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In Tough Economy, Assignments in Lieu of Bankruptcy Could Grow

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Evelyn Meltzer, a partner in Troutman Pepper’s Financial Restructuring + Insolvency Practice Group, was quoted in the January 12, 2023 *Legal Dive* article, [“In Tough Economy, Assignments in Lieu of Bankruptcy Could Grow.”](#)

Legal leaders at companies considering bankruptcy might look at pursuing an assignment for the benefit of creditors (ABC) instead, Evelyn Meltzer, an insolvency specialist with Troutman Pepper, told *Legal Dive*.

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“Directors and officers are basically able to walk away from the financially distressed entity, knowing there’s someone there to ensure the company is properly wound down,” Meltzer said.

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“Time is a big factor in why you save money,” said Meltzer. “But also, in a bankruptcy, you can’t do anything without filing a motion with the court to get approval. The [fiduciary] can simply sell the assets, and you don’t have all the same parties; there’s no official committee of creditors, for example, or no U.S. trustee, which also keeps down the cost.”

Meltzer recommends the company work with outside insolvency counsel to identify a fiduciary, known as an assignee, in cooperation with their secured lender. The lender must be on board with the assignee and how the pricing is set, among other things, so it will release its lien, making the assets most attractive to buyers.

“No one is going to buy assets subject to someone else’s lien,” she said.

...

“The fiduciary has the responsibility to maximize value,” she said.

In Delaware, where Meltzer’s practice is based, the assignee is required to solicit asset pricing estimates from two appraisers and post a bond for the amount of the highest appraisal. That reassures parties about the pricing and demonstrates that the assignee stands behind the deal.

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“You’re looking for someone who has experience marketing assets, conducting a commercially reasonable sale for the assets and is familiar with the ABC process,” she said.

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“People often wait too long to call,” she said. “They’re really at the 11th hour, so there’s not a lot of time left for planning.”

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