

Restructuring in the Time of COVID-19

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For more information, visit:

**Pepper Hamilton / Troutman Sanders
COVID-19 Resource Center**

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Audio

The screenshot shows the Cisco Webex Events interface. At the top, the title bar reads "Cisco Webex Events" with a "Connected" status indicator. Below the title bar is a menu with "File", "Edit", "View", "Communicate", "Participant", "Event", and "Help". The main content area displays a webinar slide titled "Pepper Hamilton Webinar" with the Pepper Hamilton LLP logo. A red text overlay on the slide reads "Audio should stream automatically on entry through your computer speakers". An arrow points from this text to an "Audio Broadcast" control panel. The control panel shows a status of "24.7 Kbps" and buttons for "Pause" and "Stop". At the bottom of the interface is a toolbar with icons for mute, video, chat, and other functions. On the right side, a "Participants" panel lists "Brian Dolan (Host)" and "Brian Dolan (me)".

Audio

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We Are On Mute

Audio will start at 12pm ET

PowerPoint Slides

Email Brian Dolan at dolanb@pepperlaw.com for slide deck.

Q&A

Cisco Webex Events

File Edit View Communicate Participant Event Help

Connected

BD Brian Dolan (Host)

Viewing Pepper Hamilto...

Click here to send questions to us

Pepper Hamilton Webinar

Audio Broadcast
24.7 Kbps
Pause Stop

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Q&A

Whose Businesses Will Be Affected by Coronavirus?

Your business

Your customers

Your suppliers

Your lenders and borrowers

Strategic and financial opportunities

Your Business – Immediate Steps

Take a realistic look at your cash flow projections

- Consider the impact of reductions of 25%, 50%, 75%, or a total shutdown on your 13-week projections

Protect working capital

- Most critical issue: preserve cash
 - Identify and implement cost reductions
 - Draw existing lines of credit
 - If you have unencumbered assets, consider using them as collateral to seek additional financing
 - Small businesses may be able to access SBA loans

Your Business – Immediate Steps

If current debt service levels cannot be maintained or covenant breaches are imminent (or have already occurred), counsel can help you proactively negotiate a solution with your lenders.

Options may include:

- Covenant waivers
- Standstill or forbearance agreements
- Extensions of maturity
- Restructuring the loan
 - PIK interest/amortization payments
 - Kick interest/amortization payments to the end of the loan
 - A/B note split (the “hope note” structure)

Your Business and Bankruptcy

If out-of-court cost reductions and debt restructuring are not enough, you may be able to get the protection you need under Chapter 11

- Note: sometimes the threat of Chapter 11 with its cramdown provisions is enough to persuade reluctant creditors to come to the negotiating table.

What Chapter 11 provides:

- Breathing room – all collections, lawsuits, foreclosures, and similar actions are automatically stayed
- Ability to reject financially burdensome contracts and leases (and keep the ones you want)
- Ability to sell your assets free and clear of all liens and claims
 - Current equity holders may participate in the auction
- Exclusive right for first 120 days to propose a plan of reorganization that can potentially be “crammed down” over the objections of non-consenting creditors

Your Customers – Immediate Steps

Take proactive steps now to protect your ability to get paid if your customer suffers financial distress or files for bankruptcy

- Put customers on COD/CIA
- Obtain a security interest in goods sold (be careful to properly perfect the interest)
- Seek a guaranty from the customer's parent or principal
- Require an irrevocable standby letter of credit

Review any contracts with your customers

- Verify the identity of the counter-party and where it sits in its corporate structure
- Are there potentially problematic provisions that need to be negotiated or removed?

