



TEXAS A&M UNIVERSITY

School of Law

"TAMU Law Answers" Webinar Series

LEGAL ISSUES IN THE AGE OF THE CORONAVIRUS

"One Without the Other? – During the COVID-19 Pandemic, Distressed Businesses Need Both Effective Legal and Communications Strategies"

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Panelists:

- J. Machir Stull, Partner, Cantey Hanger L.L.P.
- Wayne Barnes, Professor of Law, Texas A&M University School of Law
- Steve Montgomery, President, MontgomeryGR
- Moderator: William Magnuson, Professor of Law, Texas A&M University School of Law

While the panelists are attorneys, they will be discussing the law generally, and nothing in the webinar should be considered as legal advice. Attendees should consult their own legal advisor to address their own unique circumstances.

TRANSCRIPT of webinar video available at <https://youtu.be/hC4u-c9fEmY>:

- All right, well, let's go ahead and get started. Good morning, and welcome, everyone, to Texas A&M School of Law's webinar, "Effective Legal and Communication Strategies for Distressed Businesses." This is part of [TAMU Law Answers Legal Issues in the Age of Coronavirus Webinar Series](#).

Texas A&M School of Law has been putting these on for the last several months. We have included topics such as "Navigating the Waters of Business Bankruptcy," "Minority and Women-Owned Business Enterprises," "Implications for Housing," "Commercial Real Estate," "Bankruptcy," "Small Business Incentives." All of these webinars and videos of them are available at TAMULawAnswers.info. You can find them there.

Today we'll be discussing how to craft an effective legal and communication strategy if you are a distressed business in this time. And so I want to, before we begin by introducing the panelists, I wanted to start with a disclaimer. While the panelists are all attorneys, they will be discussing the law generally. And nothing in the webinar should be considered legal advice. Attendees should consult their own legal advisor to address their own unique circumstances.

I should also say that if you have questions during the course of this webinar, please put them into the Q&A box in your Zoom section. And we will attempt to answer them. We will leave some time open for questions at the end of the session. So let me begin by introducing our panelists.

So first, we have Machir Stull, who is a partner at Cantey Hanger LLP, where he focuses on corporate restructurings, distressed businesses, 363 sales, and creditors rights, as well as assisting businesses with a wide variety of other matters, including advising on mergers and acquisitions, and serving as a general outside corporate counsel.

Steve Montgomery is the president of Montgomery GR, which provides states and local government relations, public affairs, and strategic communications services to clients across North Texas. And finally, we have Wayne Barnes, who is a professor, a colleague of mine at Texas A&M Law School. Wayne is an expert on bankruptcy, consumer law, contracts, and secured transactions. I'm William Magnuson, I am also a professor at Texas A&M Law. I focus on corporate and M&A Law.

So let's start by opening up with a discussion from Machir. Machir, could you tell us a little bit about the landscape of distressed businesses and the challenges companies are facing today?

- Sure. Thank you. Good afternoon. My name is Machir Stull. And as just said, I'm a lawyer at Cantey Hanger in Dallas. And I focus on bankruptcies. And today I'm going to talk a little bit about the state of the economy and the current bankruptcy activity that we're seeing across the country.

Recently, I was chatting with a colleague in the bankruptcy bar that described the current crisis as sort of the dot.com, the 2008-2009 recession, and the S&L crises all rolled into one. And really that was because this spans all industries for the most part. And very few industries have come out of this unscathed.

That being said, I think you can kind of put the folks have been impacted by this into a couple of buckets. One bucket of companies that have been really impacted by that COVID pandemic has been oil and gas and travel related industries. Here, I think geopolitical forces probably pushed down on oil and gas prices. And then you had to reduced travel caused by all the COVID lockdowns. And so we've seen a bunch of those recent bankruptcy filings.

Examples are Bruin E&P, Denver Resources, and I think you can even put in the Latin American Airlines that filed recently up in New York. Historically, New York and Delaware were really the favorite jurisdictions for bankruptcies. Recently, it's really been-- the activity hotbed has been

down in Houston, largely because of some debtor-friendly procedures put in place down there, as well as some great bankruptcy judges on the bench.

With regards to oil and gas, Haynes and Boone, the law firm, has an [oil and gas bankruptcy tracker](#). They recently wrote that the recent resurgence of confirmed COVID-19 cases in the U.S. and abroad would indicate that any near-term sustained demand growth is unlikely to prop up world oil prices higher. And they further speculated that until the consumer confidence returns and the pandemic is over, demand and prices will remain depressed.

So that's kind of the first bucket. The second bucket, I think, is the retail and restaurant industries. Before all of-- before COVID hit, you had the Amazon effect. A lot of retailers in particular were really struggling, dealing with the brick and mortar, and how do they modernize their businesses. And then COVID came, and it was just kind of a double whammy with the headwinds they were facing.

