EQUITABLE TRANSITIONS

Educated and Flexible Solutions to Crises of Solvency

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Solvency Options As Easy As ABC by David R. Haberbush, Esq.

When the principals of Wolfer Printing Company found themselves saddled with a seemingly insurmountable cash-flow problem, they assumed that bankruptcy loomed as their only option.

They were wrong. Working with Equitable Transitions, a Long Beach-based firm that specializes in the provision of alternatives to corporate bankruptcy, Wolfer was able to take a less harsh, more proactive route. They signed over fiduciary responsibility of their company to Equitable Transitions who in turn sold the business' assets for $2.9 million, collected more than $1.2 million in accounts receivable, and $100,000 in other assets, including valuable artwork.

These proceeds likely amount to more than would have been realized were assets liquidated in a bankruptcy fire sale. As a result, Wolfer's creditors received a greater dividend than they would have if the assets had been liquidated in a Chapter 7 bankruptcy filing, Wolfer did not bear the stigma of bankruptcy, and the whole process took months, not years.

Along with other resource-challenged companies operating in an uncertain economic climate, Wolfer Printing Company found that the solutions an Assignment of Benefit to Creditors (ABC) provide are often more feasible, more appropriate, and more efficient than filing for bankruptcy. Indeed, an ABC represents one of the best-kept, least-understood secrets of the post-dot.com entrepreneurial meltdown.

An ABC is not rocket science. In fact, it's this relative ease of execution that makes ABCs, when appropriate, an attractive alternative to a protracted, complicated bankruptcy proceeding. In general, the process takes four steps.

THE PROCESS

Step One: Assignment

- Company X (*Assignor*) legally confers all rights, interests, and control of all assets to an independent third party trustee (*Assignee*).

Step Two: Liquidation

- *Assignee* liquidates these assets so to distribute them pro rata to the creditors of the Company. Such assets include but are not limited to such physical assets as machinery, equipment, and furniture, as well as less tangible ones as patents, copyrights, intellectual property, and accounts receivable.

Step Three: Settlement

- *Assignee* first evaluates and determines the amount and validity of claims of creditors.
- *Assignee* then distributes funds to creditors in order of the following priority: secured creditors, administrative creditors, including the Assignee, tax claims, claims for wages, salaries or commissions earned within 90 days of the Assignment date but only to the extent of $4,300, claims for consumer deposits up to $900, and all other unsecured claims. Unsecured creditors cannot follow sold assets. Formal claim process allows *Assignee* to limit and control ongoing liabilities.

Step Four: Closure

- *Assignee* reviews, controls, cleans up, and works toward closure of corporate situation before and during the asset sale.
- Assignee issues Final Report and closes out Assignment Process.

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What's Inside

Mr. Haberbush Goes to Washington

A lawyer's chance to argue a case before the highest court in the land is always slim. For 2004, it is ½ of 1%.

David Haberbush, J.D., principal of Haberbush and Campbell, LLP, and founder-principal of Equitable Transitions, has beaten the odds. After 3 years of litigation and appeals, he will appear before the United States Supreme Court.

Enacting a veritable David versus Goliath scenario, Haberbush's opponent is no less than the Internal Revenue Service. They claim that Haberbush's clients, the ex-partners of a long-dissolved hotel investment company, owe $70,000 in back payroll taxes. With interest and penalties that amount has ballooned to over $400,000.

Haberbush will contend that the obligations of a partnership are distinct from those of its individual partners. In so doing, he will show that the IRS has violated his client's guarantees to due process of law under the Fifth Amendment.

To prepare, Haberbush will conduct mock arguments and explore experimental strategies. He will also arrive a few days early to the nation's Capitol to observe Supreme Court proceedings.

Go East, Young Man

In a reversal of Horace Greeley's famous career strategy, Don Fayles is heading east.

Fayles, founder-principal of Equitable Transitions and former Chief Administrative Officer for First Los Angeles Bank, is moving to Bella Vista, Arkansas from where he will expand the firm's operations with an initial emphasis on the metropolitan areas of Dallas and Houston.

Though he will focus on business development east of the Mississippi, Fayles will maintain a regular managerial if not virtual presence in the Long Beach home office thanks to direct flights to LAX, telephone, e-mail, fax, and video conferencing.

No Longer Logo-less in Long Beach

Soon a picture will be worth at least a thousand words.

After 18 months without a visual tag, Equitable Transitions has decided to adopt a new look. It is hosting an international logo design competition. Open to design and art professionals and teachers and students, the winner will receive a $500 honorarium and mention on the firm's Web site, not to mention some valuable experience.

The winning entry's design will be incorporated into all of Equitable Transitions's marketing material.

