Bankruptcy Law & Chapter 11 Explained

Probably the best way to understand the various roles of a bankruptcy lawyer is to walk through a sample Chapter 11 process, exploring its various twists and turns, from pre-filing to plan confirmation. This section focuses on a corporate Chapter 11 proceeding, as opposed to the alternative corporate process, a Chapter 7 liquidation.


Chapter 11 is focused on reorganizing the debtor, paring it down to its essential business and assets and restructuring its debts so it emerges a leaner, meaner entity with a future. This is in contrast to Chapter 7, in which the debtor closes its doors and sells its assets. Chapter 11 is the most complex type of reorganization, and involves most of the features of corporate Chapter 7 and consumer proceedings; once you understand a Chapter 11 case, Chapter 7 corporate proceedings and consumer bankruptcies are relatively simple to follow.

The roadmap below simplifies the process but is by no means completely comprehensive. Every Chapter 11 proceeding is unique, and this summary does not discuss every section of the Code nor every bankruptcy device. Nonetheless, this description should give you a solid basis upon which to understand the various steps of Chapter 11.

Phase 1: The Coming Storm

Before every bankruptcy filing, the debtor can feel the rumbling of the coming storm. Perhaps the debtor’s business is part of a general industry downturn, subject to a massive lawsuit, or suffering from a bad case of over-expansion and underfunding. In any event, the debtor has liquidity problems, and trade creditors are getting testy, bondholders are demanding their interest payments and, most fatally, the debtor’s secured creditors - the banks providing the debtor with credit - are refusing to provide additional necessary funding.

At this point, weeks and sometimes months prior to the actual bankruptcy, the debtor often retains bankruptcy counsel. It knows bankruptcy is a distinct possibility, and needs counsel to try to avert bankruptcy, plan for its possibility and explain its consequences. Here, bankruptcy counsel serves as a legal adviser, sharing its knowledge and helping to plan for the future.

Chief among the priorities of debtor’s counsel is negotiating financing with the secured creditors, often trying to convince the banks they have a viable business plan worth the risk of further investment. Banks also often retain bankruptcy counsel to negotiate with the debtor. Here, the bankruptcy practitioner serves as a commercial financing attorney. In addition, debtor’s counsel will usually negotiate with trade creditors and bondholders, attempting to restructure the terms of debt, among other steps to avert bankruptcy.

Other creditors might also seek bankruptcy counsel at this point. They sense bankruptcy is imminent, and want to secure payments owed by the debtor in a manner immune to avoidance challenges (the debtor or bankruptcy trustee’s ability to cancel out - or “avoid” - certain pre-bankruptcy transfers). Creditors might also form ad hoc committees, retaining counsel as a group, to negotiate more effectively and gain leverage in negotiations. Here, the bankruptcy practitioner practices the art of dispute resolution and, sometimes, the ultimate in dispute resolution - litigation.

This process results in one of two things - either a reprieve from the bank or other creditors (or other successful out-of-court restructuring) or bankruptcy.

Phase 2: When Bankruptcy is Inevitable

But first, why bankruptcy?

If negotiations fail, and the debtor does not have sufficient liquidity to make good on its obligations, the debtor may consider filing for bankruptcy. The debtor can shut the doors of the business, or instead try to continue operating, paving the way for a restructuring or sale as a going concern. But how do you continue operating with no money and a firing line of creditors demanding payment?

That’s when Chapter 11 comes in. Imagine the most stressful day of your life - you missed a deadline at
work, you locked your car keys in the trunk, and an eviction notice is posted to your door. All you want to do is scream "STOP!" and freeze time so you can work out your problems.

Well, that’s Chapter 11 for you - the debtor screams "Stop!" and enters a bubble of protection.

**Short-term protection**

Bankruptcy affords a debtor-in-possession many immediate protections, namely:

- **The Automatic Stay:** This provides a true bubble of protection - all litigation against the debtor is paused, and creditors cannot file or continue suits against the debtor without permission from the bankruptcy court.

- **"DIP," or Debtor-In-Possession Financing:** That same bank that wouldn’t lend money prior to bankruptcy might change its tune in bankruptcy - and if not, other financial institutions might be willing to come to the rescue. DIP lenders receive special protection, achieving priority of payment above other creditors, although such priority varies from case to case.

- **Priority for Administrative Expenses:** Trade creditors also receive priority for many debts incurred for goods and services - administrative expenses - provided to the debtor during bankruptcy. Without this special priority, trade creditors would most likely cease doing business with the debtor, forcing the debtor to cease operating.

**Long-term ramifications... and drawbacks**

The short-term protection of bankruptcy, of course, is not the only benefit of commencing proceedings. The primary long-term impact of Chapter 11 is the fresh start it affords debtors. During the bankruptcy process, the debtor comes to an agreement with its creditors in satisfying their debts. At the end of the process, the reorganized debtor receives a discharge from its debts - all those debts simply disappear.

In addition, bankruptcy gives debtors the opportunity to reject executory contracts and leases, streamlining its business. On a more procedural note, bankruptcy forces every party to the table to negotiate a comprehensive solution to the debtor’s problems - giving the debtor more leverage at that bargaining table than it would have otherwise.