These companies include Tailored Brands, which is the umbrella for Men's Wearhouse and Jos A Bank. It includes NPC or National, which is a large Pizza Hut and Wendy's franchisee, and even Stein Mart, which recently filed in Florida to liquidate. The CEO of Stein Mart just came out and said, "The combined effects of a challenging retail environment, coupled with the impact of the coronavirus pandemic, has caused significant financial distress for our business."

And the third bucket, to me, is companies that were circling the drain, that were struggling for various reasons prior to COVID, and then this came and sunk them. And I would throw Neiman Marcus and Chesapeake into this group. I think everyone knew there were some issues, and they might file this year, or next year, sometime soon. But then COVID came and just sunk the ship, so to speak.

And Neiman's, they just came out and said in the bankruptcy court, they said, "In 2019, Neiman's distressed its capital structure. This transaction afforded Neiman's meaningful runway and flexibility to meet its earnings targets. Prior to February 2020, Neiman's is on track to meet all of its budget, earnings, and savings targets for the year." Then on March 11th, the COVID pandemic hit and I think the rest is history.

And then I think another bucket that hasn't really happened yet, but I think may grow here in the next few months, is really small to medium-sized businesses. These are the businesses that maybe stimulus money, or bank, or investor, or patience, or forgiveness has really helped weather the storm so far. But at some point, the patience and the stimulus runs out. And these companies may be forced to file as well.

So back in late 2018, early 2019, I did a presentation on corporate debt. And I focused on a term that economists call "zombie companies." And zombie companies are typically a company that's 10 years old, but its unable to service its debt with its profits. And so these companies perpetually refinanced during low interest rates, so they keep going.

My general thesis back then was that with ballooning debt, primarily caused by low interest rates, when the Fed raises rates as they're historically likely to do during good times, these

companies will either be forced into distress activity, consolidations, bankruptcies, whatever it may be. And I think I was wrong about the cause of this next wave of bankruptcies. But I think I was right, since that corporate debt at least has played some part in it.

And I want to kind of briefly go back to that. And I'm going to pull up a slideshow here that I'd done back then. And I think it's pretty applicable here. So this is one of the slides about corporate debt. And I think it's really interesting because it shows how it's grown exponentially from the '80s and the '90s. It's just on the rise.

Let's see here. Here we go. And then the second slide here, I think is interesting because it shows-- this is the S&P. Back in 2017, almost 15% of the companies in the S&P were zombie companies, which is a pretty staggering number. And I'm sure it's grown since then. And here's a geographical analysis of the zombie companies. I don't think it's that surprising that most of them existed in places of high economic-- high economic activity, like Texas, New York, and even California, to some extent.

But I think one of the things I've talked about in this presentation, that's still a big concern coming out of COVID is the percentage of debt that's corporate bonds. Bank debt typically is more expensive. There's more oversight. It's a little bit more secure in a sense that the banks are checking on their investments or their money, where their money is being spent. Whereas corporate bonds, it's really oftentimes-- they're covenant-lite loans.

They're packaged and sold on the market. So a lot of times they become essentially junk bonds. And it kind of harkens back to the 2008-2009 crisis, where you had all this stuff bought and sold out on the market, and that kind of led to the crumbling of the economy. And that's happening to an extent now.

And as bonds-- as the bond debt and bank debt, and just corporate debt generally continue to rise, all of these companies become ultra low rate-- ultra rate sensitive. And right now, rates are zero, near zero, and they probably will be for the foreseeable future. But somebody once said that the job of the Fed is to take away the punch bowl right as the party gets started.

Now, recently, we've seen politics and interest rates overlapping a little bit. But back before COVID, the president of the Dallas Fed said, look, we need to start raising rates. And the reason is, generally because as the economy stalls out, as it rises and falls, interest rates are one of the primary bullets that the Fed has to speed up the economy and get it going again. And so, if it's always low, then you're out of bullets in terms of fixing the economy or trying to fix it.

And so, even back before COVID, he was talking about how the economy is becoming so rate sensitive. And that's really because of this ratcheting up of corporate debt, primarily in the corporate bonds. And so coming out of COVID, who's to know when it's going to end, if ever. But hopefully, when things normalize, I think it will be curious to see what kind of corporate debt, how that looks like, how the interest rates, how they're played with by the Fed.

And I'm not an economist, but a lot of economists would say, look, the liquidation of zombie companies is a good thing. These are companies that crowd out the marketplace. They're

inefficient, they're bloated, let's get rid of them. So, that's sort of a black and white economist viewpoint. But I think there's always a nugget of truth in some of that, that getting rid of some of the inefficient companies might not be a bad thing.

