

Ken: What kind of business situations would make for a good Chapter 11 bankruptcy filing?

Jon: The most typical Chapter 11 business filings are the companies that are so burdened by debt, that if they could reduce their debt, they could otherwise run properly. In other words, the type of businesses that are just running deficit because business has just slowed down to the point that they cannot operate anymore, probably won't make it. However, those that are just burdened by the ongoing bank debt service payments can be helped by Chapter 11.

Ken: So there are some different circumstances that would make bankruptcy appropriate for these companies?

Jon: The types of Chapter 11 bankruptcies that we see in the news have their own sets of circumstances that make bankruptcy filing more appropriate in different situations.

Ken: One of the most well known bankruptcies recently was General Motors. They did it, are out of it, and it was quick. Why did they file for bankruptcy?

Jon: GM was in a situation where they needed more money to reorganize and operate. The United States taxpayer was going to put in money, but it was a "bad money after good" situation. By going through the bankruptcy procedure, the U.S. taxpayer received essentially full ownership of the company in exchange for putting in more money. That cannot be done without the agreement of all creditors, which is very difficult to do, or through the bankruptcy process.

Ken: Does bankruptcy sometimes make it easier to get financing?

Jon: It does. For example, let's say that there is a large company that has \$50 million dollars worth of debt. If you want to lend money to that company, you have to consider the debt that they already owe. In a Chapter 11 bankruptcy, you are often put first in line. So, when you look at a company that might be perfectly fine to put \$1 million in, it is fine as long as you are not behind the \$50 million that came before you.

Ken: A high profile bankruptcy in this area would be the Phoenix Coyotes. Tell us what your feelings are about that.

Jon: It is definitely an interesting case. Many teams get bought and moved to different cities without a bankruptcy filing. The main reason behind the bankruptcy filing in this case was because of the lease of the arena. In a bankruptcy filing, you can cancel executory contracts. These are contracts that have not been completed yet, like leases. In the case of the Coyotes, one of the most appealing things to the buyer was the ability to use bankruptcy as a tool in order to cancel the lease on the arena.

Ken: Another local story was Basha's. They were talking about union problems as one of their reasons for bankruptcy.

Jon: This is a similar thing. Bankruptcy protection is used by a company in order to change contracts. This is an example of a labor contract. Chapter 11 allowed Basha's to close several stores and also gave them a lever to negotiate a better deal with the unions.

Ken: If you are in bankruptcy and you decide that you would just like to sell and get out of it, is that possible to do?

Jon: It is possible. A lot of times, it is even easier to sell a company that is in bankruptcy. Although you can buy a company through a traditional asset purchase agreement, bankruptcy will allow you to get a "free and clear" sale. So, if you are the buyer of the business, often times you would like it to go through the bankruptcy process so you can buy it without all of the liabilities it had before it went through bankruptcy.

Ken: Here is the website to jot down and check out today: [www.discreetbk.com](http://www.discreetbk.com)

Jon: You can also call us at (480) 295-3470