

Being Strategic About Chapter 11 Communications

By **Eden Gillott**

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After years of speculation amid swooning financial fortunes, Sears Roebuck and Co. filed for Chapter 11 in October 2018. Last week may have proved to be the light at the end of the tunnel as Sears' Chairman Edward Lampert prevailed in a bankruptcy auction with his plan to keep its remaining stores open and its employees working.

Close on Sears' heels, Pacific Gas and Electric Co. in California plans to file for bankruptcy on Jan. 29.

In Chapter 11 and out-of-court restructuring cases, it's critical to ensure that the communications strategy is aligned with the legal strategy. While Sears and PG&E are being covered heavily in the media because of their prominence, your clients' communications are equally important to them. Miscommunication or lack of communication can be costly.



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Why Bankruptcy Communications Are a Vital Part of Your Legal Strategy

Sometimes the Chapter 11 process can be hiccup-free.

More often, that's not the case. With many moving parts and final details being negotiated until the last moment, potential scenarios shift frequently and you must create different storylines for all eventualities.

You can't afford to wait until the pen has lifted off the page before organizing your communications strategy. As soon as the ink dries, people will want to know how it affects them.

The Importance of Timing to Minimize Speculation and Gossip

How and when you make the announcement sets the tone for everything that follows. In most cases, the official announcement occurs the same moment your client files in U.S. Bankruptcy Court.

Sears and PG&E disclosed their bankruptcies before filing but for very different reasons. Sears floated the possibility of filing Chapter 11, arguably to encourage creditors to agree to terms more beneficial to Sears. Similarly, the Weinstein Company indicated it was considering Chapter 11 in an effort to coax

suitors to buy the firm beforehand. PG&E was required under a new California law to announce its intent to file to give employees 15 days' notice.

Regardless of when the "official" announcement is made, unofficial news starts spreading well beforehand.

Why? Because any time a company closes a retail outlet or production facility or lays off some employees, fear takes over with rumors of greater financial difficulties and more layoffs. Some people just want to demonstrate their prescience and to be able to say, "I told you this would happen!" If rumors aren't addressed quickly, they will create a crisis of confidence that may seriously undermine your client's business.

Your communications strategy must be in place in advance and ready to be deployed seamlessly. It must guide your client in who needs to be informed, what needs to be said, what forums to use, and when the timing is best.

The Necessity to Reassure Customers, Vendors and Employees

Most people don't understand the nuances of Chapter 11. Such misperceptions and confusion can create emotional reactions. If left unattended, these emotions can cause people to act in ways that will damage your client's business.

Such misperceptions must be addressed quickly and in easy-to-understand language. When people are frightened, it's hard for them to process complicated information. You must reassure and persuade.

Not sure who to inform? Think of who's critical to keeping your client's business operating. Customers worry about having to find a new place to shop. Vendors worry about getting paid for products and services. Employees worry about job security.

People are afraid of the unknown. Your communications must explain what's happening, why it's happening and how it impacts various groups. It also must anticipate questions that will likely be asked. These questions usually are varying forms of: "What does this mean for me? How will I benefit (or be hurt)? What should I do now/next?"

Even though each audience has its own interests and must be handled differently, your underlying message to all of them must be consistent. Don't send conflicting messages or you will sound disingenuous or dishonest.

Issuing a press release is only the tip of the iceberg. A solid strategic communications strategy must also provide your client with packets of information to share with each target audience. What should be included? At minimum, scripts for meetings or discussions with employees and vendors, letters from management, Q&As, Chapter 11 terms and definitions, a sequence of events and talking points for hotlines.

Sometimes it may be beneficial to add a more personal touch. For example, holding in-person gatherings with senior management and the bankruptcy attorney to field questions and allay concerns. With large and spread-out companies, such meetings may be broadcast to far-flung facilities via video link.

Working with the Media

While most Chapter 11s don't make the headlines like Sears or PG&E, don't be surprised if you and your client end up in the paper. This typically happens when there's local interest (e.g., the company employs a number of people locally), the company is well recognized or the players are well known (e.g., notable owners, investors, etc.).

Depending on the news outlet, the journalist may lack a good understanding of the Chapter 11 process and need to be gently walked through it in order to report accurately. Don't assume the journalist understands the fundamentals of bankruptcy law.

Typically, news coverage comes in three waves: (1) speculation about a possible Chapter 11 or out-of-court restructuring, (2) the actual event, and (3) analyses of what it means for the future.

If you find yourself handling media inquiries, you must be ready with talking points prepared in advance, so the message and the tone are just right. An inappropriate comment or action will cause harm that's difficult to undo. You must get it right the first time.

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