So anyway, that's something to look for going forward. Who knows, like I said, who knows what's going to happen, where the rates will end up, how the Fed will decide the rates, and when COVID will hopefully slow down. But I think going forward, it'll be interesting to see how the rates interact with COVID. And I think that's all I have for my piece of the presentation. So I will turn it over.

- Great. Well, thank you, Machir, for that excellent introduction to some of the issues that these companies are facing. Now let's turn to Wayne Barnes, who is going to talk to us about bankruptcy law options for distressed businesses.

- Yeah, so thank you so much for that, Billy. And thanks for that, Machir. So, a lot of complex forces and factors at work with distressed businesses, as Machir just pointed out. And whatever the reason is, whether the pandemic has been the proverbial tipping point, like they were just razor-thin margins, and then this is what tipped it over the edge, with the low interest rates.

A lot of things the government does is to try to throw things out there to keep a lot of businesses afloat. Like he said, low interest rates, a lot of the stimulus packages are just meant to be band-aids to help. But there is that-- a lot of bankruptcy experts think that that tidal wave is coming. In fact, it's really already started with the corporate filings, I think. And we're just seeing the beginning of that.

But the good news is there are options. So you may be out there as a business owner, and you're like, well, I don't want to-- I want to avoid bankruptcy at all costs. And if you can do it, and you can work things out with your creditors, or your investors, or what have you, then that's always a great option. But bankruptcy is a good option too.

And so I want to just do a briefest overview of what bankruptcy options there are. And then I'm going to turn it over to Steve to talk about how to communicate through all these strategies. But let me just talk first about the basics. And I'll share a PowerPoint as well. And hopefully, you can see that now.

And I want to just give you a quick overview of bankruptcy really. So the types of bankruptcy cases, there's basically three. I don't want to-- there is Chapter 7, straight liquidation. Now, that's not really what we want to focus on today. Because that's if-- if you're an individual, it's one thing. I'm assuming I'm mainly talking to business organizations. Of course, you may be out there, and you're a sole proprietorship. You have a business, but you don't have a corporation or partnership. It's just you.

And so Chapter 7 is a possibility. It's a possibility for organizations as well. But it's straight liquidation. If a corporation files 7, that's pretty much the end of that corporation as we know it. And so that's when you just kind of liquidate all the assets, and divvy it up, and pay everything to creditors.

Now, there's some benefits to that, of course. But for a corporation or a partnership, that's kind of the end of the line, sort of the financial death. So I want to think happy thoughts for now and talk about more of the reorganization side, where you're going to live and come out the other side. Now, a human being that files a Chapter 7, of course, comes out the other side of a liquidation. But again, I'm focusing more on business bankruptcies.

Now, Chapter 13 is the individual reorganization. So this would, again, not be for corporations. It would not be for partnerships. This is just for a human being, an individual, as the code calls it. And again, this might be relevant to mention just a moment, because you might be out there, again, and own your own business, and you don't have a partnership. You don't have any kind of a corporation, no LLC. And your business is just part of your own personal finances.

And so for this, Chapter 13 might be an option. How it works is it's kind of the opposite of liquidation. So whereas Chapter 7 is you give up all your assets, your non-exempt assets if you're an individual. And then the good news is that's what the creditors get, and you get to keep your income, your paycheck, or your salary going forward, or your income from your business if you're an individual.

Now a Chapter 13 is the reorganization. The idea there is you keep your assets. So you're not liquidating. Instead, what you're doing is committing your future income. Hey, I think I can pay a certain amount on my debts over a period of probably three, probably more likely five years in a plan. And that does require that you can show the court you have sufficiently regular income.

And then, so, with a with a salary, of course, that would work. But we're focusing more on business owners. So if you can show your individual sole proprietor business has a sufficient regular stream of income, then Chapter 13 might be an option.

There are debt limits, though, as you can see at the bottom. So if you've got more than this level of debt-- so if you've got more than \$419-some odd thousand of unsecured debt, whether that's credit card, or business loans, or what have you, then you're too much debt to file 13. You're going to have to look elsewhere, to 7, or as we'll talk about, Chapter 11. And the same thing with secured debts. More than \$1.2 million or so in secured debts, you can't file 13.

So it's for a very relatively small niche of businesses, just those sole, individually-owned businesses. For everyone else, there's, of course, Chapter 11, in its variant forms. So Chapter 11 is usually thought of as the business reorganization. So a normal Chapter 11 case is what you would think of. This is what a lot of the retail businesses that Machir talked about file. Most of your large retail companies, your Pier 1 Imports, that file bankruptcy, this is what they do. They file Chapter 11-- your airline bankruptcies, your Hertz Rent-a-Cars et cetera.

And so it's fairly complex, because these are large corporate entities that have a lot of constituencies that they have to deal with-- shareholders, creditors, employees, sometimes unions, a lot of contracts. And so that's your normal Chapter 11 case. Now I'm going to talk to the next slide about all the different tools that are somewhat agnostic and beneficial to anyone or any company that files bankruptcy.

