

Outline of the Process

1. Determination of creditors
 - a. classification of creditors by types of debt (secured vs. unsecured), and by amounts of debt. This is very important as will be seen later, as the acceptance of the plan by the classes may be somewhat dependent upon the class
 - b. determination of creditors committee- based on upon classification of debt, where we can place Jack, Ted and Matty
 - c. determination of self-interest of creditors- part of basis for determining classes
2. Petition for Bankruptcy under Chapter 11
 - a. List of 20 largest unsecured creditors- from above classes
 - b. current balance sheet- must show financial position as of date of filing petition.
 - c. Employer ID #
 - d. Statement of executory contracts- those executed but not yet fulfilled
 - f. List of members, what percentage they own, status of equity accounts
 - f. list of interested parties- IRS (by virtue of liens they have on promissory notes), landlord, utilities, maybe accounts (this is not clear)
3. Plan for reorganization
 - a. Must have:
 - (1) delineation of classes as outlined in #1 above
 - (2) specify unimpaired classes- i.e. those who will get full payment as scheduled
 - (3) specify treatment of impaired classes-- determination of in what manner their claims will be satisfied
 - (4) provide same treatment for all creditors in same class-- thus the importance of the classification process
 - (5) provide adequate means of implementation-- the Code outlines 10 examples, but there is only limited by reality of carrying out the plan and the degree of acceptance by the creditors classes
 - (6) for corporations - provide a change in charter to allow non-voting securities and voting securities such that creditors classes have control over payment of preferential dividends.
 - (7) only have provisions consistent with interest of the creditors and public policy
 - b. May have
 - (1) impairment of some classes
 - (2) provide for assumption or rejection of any executory contract
 - (3) provide for settlement of any claim belonging to the debtor
 - (4) provide for sale of ~~xxx~~ debtor's property
 - (5) include any other provision consistent with the Code
 - c. S & T for development of plan such that it will gain acceptance by the requisite number of classes (see Acceptance below). Essentially this is the heart of the matter-- how far can NB go in relieving its debt and still have the various classes accept the plan. Further to the extent that debt is re-scheduled, this has to be realistic in terms of NB's ability to pay. If the creditors either do not believe it to be realistic, or don't think that NB is paying off fast enough, they can move for liquidation under Ch. 7. Therefore the plan must convince creditors that they will be better off under the plan than if the assets were sold and they would be paid x¢ on the dollar.

4. Acceptance of the Plan

- a. The plan must be negotiated with the classes (creditors' committees) and other interested parties (IRS?). In order to solicit acceptances of the plan, the debtor must file a Disclosure statement with the Court, which, once approved, can be sent to creditors along with a ballot to vote on the plan.
- b. The Disclosure Statement is similar to a proxy in content; the Statement is the most important document as this must persuade the creditors' committees to approve the plan based on their self-interest. Therefore you must be able to convince the creditors that they will benefit more from reorganization as proposed by the debtor than from either liquidation or from an alternative plan which can be presented. The disclosure statement must discuss the effect of the Plan on each class of creditors, the benefits of the plan, how the debtor intends to meet the plan, (somewhat a business plan for the future), history of operations, management, conflicts of interest in management (e.g. Ted as creditor and management).
- c. NOTE: to the extent the solicitation is done prior to the filing of the petition with the Court, there does not appear to be as strict of requirements for the disclosure document, there is also no need for the hearing on the disclosure statement and approval by the court. This means that, prior to the filing of the petition, the plan of reorg. should be formulated, along with some statement with disclosure, creditors committees formed etc.
- d. The plan is accepted when each class which is impaired votes on the plan and ~~the~~ creditors with 2/3 in dollar amount of claims and 1/2 of number of claims in each class vote affirmatively. Unimpaired creditors do not have right to vote. The ballots are sent with the disclosure statement and a copy of the plan of reorg.

5. Other Post-Petition Matters

- a. Landlord and utilities have right of notice. They have the right to require a deposit from the debtor to the extent they do not already have one. Otherwise, they can't evict or cut-off utilities.
- b. The court has the right to modify the plan based on input from the creditors' committees.

6. Confirmation

- a. The court will approve based on acceptance of each class of creditors and various other requirements, including assurance that plan will not be followed by a liquidation or further financial reorganization.
- b. Other requirements are somewhat mechanical.

ISSUES AND PROBLEM AREAS

1. IRS stepping in as a direct creditor of NB-Coop based on taxes owed by NB-INC. IRS has lien on promissory notes, as interest party they may try to be substituted to extent of unpaid balance on back taxes.
2. Avoidance of appointment of trustee by the court, allowance of running NB under present management.
3. Extent to which various creditors are secured vs. unsecured, effect of guarantees of loans by management-- does it trigger the debt?
4. Whether former owners are in same class as most unsecured creditors-- effect degree of influence on creditors committee.
5. Attempts to go back to original sale to coop and treat as reorganization rather than sale and liquidation.
6. Whether to solicit acceptance before hand and avoid court procedure and full disclosure requirement.
7. Whether to disclose conflicts of interest in disclosure statement and to what extent.

8. Whether creditors can personally sue board for distributing -rofits before paying creditors.
9. Whether NB can continue with advance patronage div. during bankruptcy or whether court will disallow any profits payments, need to have wages paid with all the resultant liabilities (tax).
10. Determination on attorney and effect of filing.