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The Benefits an Independent Trustee Brings to a Financially-Troubled Company's Retirement Plan Disbursement

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I'm going to give my reasons why I believe a financially-troubled company should appoint an independent trustee instead of permitting the owners to serve as trustees. What's new is not the concept but its implementation. In the insolvency community it's not a wide-spread practice. That's a shame because bringing an independent trustee into a company's retirement plan disbursement at the onset of the financial troubles can preserve and augment the fund's money (on both the cost and revenue sides), reduce time frames to a great extent, and assuage frayed nerves.

It happens with surprising frequency. A company must downsize or shut down, or else it must resort to a general assignment or a receivership. As a result, the company's pension plan or retirement plan may be eliminated. If that's the case, funds must be distributed. Frequently it becomes apparent that, for whatever reason, the plan is not fully funded, its management has been mishandled, or it has just been ignored. This in turn causes legal harangues with employees and raises the specter of a possible Department of Labor or IRS audit. When the plan ends, employees are cynical and suspicious of management. Sometimes rightly so. Frequently the plan's participants are not versed in financial language, which adds to the confusion.

When a company faces insolvency challenges and must take a tough next step – bankruptcy, a general assignment, a receivership – often the last thing on an owner's mind is the disbursement of accumulated retirement and pension monies. Granted, to be fair to the company's executives, they must direct their focus at the same time onto so many pressing issues. They may have many fires to put out and, face it, their interests are most likely elsewhere. It's a pity because, from the point of view of the employees, whose future is wrapped up in this money, timely disbursement of their retirement savings should be a priority.

As a result, the uncertainty of not knowing when they're to get their money exacerbates an already stressful situation, the loss of a job and benefits, a restructuring, whatever. Moreover, add to that anxiety the stress of not receiving straightforward and accurate information, of not having calls returned, of not having forms sent, of having forms misplaced. Finally, tax implications loom with rollovers; participants need money for unforeseen medical expenses, for mortgage down payments: all these factors heap stress upon stress upon the shoulders of plan participants.

These are just the internal stressors. Sometimes irregularities in fund disbursement not to mention plan participant complaints catch the eye of the Department of Labor. This in turn may require an audit which in turn can further delay distribution of funds. When this happens, lawyers and CPAs and consultants may be called in. Their fees, billed at book rate, come out of the plan's assets. Let's not forget the costs accrued by the pension plan administrator, who in turn often farm out associated tasks.

Meanwhile, where is the poor plan participant during all this? Not only do they not receive prompt and accurate information about their money, not only are they subject to seemingly interminable delays, but their funds are depleted by subsidiary costs related to the disbursement and/or audit. As a matter of record, to add insult to injury, while the funds are held in trust, they may receive the lowest imaginable rate of interest.

Usually, it is at this point, after the cows have already escaped through the barnyard gate, that a new trustee is brought in to sort through the mess. More often than not, an independent trustee has no prior ties, commitments, understandings, or relationships to encumber his or her judgment, efficiency, or efficacy. It is this independence and neutrality that makes the independent trustee the ideal player to work on behalf of the plan participants to bring closure to a troubling situation.

I believe that an independent trustee should be brought in to disburse pension and retirement plans the moment a troubled firm seeks insolvency relief, up front, when there is momentum, not afterwards when nerves are frayed, as structures disintegrate, as funds hemorrhage out of the trust. The benefits are legion. In my experience as a U.S. Bankruptcy Trustee, I have seen time and again how swiftly an independent trustee can push a disbursement forward.

In a climate where perception reigns paramount, I have seen how an independent trustee can be perceived as having more credibility than harried executives who are busy with the wind down of the business. Experienced, focused on but one issue, the independent trustee is perhaps the best positioned person to serve as a go-between between plan participants and auditors. Often, the Department of Labor, working with experienced and competent trustees, will not see the need to audit the fund. No audit means faster distribution and less money paid to lawyers, CPAs and consultants.

With an independent trustee communications are far more direct. Instead of hundreds if not thousands of plan participants overwhelming an already overwhelmed human resources department, they can call the trustee whose offices are primarily geared to field such calls. Often the participants don’t speak English, aren’t financially literate, aren’t aware of deadlines, implications, and options. Often, too, they have borrowed against these funds and require careful explanations on how to bring their accounts current so they may receive their monies.

The result? Stabilization of an already volatile situation, less anxiety, more control of their own money.

With a streamlined office and not a human resources department to coordinate the distribution, the funds pass more quickly passed into the plans of their rightful owners. With third party wind ups I have seen funds disbursed in just 90 days to six months. Without a third party, it could take years, especially if the Department of Labor or the IRS is involved. These monies can be more quickly used for legitimate and pressing unexpected expenses: medical, a mortgage, education.

Most independent trustees charge an up-front fixed fee, so there are no surprises, no hidden costs. Very rarely do trustees hire outside people. The result? More money to participants.

But at the same time that an independent trustee can keep costs down, so often they can negotiate higher returns for the funds held in trust. As of this writing, the going interest rate for Excessive Funds (in excess of $1,000,000) is 1.5%-1.9%. On a recent project we secured 3.9%. The result? More money to participants.

The concept of an independent trustee is not new but up-front, preventive use is. Their benefits should interest business owners whose insolvency challenges require they divide their attention among warring interests. In terms of cost (both in terms of lower costs ands higher returns) and timely distribution, they ensure stability and relative ease in an already difficult situation. They are one less thing for owners to worry about, one less thing for participants to stress over.