But certainly in a Chapter 11, if you focus on this second bullet point I have, the hallmark piece of a Chapter 11 is the plan, the plan of reorganization. So that can look as different-- there can be as many different kinds of plans as there are different companies that file. There are certain categories they tend to fall in.

What they bottom line are is, hey, here's our plan. Here's how we're going to make money for the next few years in our restructured business. We're going to close these stores, maybe keep these ones open. We're going to get out of this line of business. We're going to emphasize this one. And then how much money do we think we're going to make. And then what are we going to do with our creditors?

Are we going to just pay them certain cents on the dollar? Everyone gets-- all loans, creditors get \$0.20 on the dollar. Maybe we make them stockholders in the new company that rises from the ashes of the new bankruptcy. Congratulations, landscaper, you're now a shareholder in the new company. And so that kind of debt to equity conversion is another possibility.

Sometimes you do just want to wind things down. You want to do an orderly liquidation. And so you don't want to do a fire sale type situation, like you might have in Chapter 7. You want to take your time, find good buyers. And so, you can do that within the context of Chapter 11 as well.

There's also, I might add, as you see here, a small business debtor reorganization, a subchapter, which is relatively new. And that's a more streamlined process that looks a lot more like Chapter 13 for a business than the typical Chapter 11, which by the way involves-- this is beyond the scope, but it involves sending out what's called a disclosure statement. It's kind of like a proxy statement for stocks. And getting everyone educated. And then they all vote on the plan. And it's a very involved process.

But those are the three types of bankruptcy cases. Now, whichever one you file, and here's-- I promise of the last slide. And it's not the most exciting slide you've ever seen. But I just want to highlight some of the key benefits that really can be a life raft for distressed businesses. So real quickly, and then I'll turn it over to Steve.

When you file bankruptcy, the number one thing you get is the benefit of automatic stay. So you've got pressures. You've got vendors that are breathing down your neck or are threatening to cut you off if you don't pay. You've got creditors that are maybe threatening to foreclose. You file bankruptcy and that freezes all of that in place, for a time at least.

So the automatic stay temporarily prevents creditors and other parties from taking actions. Everything kind of freezes. You get the benefit of a breathing spell. Now, there is the possibility that eventually they can still take actions if they want to. But you get some time. And that is so valuable. And it's the very first benefit that there is to filing bankruptcy, is you get to call a time out and get your wits about you as you make your plan. And so that, just can't overstate that enough as a benefit. You get to temporarily stop everyone in their tracks as you try to formulate your plan.

Another good thing that I think a lot of people, if they haven't really looked into it, don't realize is that if you file Chapter 11 bankruptcy, you can keep doing business as usual. So you're a-- Hertz Rent a Car, I guarantee you, they filed Chapter 11. I can go up to Hertz Rent a Car right now and rent a car today. When American Airlines filed, I could go and get a flight, and fly from here to Houston today.

So you get to continue ordinary business operations. They don't shut you down. There's not even a trustee over you at first. You get to continue running things, with, of course, the benefit of counsel and court oversight. But it's business as normal with you taking certain steps that are governed by the bankruptcy code.

One thing that can be helpful for distressed businesses is you may need an infusion of credit. And so, maybe your existing bank is a little fed up. And they're not wanting to extend you any more credit. Well, there are various perks, and incentives, and benefits that incentivize banks to make loans to a so-called debtor-in-possession. That is, the debtor, the person that files Chapter 11 bankruptcy. They're called debtor-in-possession because there's no trustee. The debtor in bankruptcy, the one that follows bankruptcy, stays in possession and in control of their assets.

But the shorthand for this is you may be able to get loans to help you stay afloat and fund your operations and your business. Because they get certain incentives in bankruptcy that they don't get outside, even to the extent of getting priority over certain of your assets.

Of course, a big one that you read about all the time is that you have this wonderful power to assume or reject executory contracts and leases. So take Pier 1 Imports, I don't know, they may be liquidating totally, but let's say a business like Pier 1 Imports or RadioShack a few years back, they've kind of gotten bloated.

They have 2,000 stores nationwide. And really, they know that 40% of them are profitable. And then the others are really not doing well or their leases are too expensive. You had this ability to assume or reject all of those leases and also all your executory-- executory contracts, rather. So that's just any contract where both sides still have performance due.

So you might have a vendor supply contract where they're supposed to supply you-- if you're a restaurant, you've got someone that maybe supplies you with a certain food item. You got a milk supplier if you're a restaurant. And it's a two-year contract. But maybe it's kind of onerous, you'd like to get out, you could get rid of that contract. Now they get a claim in bankruptcy. But as we talked about before, you may be able to pay them-- you owe them \$12,000, you may be able to get away with paying them only \$3,000 over the life of a plan that you'd formulate.

