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Maximize Opportunities When a Competitor Declares Bankruptcy

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Does your company have a plan if one of your competitors files for bankruptcy protection? If a bankrupt competitor is liquidating assets to pay creditors (a "Chapter 7 Bankruptcy"), your attorney can advise you about how to acquire customer lists and attractive assets, and negotiate terms with key employees or staff of the failed business.

If your competitor obtains protection from the bankruptcy court in a reorganization (a "Chapter 11 Bankruptcy"), it will be relieved of certain debt repayment obligations, which will immediately reduce its burden to generate cash to satisfy creditors. The result, in short, is that the business will not have to be as profitable during the reorganization.

In either scenario, the major issue for your competitor in bankruptcy is a cash shortage. Your bankrupt competitor is likely to engage with customers to renegotiate contracts and lower its operational costs.

Smart business owners should consider opportunities to gain strategic advantages when competitors file for bankruptcy. Your company may be able to win over your competitor's customers, pick-up key employees (including high-level sales personnel) and/or acquire key assets through a purchase in the bankruptcy proceeding. When your competitor goes bankrupt, you may be able to force it to yield market share or limit its service offerings. Consider the following tactics if your industry competitor is facing financial trouble:

- Capture your bankrupt competitor's best customers to gain market share. In a liquidation, this may involve the purchase of a debtor entity's customer list. If your competitor is reorganizing, you should consider increasing advertising to gain market share. Your rival will have to spend to keep up or it will risk losing customers.
- Research and pursue the sales of your competitor's attractive assets. If a competitor is selling a portion of its business, it may be doing so at a discount. Make sure your business is at the table for the sale of your competitor's valuable assets. Advantages of acquiring assets in bankruptcy include: (a) elimination of unwanted liabilities (assets are usually bought free and clear of liens or encumbrances), (b) the expectation of owners and creditors are usually lowered after the bankruptcy filing, and (c) federal bankruptcy court approval provides finality, reducing the chance of future legal attack or fraudulent conveyance action.
- Leverage angst among your rival's staff by pursuing its top sales talent and strong vendors or suppliers.

Of course, as with many business decisions, there are risks when dealing with a competitor in bankruptcy. Contact a lawyer in Underberg & Kessler's Creditors' Rights Practice Group to discuss strategies for minimizing these risks when acquiring customer lists, key personnel and assets when a competitor declares or is about to declare bankruptcy.

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