Deadline for entry is midnight on Friday, September 26, 2003. For details, send an e-mail request to James Scarborough, Director of Business Development, jscarborough@equitabletransitions.com.

Bridging the Equability Gap

"Heavy-handed," "a dead end," "my road or the high road." It seems as though the crossroads of solvency and bankruptcy that a struggling mid-sized business owner must navigate are paved with malice and bad intentions.

Such is the view within the equability gap. The equability gap is the nether region between ignorance and education, harsh measures and even-handed options, pessimism and hope. It's not a pleasant place.

It doesn't have to be so. Equitable Transitions was founded on the conviction that cheaper, quicker, safer, and more flexible alternatives to bankruptcy are readily available – if not readily apparent – to accommodate many situations otherwise deemed hopeless. Seeking to bridge the equability gap, our goal is to guide an organization to the best resolution of its particular solvency challenge. In so doing, we aim to embody "equitable," in word and deed: to construct a win-win situation that serves the interests of all parties openly, honestly, faithfully.

SOME RECENT EXPERIENCES

Assignments for the Benefit of Creditors

When Fuller Evangelistic Association, a non-profit organization met with financial reversals, its board of trustees relied on Equitable Transitions's advice. An ABC was implemented because it uniquely suited the needs of the organization while providing for the payout to creditors as assets were liquidated. An initial distribution was made to the creditors and all debtor/creditor issues have been satisfactorily resolved.

Receivorships

Centerpoint Mortgage Corporation, a mortgage company and broker, found itself overextended and in irremediable financial circumstances when interest rates began to increase in late 1998. In May of 1999, Centerpoint Mortgage Corporation commended its voluntary wind-up and dissolution and chose Equitable Transitions to conduct the liquidation of its assets and the wind up of its business affairs. Located in Orange County, California, CMC did business in a number of states scattered across the country. At the time of Equitable Transitions's appointment, more than fifty mortgages issues by CMC were standing of record in the name of CMC in Minnesota, New Jersey and other states. As a Receivor, Equitable Transitions pursued these legally and factually complex issues with an eye toward realizing assets to pay a meaningful dividend to creditors.

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Intermediations

The principal shareholder and CEO of an importer called a CPA in great alarm. The Company was losing money; their bank had just completed an audit and indicated an increase in borrowing reserves was anticipated; a substantial and growing amount was due to their largest vendor; and a minority shareholder who had advanced funds to the Company demanded payment. The CEO concluded bankruptcy was the only alternative. The CPA told the CEO to call us. During our initial assessment, we reached a different conclusion. We told the CEO he could restore profitability if he would close an out-of-state office and reduce staff. These moves lowered his breakeven point from more than $11 million to about $8 million. 9-11 and other factors beyond his control curtailed successful implementation of the plan. Faced with $3.5 million in out-of-trust debt, a personal guarantee of $500,000, and needed inventory embargoed in China, Equitable Transitions negotiated an informal receivership with the firm's bank and pursued a 6-month plan that saw 60% of bank debt paid down.

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THE BENEFITS

Financially, bureaucratically, and emotionally, the benefits of an ABC are legion. All or some of the following five benefits can be realized while working with a qualified and objective third party firm that undertakes an ABC.

Continued Operation of Business as an On-Going Concern

- During an ABC, the business can continue to function, maintaining continuity, preserving jobs, and producing greater options for final disposition.

Better Return on Liquidated Assets

- Assets not sold in haste under duress of bankruptcy and as a stabilized operating company generally retrieve higher values

Assets not sold under bureaucracy of bankruptcy retrieve higher values

More Expedient

- Lower administrative expenses because the process is more streamlined than a bankruptcy.
- Less time-consuming.
- Contractual obligations can be negotiated and resolved efficiently.

Limited Court Interference

- An ABC does not require Court adjudication or consent in California.

Less Personal Liability and Headaches

- In general, the challenges faced by the *Assignor* become the problems of the *Assignee*.
- Uncertainty of outcome is virtually eliminated.
- Professional employees in effect *consult* to their own company with respect to operation and liquidation issues thus preserving core knowledge and expertise.
- Personal liability of directors and officers stops once assignment of assets begins. This is significant because in the case of start-up companies, the principals nearly always guarantee lender obligations of the company.

Fewer Stigmas

- Corporate entity's negative publicity minimized.

ABCs are not for everyone. Sometimes a company's individual circumstances do warrant a Chapter 7 or Chapter 11 filing. The only way to determine the merit of an individual case is to speak with a firm that has the experience and knowledge to understand when bankruptcy is preferable and when it is not, and will lay out the options in a clear and straightforward manner, providing customized solutions that can provide an equitable transition from insolvency to something less harsh, less time-consuming, less costly.