And so, you can get rid of those contracts, and just reduce down, and get leaner as to the ones you want to keep. Now the ones you want to keep, that you assume, of course, you've got to stay current on those and make up any defaults. But it's a really valuable power that you have when you file for bankruptcy.

One of the things that Billy mentioned that Machir is expert in his so-called 363 sales. So, in the real world, you've got some land that's got a mortgage on it, or some assets that are subject to

liens of the bank. In the real world, you can't really sell those without taking care of the bank's mortgage a lot of times, or the lien.

Well, the bankruptcy court gives you ability to sell in a bankruptcy sale process, assets, and they take free and clear of those liens. And then the bank, of course, you don't care about the bank. You're just buying the stuff. But as you might want to know, the bank gets, of course, to realize on those proceeds.

But that can be a very valuable thing. If you're a business, if you've got some valuable assets, maybe some land, and you'd like to sell it. And you're precluded from doing that outside bankruptcy because there's a bank lien or a security interests, you can do that. And they take free and clear so you're going to get more ready buyers. That can generate cash to at least pay off your creditors and maybe have some additional amounts.

Just a few more things. Strip down, speaking of business loans, if you've got a secured loan if you're a business, and you don't have any equity in it-- so say you own some land and-- and I want to be clear, this is for business properties, not your residence-- but if you own some assets, and you owe more on them than they're worth, so you own \$100,000 worth of assets, and you owe like \$150,000 in loans, you may be able to strip that down.

In other words, say, OK, bank, I'm going to have to pay you the \$100,000 that the stuff is worth, the collateral is worth, over the life of this plan. But you're \$50,000 underwater, you may get a few cents on the dollar on that. And so that can be valuable. That's yet another tool.

So all these, by the way-- I'm looking at a bunch of trees. I want to back up for a second. The forest here, of course, is hey, what is my viable plan going forward? How do I need to downsize? How do I need to reduce, get rid of some dead weight that I want to move forward and do business? And this is just yet another-- several of these are just tools in the toolbox for you to do that.

I thought I would throw this up there. This is a little bit more bankruptcy inside baseball. But if you have-- the bankruptcy code gives you certain causes of action. If you paid some people or did deals shortly, anywhere between 90 days and maybe a year or two before bankruptcy, the bankruptcy code sometimes lets you do what's called unwind or avoid those.

Like let's say you're getting a creditor that was really pressuring you, some trade creditor, and you were like 120 days late. And so at the 11th hour, they really pressured you, and you wrote them a big check, and preferred them, and didn't pay a lot of others. Well, guess what, you might be able to just keep that money right back to use to fund your plan and pay everyone off. So that's something to store away.

By the way, the flip-side is if you ever get a notice to pay up on something, you want make sure to hire counsel. Because you don't want to just write the bankruptcy attorney or trustee a check as soon as you get this. There may be defenses you can assert. But on the flip-side, when you're the one filing bankruptcy, this can be a source of funds.

Just a couple of last points. Bankruptcy is a collective remedy. So one of the benefits of it, if you don't file a bankruptcy, what you've got is a race to the courthouse. You've got lots of different people suing you and trying to seize your assets, getting the Sheriff out there, what have you. Whereas bankruptcy, everyone has to come to one place. And it's one centralized forum. And that's one of the key benefits.

And, oh, yeah, by the way, lest I forget, obviously the marquee feature of bankruptcy is that you can't essentially eliminate or discharge your liability on many pre-bankruptcy plan debts. Now, as I said, if a corporation files Chapter 7, you don't really get that here. But if a corporation or a partnership files Chapter 11, then guess what, a lot of those debts, you pay a certain amount in the plan, and then whatever is left over, you say goodbye to that.

And that can be very-- that's obviously the valuable thing for bankruptcy. And it's also a discharge injunction, where it's over once you satisfy the plan requirements and pay them whatever you're going to pay them, that the court approves, you don't have to worry about them again. They're not going to be able to sue you later. You say goodbye to that forever.

So again, we've looked at a lot of trees in the forest. The forest here is you want to help your distressed business survive and carry forward. And these are a lot of the tools, very valuable tools in the toolbox that bankruptcy gives you. So I'll look forward to see if there's any questions.

And you can always go to our website, TAMULawAnswers.info as well. But for now, I want to say thanks. And I'll wait for your questions. And I want to turn it over to Steve to talk about how to communicate all of these things as you're navigating the crisis.

- Great. Thank you, Wayne. And good afternoon. And this is an honor to be here with these folks. And thank you all for your participation in this program today. My purpose is to provide a quick overview of how an effective communications plan can help a distressed company and their legal counsel achieve their reorganization goals, something that Wayne mentioned.