Your Customers and Bankruptcy

If your customer files Chapter 11:

- Be aware of the impact of the automatic stay
- Check address on file
- Determine if the customer has actual availability under any DIP financing to pay for post-petition goods
- Attend § 341 meeting (all are currently being held telephonically)
- Note the claims bar date(s)
 - Review debtor's schedules before filing a proof of claim
 - Determine if you can reclaim any goods shipped before the bankruptcy and whether any goods were delivered in the preceding 20 days
 - If it's a Chapter 7, no need to file a claim unless the trustee sends out a notice that there will be assets to distribute

Your Customers and Bankruptcy (Cont'd.)

If your customer files Chapter 11:

- Watch for notice of assumption or rejection of your contract
- Assess your potential preference exposure (payments received within 90 days of the bankruptcy)
- If you have a substantial claim in a Chapter 11 case, consider retaining bankruptcy counsel and/or serving on the creditors' committee

Your Vendors – Immediate Steps

- If the vendor is not critical, consider reducing or deferring payments
- If the vendor is critical:
 - Build an inventory bank, if possible
 - If you are single-sourced, begin investigating alternative sources immediately
- Review contracts with vendors to verify whether any have minimum purchase requirements

Your Vendors and Bankruptcy

- Be aware that you may be required to continue purchasing under an executory contract
- Verify any amounts (chargebacks, damages, etc.) that may be owed by the vendor
 - Hold payments to preserve setoff rights
- If the “vendor” is an IP licensor, you have additional protections under § 365(n) of the Bankruptcy Code

Your Borrowers and Lenders

- Lenders will need to assess whether pre-bankruptcy draws on revolvers are permitted under the loan agreements.
- All waivers, standstills and forbearances need to be documented. Consider some form of pre-negotiation agreement to make it clear that any agreement must be in writing and acknowledged.
- Pre-petition lenders may be the only source of DIP financing.
- Under the current exigent circumstances, preparation of new loan agreements may not be possible. May need to consider loaning off of a term sheet, budget and bankruptcy court order.
- Need to consider objectives of the case – financial restructuring and/or sale of some or all assets.

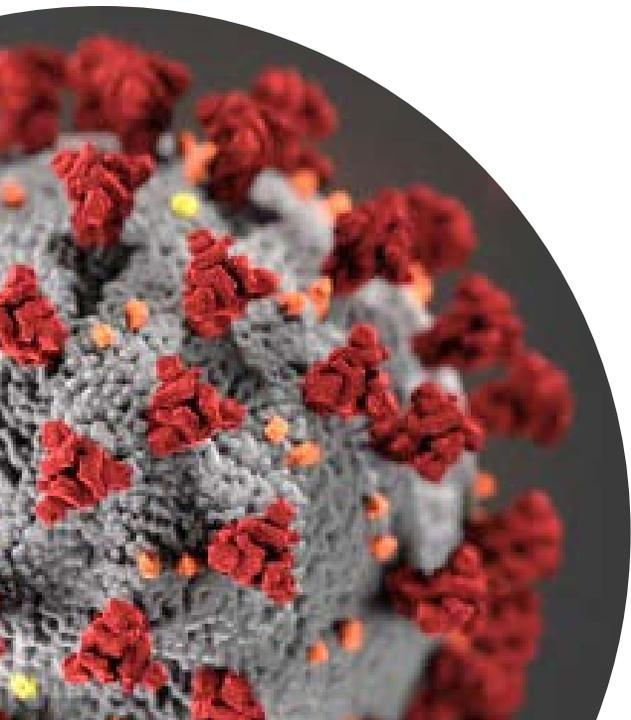
Strategic and Financial Opportunities

- Many businesses may be looking for “white knight” acquirers
- Consider “cleansing” assets through a § 363 sale
 - “Free and clear” of liens and encumbrances
 - Blessing by the Bankruptcy Court
 - § 363 strategies
 - Stalking horse protections
 - Credit bidding

Access to Courts

- Most courts are still operational. Need to check local announcements and orders to determine exact status.
- Bankruptcy petitions can be filed electronically at any time.
- Many bankruptcy courts are conducting hearings by phone and may employ video conferencing if evidence needs to be presented.

Questions?



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