

Who Is the Debtor?

Creditor's Rights Toolkit

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This article discusses the leverage and incentives that a debtor has in a Chapter 11 Case.

The debtor is the entity that files for Chapter 11 bankruptcy and is the central player in a Chapter 11 case. The debtor sets the goal of the Chapter 11 case, such as whether to pursue a sale process, a plan of reorganization, or a plan of liquidation.

KEY ISSUES

DEBTOR-IN-POSSESSION

Typically, in a corporate Chapter 11, the debtor will act as a “debtor-in-possession,” meaning that the debtor will retain control of its business and will lead the administration of the Chapter 11 case. Debtors-in-possession are granted significant powers in a Chapter 11 case, such as the ability to assume or reject contracts and leases. In rare cases (for example, in cases involving fraud by the debtor), a Chapter 11 trustee is appointed and takes control of the debtors’ assets and business, as well as case administration.

JOINT ADMINISTRATION

Often when one corporate debtor files for Chapter 11 bankruptcy, parents, subsidiaries, or affiliates will also file. Each of these co-debtors initiates its own, separate Chapter 11 case. To simplify logistics, debtors will often file motions for joint administration, which are routinely granted by bankruptcy courts. Joint administration allows for all pleadings across all co-debtor cases to be filed on one of the co-debtor’s (called the “lead debtor”) docket. Joint administration is solely a procedural phenomenon — each debtor retains its own assets and liabilities, separate from its fellow co-debtors. For creditors, this is critical because, despite joint administration, claims must be filed in case of the debtor against whom the creditor has a claim (which may not be the lead debtor).

PLAN EXCLUSIVITY

Under the Bankruptcy Code, the debtor has the exclusive right to file a bankruptcy plan for the first 180 days of the case. This time period can, and typically is, extended (up to a maximum of 300 days). This exclusive period grants the debtor significant leverage in determining the ultimate outcome of the bankruptcy case, such as whether to pursue a marketing and sale process to sell the debtor’s assets, or a plan process.

TAKEAWAY

There are many players in a Chapter 11 bankruptcy case, but none more central than the debtor. If a business partner files for bankruptcy, it is important to have experienced bankruptcy counsel who understands the leverage and incentives that a debtor has and how best to navigate the contours of a Chapter 11 case.

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