I'm going to try to cover a lot of information. I may go a little fast and neglect some of the nuances. But please, feel free to reach out to me directly afterwards. I'm happy to deep dive on any of this kind of stuff. So let me share my screen real quick. Can you see the PowerPoint? Is that a yes?

- Yeah, we've got it, Steve.

- All right, you see Strategic Communications for Distressed Companies? All right, so as Wayne mentioned, and let me back up a little bit. So as Machir mentioned, the American Bankruptcy Institute reports that monthly commercial Chapter 11 filings for July of 2020 are up 52% compared to one year ago. For the first half of this year, Chapter 11 filings are up 27% over last year. And this surge comes as little surprise given the blows to the economy that we've had. And unfortunately, as Machir mentioned, this trend could continue in the months ahead.

So as Wayne was alluding to, by design a Chapter 11 reorganization is intended to afford the debtor the opportunity to keep the company alive, to remain operational, and for the assets to

remain productive during and after the restructuring. So to preserve this value and to optimize business continuity throughout the process, business managers must think strategically about how they communicate with key stakeholders. And these are customers. These are critical vendors. These are employees and others that we'll get into.

A coordinated communication plan provides the opportunity to frame the Chapter 11 narrative, to explain why the restructuring will lead to future success. And by articulating a compelling turnaround story, the business can limit disruption of these critical relationships. It can also be helpful to achieving your legal strategy, as it's often the buy-in of these various stakeholders that holds the key to a successful reorganization.

So complexity and clarity-- the bankruptcy process can be complex, even for the sophisticated businessperson. Misunderstanding it can lead to poor decision making. So you must educate people on what's happening and why and help stakeholders have a clear understanding of the company's plan for exiting.

Misinformation-- whenever a company closes a retail outlet, or a factory, or lays off a few people, gossip and speculation can quickly fill any void of information. Failure to promptly and clearly address misinformation can create a crisis of confidence and can undermine your client's business. A good communication plan is an effective tool for managing damaging information.

Panic-- you must reassure and persuade customers, and vendors, and employees that it's not time to panic or jump ship. Because if they do, your client's business will suffer. It's essential to instill confidence, promote stability, and protect your brand. And let me add a caveat here-- while ensuring legal compliance with forward-looking statements. And we'll have more on this later.

And finally maximize and minimize-- minimize and maximize. The purpose of having a communications plan is to minimize disruption and damage and maximize value retention. So how do these things look? You need clear, you need factual, timely, and strategically aligned messages that support the business and legal goals of the company.

Tailored and personal-- recognize that each of your client's audiences has its own interests. While the underlying messages must be consistent, you must also tailor them for the individual interests. What are the concerns of each constituency? What questions does the employee have versus questions that the investor has?

Specific-- every company's legal and financial situation is specific. To be credible, and therefore effective, a communications plan must reflect the uniqueness of the client. There are some best practice strategies, but no uniform fit.

Clear-- your communications must simplify the complex and replace emotional response with rational action, not simply a rehash of lawyer speak. Instead, describe the process in everyday language, using relatable analogies.

Multi-channel-- think beyond the press release. Your messaging needs to be deployed across multiple channels while still being as intimate and personal as possible. Larger companies often

have to rely on broader channel modes, like dedicated websites with regularly updated FAQs, company-wide announcements, hotlines, and even mass mailings. And there are some great examples out there of some of these websites.

Wherever possible, and particularly with smaller clients with fewer employees or customers, I recommend arming your messengers with talking points and having personal and direct conversations. Supervisors presenting to their teams, account managers working their accounts, et cetera.

Collaborative-- and this is an important piece. There must be alignment between your communications and legal strategies. The communication plan is there to serve the legal strategy. This means working collaboratively with your bankruptcy counsel. Counsel should review all communications during this process. You never want your client to say or do anything that will undermine it legally. Now, connecting the legal disclosures with the human element can be tricky, but it's vital. And it's really, it's essentially the whole point of having a communications plan.

Finally, timely and staged-- a business reorganization is a very process-driven activity. And your communications team needs to understand the process, and anticipate each step, and the messaging needs around each step. They must understand the flow of the process that takes place behind closed doors, as well as the triggers that cause it to become public. Stay current, manage, anticipate, and adapt. Orchestrate your communications to be at least one or two steps ahead of the process.

So who are we talking to? So wherever possible, your message needs to assure stakeholders that the company's reorganization plans aligns with their own interests, and that their ongoing relationships with the company are merited. Let people know what to expect and anticipate their question. Look through the lens of the recipient and ask, how does this affect me? How will I benefit or be hurt?

Employees-- loss of talent is a substantial problem for companies going through restructuring. Employees will fear for their jobs. Will they continue to be paid? Will they receive benefits? What about their retirement savings plans? What employees most crave is clarity and resolution.

