operations and Minimize Expenses Pending Lift of National COVID-19 Shutdown

What effect is COVID-19 having on the administration of bankruptcy cases in the United States?

Bankruptcy courts across the U.S. are taking steps to balance public health concerns while providing as much crucial access as possible to parties seeking bankruptcy relief. Generally, the bankruptcy courts remain “open for business,” adopting procedures to balance public health concerns with ensuring parties are able to obtain the relief they need.

The measures adopted vary by jurisdiction. Almost universally, bankruptcy courts have implemented rules mandating that all proceedings be conducted telephonically and/or by video, and issued restrictions for in-person access. Many bankruptcy courts have entered orders continuing matters for a period of time, or limited proceedings to emergency matters. For the three busiest commercial bankruptcy venues, the Southern District of New York, the District of Delaware and the Southern District of Texas, hearings remain as scheduled with limited changes to normal court operations (e.g., telephonic or video appearances; “non time sensitive” matters may be continued).

In tandem with the development of flexible court procedures, Chapter 11 debtors are seeking novel forms of relief to address the financial and operational stress wrought by COVID-19. For example, we have seen a recent surge of debtors requesting the extraordinary relief of orders suspending in abeyance or “mothballing” the Chapter 11 proceedings for various periods, to address issues stemming from governmental orders directing the closure of “non-essential businesses.”



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The following cases highlight the extraordinary relief sought by debtors to address business challenges from COVID-19 and how bankruptcy courts are administering their requests:



Modell's Sporting Goods filed for Chapter 11 in the District of New Jersey in early March 2020 with plans to liquidate its remaining 134 stores. Initially, Modell's was optimistic that store closing sales would finish by mid-April. However, Modell's plans were derailed by government-mandated shutdowns, making store closing sales impossible. These circumstances led Modell's to file a motion seeking an order ceasing operations and deferring expenses through April 30, 2020. On March 27, 2020 the Bankruptcy Court granted Modell's motion. Modell's represented that it will "reoperationalize after COVID-19 abates," but did not offer further details. On April 13, 2020, certain landlords appealed the Bankruptcy Court's Order temporarily suspending Modell's Chapter 11 cases. On April 20, 2020, Modell's filed a notice with the Bankruptcy Court seeking a further suspension of its Chapter 11 case through and including May 31, 2020, subject to further extension. The company represented that various state and local orders "continue to prevent the Debtors from conducting retail sales at their various locations." On April 30, 2020, the Bankruptcy Court overruled 22 objections filed by 44 landlords controlling 53 of the company's 134 remaining stores and extended suspension of the Chapter 11 cases to May 31st.



On March 20, 2020, CraftWorks Holdings (Logan's Roadhouse, Old Chicago Pizza & Taproom) filed a motion in its Chapter 11 case in the District of Delaware for a sixty day "breathing spell," or to implement mandatory meet and confer procedures prior to parties filing pleadings. On March 23, 2020, Bankruptcy Court Judge Shannon stated that the Court was not inclined to grant the request, because the "burden on the creditors [was] . . . too great," and instructed the parties to fine-tune the procedures. Thereafter, on March 30, 2020, Judge Shannon granted the motion for temporary case procedures that limit the procedures available for creditor relief while the debtors mothball stores in light of COVID-19.



On March 8, 2020, Art Van Furniture filed for Chapter 11 in the District of Delaware to implement a private sale of 44 stores and two distribution centers, and conduct going-out-of-business sales at the remaining locations. On March 24, 2020, Art Van declared that decreased foot traffic caused by COVID-19 prompted the buyer to walk away, and government-mandated shutdowns halted its going-out-of-business sales. On March 26, 2020, Art Van announced that it would seek an order putting its operations in "stasis" or "life support mode" for several weeks. However, on March 31, 2020, Art Van notified the Bankruptcy Court that it may instead need to convert the cases to chapter 7, because it could not reach an agreement with its prepetition ABL lender on terms for mothballing operations due to its cash needs and projected recoveries. On April 6, 2020, the Bankruptcy Court granted Art Van's motion to convert their cases to Chapter 7.



On February 17, 2020, Pier 1 filed for Chapter 11 in the Bankruptcy Court for the Eastern District of Virginia to facilitate a sale process through a Chapter 11 plan, and implement a plan support agreement with an ad hoc term lender group. At its first day hearing, Pier 1 obtained Bankruptcy Court approval of bid procedures for a sale of its assets with a bid deadline of March 23, 2020. As the impacts of the COVID-19 pandemic mounted, Pier 1 announced nationwide store closures effective March 27, 2020. Thereafter, Pier 1 cancelled its auction and worked with its lenders and creditors' committee on a best path forward for the cases. On March 31, 2020, the Debtors filed a motion seeking authority to pay only specific budgeted "critical" expenses and adjourn all motions for payment of other administrative expenses and stay relief for an unspecified "limited operation period." The Bankruptcy Court approved the motion on April 2, 2020, imposing the relief requested for a period of at least 26 days (renewable thereafter at monthly status conferences at which creditors could object). On April 28, 2020, the Bankruptcy Court granted Pier 1's request to keep its Chapter 11 cases on pause until May 31st, even though landlords representing more than 50 store locations objected to the extension based on a continued lack of rent payments.



On April 13, 2020, True Religion Apparel filed for Chapter 11 in the District of Delaware for the second time in less than three years, unable to weather the effects of the coronavirus pandemic on retailers. The company reported that it had a 80% decline in revenue "practically overnight" due to the COVID-19 pandemic, resulting in all of its stores being closed and 92% of employees being furloughed. True Religion entered bankruptcy without a sale or restructuring transaction lined up. Rather, the company is seeking to temporarily "mothball" its stores in light of COVID-19. On May 6, 2020, the Bankruptcy Court will hold a hearing on True Religion's motion for authority to defer lease payments for 60 days and install temporary case procedures that would govern, among other things, rejection of executory contracts and unexpired leases and certain relief available to creditors for an interim period of at least 30 days, subject to further extension. True Religion's motion is heavily contested by multiple groups of landlords.

Bankruptcy courts continue to work creatively to afford access to necessary relief as government shutdowns, tightened capital markets and volatility disrupt the marketplace. In Chapter 11, more debtors are likely to consider pausing their Chapter 11 cases to weather the storm. As stakeholders and bankruptcy courts grapple with the long term ramifications of approving novel and extraordinary relief, Goodwin's Global [**Financial Restructuring Group**](#) is guiding stakeholders through the benefits and impacts of Chapter 11 relief in a time of economic crisis.

Contact Us

Each situation is fact intensive, and we stand ready and able to help you think through issues and position you for the best possible outcome.

Financial Restructuring



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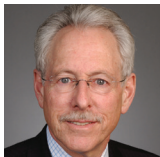
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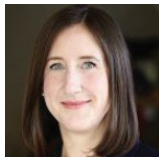
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