

## CHAPTER 11 BANKRUPTCIES

Chapter 11 bankruptcies are on the rise, and many expect that trend to continue. In the third quarter of 2008 there were 70% more Chapter 11 filings than in the third quarter of 2007, according to Automated Access to Court Electronic Records, a company that tracks bankruptcy statistics. Experts are predicting a record number of corporate bankruptcies – from large public companies to small local-only businesses – in 2009, and possibly beyond. With corporate bankruptcies becoming more common, businesses leaders across all industries are wondering: What exactly *is* a Chapter 11 bankruptcy, and how does it affect my business when a customer/vendor/competitor files for bankruptcy? This article is intended to help you understand the Chapter 11 process and answer some of your business bankruptcy questions.

### Some Fundamentals

In brief, Chapter 11 is a tool that companies facing financial distress may use to hold their creditors at bay – at least temporarily – and

to reduce and restructure their outstanding debt. (The name, “Chapter 11,” comes from the chapter within the federal bankruptcy laws that applies to corporations and other businesses that go into bankruptcy and seek to continue operating through the process.) A Chapter 11 case starts with the company, generally referred to as “the Debtor,” filing a petition for relief or “Petition,” in a federal bankruptcy court. The Petition is analogous to a lawsuit entitled, “*Debtor v. All of Its Creditors.*” It initiates a legal proceeding that brings all of the Debtor’s creditors into one forum where all the creditors’ claims against the Debtor can be addressed. One important difference between a bankruptcy petition and a regular lawsuit is that the Debtor receives *immediate* relief from its creditors after filing the Petition. (In a regular civil case, a plaintiff has to prove its case before getting any relief from the judicial system.) This immediate relief is commonly known as “the Automatic Stay,” or simply “the Stay,” among bankruptcy practitioners.

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## Management of the Debtor

In a Chapter 11 case, the Debtor's current management remains in place after the Debtor files its Petition. Contrary to popular belief, the Court does not appoint a trustee to take over the Debtor's business when a Chapter 11 is filed. Management continues to run the day-to-day operations of the Debtor and to plan the Debtor's long-term business strategy. Management of a closely held company is probably not accustomed to the kind of outside scrutiny and public disclosures required by the Chapter 11 process. For example, a Debtor must file operating reports in the public record that show its monthly revenues and expenditures – including salary information for key employees. The Debtor also has to disclose information about its business plan. Importantly, the Debtor's management will periodically be asked to justify why the Debtor should continue as a going concern instead of having its assets sold to the highest bidder and using the sale proceeds to pay its creditors.

If you would like to learn more about the Chapter 11 process or legal terms and issues that are common to Chapter 11 bankruptcies, please visit [www.louisianalawblog.com](http://www.louisianalawblog.com). The Blog contains several general-use, educational articles that may be helpful, but that do not constitute legal advice. Please consult an experienced bankruptcy attorney for advice about how best to address particular situations your business is currently facing, or may soon face.



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