Now, Wayne mentioned this. For businesses that serve the general public, most customers will likely never know it's even in Chapter 11. People are still buying shoes from Neiman's. They're still renting cars from Hertz. For all practical purposes, it's business as usual while the process unfolds in bankruptcy court.

However, even for these companies there are customers to be-- customer issues to be addressed. Can they still use their gift cards or coupons? Some might wonder should they start shopping somewhere else, or worse, wait to make their purchasing decisions until there's a going out of business sale.

So for some companies, customers might wonder, are their warranties still valid? Or will they be able to get their products serviced in the future? So obviously, negative reactions by customers

can have a detrimental impact on the business. And your communications plan should seek to minimize these types of responses.

Now, vendors and suppliers on the other hand, they become aware that-- usually become aware when a customer files for bankruptcy. Those who are creditors will receive notice throughout the case. Many companies depend on these strategic relationships with their vendors, and they want to maintain them. They need to. But vendors will wonder if they'll get paid. The messaging needs to address their concerns and clarify pre and post of a particular payment issue.

Investors-- depending on the company, there are many variables when it comes to investors. However, it is not atypical for equity holders to experience significant or even complete loss in their investment, depending on the outcome of the case. My general approach on this is to leave investor communications in the hands of legal counsel due to the legal ramifications associated with every statement by the client.

Media-- general media-- so depending on the profile, the business news media interest ranges from high profile to non-existent. For most clients, it's rarely front-page news. But above all, provide a point of contact. And once the plan is submitted, my recommendation is keep a low profile with the news media. The idea here is to keep control of the process by keeping it out of the news.

And others-- in some cases, particularly for a large or well-known local employer, there may be communications to community leaders, like elected officials. News media will often seek the comment from the local mayor. So alerting and equipping these folks before an official announcement can help you manage your message.

And finally, a word about disclaimers. And this refers to earlier comments about working closely with counsel. For certain businesses, there are applicable federal security laws and safe harbor provisions related to forward-looking statements that indicate-- that may indicate the need to use certain disclaimer language. And it is advisable always to follow guidance of legal counsel when issuing statements.

What else? So, not a crisis. Unlike a crisis situation, where an unexpected event occurs that can change your priorities in an instant, a reorganization is an anticipated event that can be planned for. And even further, in a true crisis, a negative event is central to the situation. A restructuring, however, is correctly seen as an immediate and positive action to right the ship.

And finally, rebuild-- once a company has undergone financial reorganization and has emerged from court, it must work to rebuild its relationship with its key audiences. And there are communication strategies around this as well.

That's about all I can squeeze in in 10 minutes. I'm happy to address any questions that you all have. Again, if you're interested in a deeper dive, I'm always happy to discuss this in more detail. Feel free to reach out to me. Back to you, Billy.

- All right, well, thank you Machir, Wayne, and Steve for this fantastic overview of some of the legal and strategic communication strategies that people need to be thinking about during distressed business times. We have one question. And if anybody in the attendees has a question, please put it in the Q&A box.

We have one question that came in earlier. And this is related-- I'll open it up to all of the panelists. It's related to property owners, advice for property owners. And the question, the specific question they asked was, is there any advice for multi-family rental assistance for property owners?

So many people are now insisting that they don't want to be evicted. Residents don't want to be evicted. They don't want to pay rent. Many may end up abandoning their apartment. What can owners do? Do they have recourse? Any suggestions for people dealing with those kinds of problems?

- Machir, do you want first dibs?

- I was going to give it to you, Wayne.

- Well, I have a feeling, I'll give the view from 30,000 feet, and you--

- I'll take a stab at it. I think-- this is high level. I think first and foremost, I think the stimulus money, I would investigate what that affords you, if that's available to you. I would also look at the local laws in terms of evictions and that sort of thing. Keep in mind the extent that you're going to pursue someone for a breach of contract, or lease, or guarantee, or something like that, that you always typically have a duty to mitigate your damages, meaning you have to try to re-let the property. But Wayne, I don't know if I took the words out of your mouth.

- Yeah, I agree with all that. It's kind of a stunning thing, and I should-- I probably should be a little more on top of this. I know Congress is, in their-- in their highly functional way it's trying to come up with additional stimulus relief. But an odd thing in the midst of this pandemic, and I know that we've talked about this on previous webinars, is all this eviction moratoriums that have been-- moratoria they've been in place is great, but then in the back of your mind, none of that has excused payment of rent.

And as Machir was saying, if I'm a landlord, or I'm an owner of these properties, I'm keeping my ledger. And I'm thinking, OK, well, they're three months behind, they're five months behind. And then I can't evict them. And boy, the most important thing Machir said is that be sure you stay mindful of not running afoul of any of the moratoria that are in place. But once that's lifted, there's going to be, I predict, a stunning amount-- just a large amount of potential evictions.

