

Media Mention: Lance Martin Featured in 'Fortune' Article on Bankruptcy

May 12, 2020



***Fortune* recently interviewed creditors' rights attorney Lance Martin regarding a new bankruptcy tool that could help small business debtors.**

The online article, "A New Bankruptcy Law Could Prove a Big Help for Small Businesses. Here's Everything You Need to Know," shares three different attorney perspectives on

bankruptcy and the new subsection in Chapter 11. This article focuses only on Martin's responses in the Q&A.

From the article:

Is bankruptcy going to help me save my business?

Part of filing for bankruptcy is creating a business plan outlining your projected income and how you'll pay your creditors back. Bankruptcy is intended to help companies that will be able to stay cash flow positive once their debts are reduced or eliminated, so that is key to consider beforehand. "You really need to do some pre-bankruptcy planning to think about, how can you generate revenue on a going-forward basis to support a plan that's going to be feasible?" notes Martin. Especially coming out of coronavirus shutdowns, businesses need to have a clear picture of how they can snapback their business and generate enough revenue, and how reorganizing via bankruptcy could help them reach those goals.

What are the benefits of bankruptcy?

"If you're being foreclosed on or your landlord is trying to evict you or you're being sued, all of that has to stop and all of the creditors have to come in and deal with you in the bankruptcy court," Martin tells *Fortune*. "It eliminates death by a thousand cuts if you're fighting a battle on several different fronts."

Will I have to pay back all my debts?

As part of a bankruptcy plan, businesses will have to propose what they project they'll have as disposable income over the next three years, and how it will be doled out to different creditors. "If you comply with a plan like that, then you can essentially eliminate your debts after a three to five year period," Martin says.

Do my creditors have to approve my plan?

Plus, one benefit of Subchapter 5 is that businesses are provided a special Subchapter 5 trustee, which basically acts as a mediator between the debtor and creditors. "If you're a mom-and-pop, the Subchapter 5 trustee is going to be there to hold your hand and your attorney's hand through the process," says Martin.

What if I just want to walk away from my business?

Another path is that a business can decide to turn a Chapter 11 into a Chapter 7 if they decide midway the business isn't viable to keep running. Adds Martin: "Any business owner needs to think long and hard about the viability of their business on the going-forward basis. If they're determined that, 'we were limping along before the virus or we were ready to retire' or whatever it is, and they don't think that the business can survive or they can sell the business in this market, then Chapter 7 may be an option."

Will I need to file for personal bankruptcy too?

When weighing the option of filing for bankruptcy, small business owners should consider "where their personal liability is vis a vis the business," and what kind of personal guarantees or collateral they have in loans, notes Martin. Some business owners may need to file personal bankruptcy too, in order to help restructure their own debt. In fact, Subchapter 5 and Chapter 11 are also available to individuals whose debts are mainly tied to commercial or business activities.

Keep in mind...

All the experts *Fortune* spoke to stressed that bankruptcy should always be a last resort. Martin highly recommends working with your creditors to try to come to some agreement, deferment, or payment plan *outside* bankruptcy court: "That will save you time and money," he says. Plus, creditors would "much rather just get paid, and if they have to modify their loans or defer for a time, I find they're inclined to do that."

And while the word "bankruptcy" does carry a lot of negative connotations, some attorneys note that the stigma likely won't be quite the same during coronavirus. Unlike the slew of bankruptcies that followed the 2008 financial crisis, Martin says "This situation feels different. It feels like businesses have been caught in a buzzsaw" amid government-enforced shutdowns. He adds: "I'd like to think that the capital markets and banks and investors and other businesses are going to frankly be pretty understanding that some businesses may have had no choice."

You can read the entire article on *Fortune* magazine by registering for free. Martin has also written extensively about the new subsection and bankruptcy in general on wardandsmith.com. You can view his latest articles [here](#).