Because they're going to lift the moratoria, and a lot of these tenants haven't paid for several months. And unless the Congress or the legislature somehow intervene, there you are, you're in default. And so what Machir said is absolutely right. As long as you be mindful that you're not running afoul of whatever government restrictions have been put in place to obviously protect

people from the effects of the pandemic, then when the smoke clears, and they owe the rent, then you're entitled to evict as per normal.

And you do want to try to re-let. I'm basically repeating what Machir said. But I think that's all right. And I think it's a little bit unprecedented to have, on the one hand, this moratoria that prevents you from evicting, and yet nothing is excusing them from rent. It would be extraordinary-- and I don't even know-- the constitutionality of that would be-- why am I going to opine on constitutionality live on camera without preparing?

But the government does have some Constitutional ability to affect contractual relations. But that would be-- I don't predict that they'll do something so severe as just forgive rent. So I do think that will be owed. And you'll be able to take your actions when you're allowed to do. So, yeah, that was a long-winded way of saying I agree with the Machir said.

- Well, I think one other point, or just a thing I've noticed about all these bankruptcies is that every company, or even a multi-family property, has its own ecosystem. And so a Neiman's, for example, files bankruptcy, there's probably going to be several marketing companies or vendors that have to file bankruptcy because their business gets slashed.

And same thing with a property owner. People aren't paying rent, well, they may have to file their own bankruptcy. And then the property owner, if he can't re-let those properties, that property might file bankruptcy. And so, it's all kind of a chain reaction. And for the sake of the greater economy, I hope the chain isn't that long.

But it's every individual impacts another in some way. And so, just helping tenants in one case sounds great, but you have property owners as well who are harmed by this potentially. So it's a give and take. But it's all-- no one-- no one's just completely isolated. And every decision and action has some corresponding action. I guess it's a physics term or something. I don't know.

- For every action, there's a--

- equal and opposite reaction.

- Yeah. Hey, it's in the chat, but I want to reiterate that there's been a couple of webinars specifically on residential and commercial real estate issues. So a lot of people, a lot of real estate experts, which I consider Machir one, I know he represents clients in that area. But if you want to go check out some webinars devoted solely to those issues, go to our website, [TAMULawAnswers.info](https://www.tamulawanswers.info). And then you can check out the recordings of those webinars that solely talk about those issues for the entire hour.

But we're-- like I say, Machir's exactly right, and we're in uncharted territory. So just tread carefully. But no one is taking away your ultimate right to enforce your lease agreements. And just as long as you stay mindful of what restrictions have been put in place. But those won't last forever. And this will end. Hopefully, it will end, eventually. We all wait for that. But in the meantime, I know that there's great pressure put on all manner of businesses.

- Well, I don't see any questions in the Q&A. I may take-- we have about three minutes left, and then I'll have a final wrap-up couple of comments. But I'll take the moderator privilege and ask-- we have such an amazing array of expertise and knowledge here.

We've talked a lot about some of the things that people should be doing, and they should be considering in this crisis, what are the biggest mistakes that people are making? What are the things that you're seeing that people are doing that they-- that are the worst mistakes they can do? You guys have any comments on that?

- Yeah, I'll dive in. I think generally, it's just best to be proactive. If you think you might have an issue, a legal issue, it's typically better to talk to a lawyer sooner than later. If you think you might have a communications issue, it's best to talk to someone in PR sooner than later. It's just don't get caught flat-footed. And I know that that's easy to sit here and say. But I would just be proactive, because typically issues can be worked out easier if they addressed by the right people sooner. So that's my response.

- Yeah, I think that's accurate. This is Steve. These are planned events. They should be planned events. So coordinate beforehand. Before you issue statements, before you take any action, consult with counsel. And make it a planned event.

- Yeah, that was the first thing that popped into my head as well, is plan, and don't wait too long. There's that old joke about you can-- sometimes it's used to refer to God, but the idea that, I just thought someone would help me. And well, I sent someone. It's flooding, and well, I sent someone with a rowboat a couple times, someone with a helicopter.

And no-- and in this case, who you should be talking to is not people with helicopters, but you should be talking to lawyers and professionals. And wait until-- before-- talk to them before you drown, right? Before it gets to be beyond hope. Because at that point, you're in much more of a powerful position to do something, and restructure and re-pivot with good professional advice.

- All right. Well, with that, I'd like to thank our panelists for coming on-- for coming and having this wonderful conversation on legal and communication strategies for distressed business. The video and presentation slides from this webinar and all of our previous webinars will be available on the web at TAMULawAnswers.info.

This Friday, we will have a fun webinar on Hell's Half Acre and Historic Fort Worth, which should be a great webinar. And finally, you can see this and all of our upcoming webinars also at TAMULawAnswers.info. And with that, I'll thank everyone for attending and hope to see you again soon.

Thank you, all.

Thank you.

Thank you.