Obviously, Chapter 11 isn’t all protective bubbles and discharges from debts - it has its downside. First, the debtor went into bankruptcy for a reason, often large-scale business problems. While bankruptcy provides a window within which a debtor can fix those problems, it provides no guarantee the debtor will actually solve its problems and thrive after bankruptcy.

Second, the Chapter 11 process is a treacherous road, and many companies entering Chapter 11 eventually convert the bankruptcy case to a Chapter 7 liquidation or enter into a Chapter 11 liquidation plan, in either event shutting its doors and selling the whole kit and caboodle. Finally, creditors and customers sometimes avoid doing business with a company that was recently bankrupt. These and other disadvantages make bankruptcy a process of last resort for many potential debtors, even if more companies are viewing bankruptcy in a more benevolent light as just another financial planning tool.

**Preparing for bankruptcy**

Once bankruptcy is inevitable, debtor’s counsel engages in a mad scramble of negotiation, drafting and information-gathering. The debtor is about to pass a crucial threshold - the commencement of the bankruptcy proceeding through the filing of the bankruptcy petition. From the moment the debtor’s counsel files the petition in the bankruptcy court, the debtor transforms into the debtor-in-possession, under the protection and restrictions of the bankruptcy court.

One of the benefits of a Chapter 11 proceeding is the ability of the debtor-in-possession to continue operating with its current management as it proceeds through bankruptcy. It can enter into contracts, sell products and services, pay its employees and do almost anything it did in its pre-bankruptcy incarnation. But for the debtor to achieve this fully operational status, its counsel has to slog through weeks of intensive preparation.

The days before bankruptcy are some of the most intense days of a proceeding for debtor’s counsel for three primary reasons: the significance and complexity of DIP financing; the sheer number of motions, exhibits, schedules and other papers to be prepared; and the pressure of getting it all done before the debtor...
is forced to close its doors.

**Negotiating DIP Financing**

In order to become a "debtor-in-possession," the debtor needs - surprise - money. Much of the time before the bankruptcy filing is spent negotiating DIP financing with lenders - sometimes the same pre-petition secured lenders and other times a new group of lenders. If you remember, DIP lenders receive unique protections in bankruptcy, ranging from priority above pre-petition unsecured claimants to liens on the debtor’s assets superior to all pre-existing liens (including those held by the debtor’s pre-petition secured lenders).

These protections give potential DIP lenders incentive to extend credit and some measure of security. Here, counsel continues to play commercial financing attorney.

Negotiations of DIP financing usually touch on other pivotal financial issues, including:

- **Budget forecasts**: detailing how the DIP money will be spent;
- **Budget "carve-outs" for debtor and creditors committee counsel**: guaranteeing sufficient funds to pay such counsel (and without which most counsel wouldn’t represent the debtor or the committee);
- **Employee retention and bonus plan**: often a more contentious part of DIP negotiations, under which key management and personnel receive financial rewards for guiding the debtor through bankruptcy.

These negotiations have important long term ramifications for the case, as the debtor and DIP lender create a super-priority system, determining what entities and expenses get the highest priority in repayment down the road.

Negotiation of DIP financing often continues up to (and sometimes through) the eve of bankruptcy, and is often one of the more exhausting and intense experiences in the bankruptcy process.

**Getting the papers in order**

In addition, debtor’s counsel needs to assemble other papers to be filed at the start of the case:

- Bankruptcy petition (or, in the case of multiple subsidiaries, petitions);
- Schedules of information about the debtor, such as its largest creditors and its assets and liabilities; and
- Motions requesting first-day orders, which authorize the debtor to continue operating, and which will be discussed further in the next section.

During this stage, junior associates work with the debtor to gather and organize often huge amounts of information in a very short amount of time. Although not the most exciting work performed during the process, it is crucial, and the sheer amount of work usually makes this an intense, adrenaline-filled time.

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**Phase 3: Into the Storm - The Case Begins**

So DIP financing is negotiated, petitions, schedules and exhibits completed, first-day motions drafted - what now? Let the games begin.

**Commencement of the case**

The bankruptcy case commences with the filing and service of the bankruptcy petition and schedules (first-day motions are usually also filed at this point). The petition date serves as the bankruptcy line in the sand; from here on, the debtor’s world - its assets and liabilities - is split between pre-petition and post-petition, treated in very different ways. For example, most claims against a debtor that arise post-petition are entitled to a different - and higher - priority than their pre-petition counterparts, giving vendors incentive to continue doing business with the bankruptcy debtor.

The filing of the petition creates the bankruptcy estate, consisting of all assets owned by the debtor on that date. Best of all for the debtor, it also creates the automatic stay, that glorious protective shield against creditor attacks, halting all creditor lawsuits and other actions against the debtor and preventing creditor aggression without bankruptcy court approval.

**The first-day hearing and orders**
After all this hard work, there’s a bit of pomp and circumstance: the first-day hearing. This is a crucial hearing, with a full courtroom overflowing with most of the cast of characters in these proceedings: the bankruptcy judge, counsel to and representatives of the debtor, pre-petition and DIP lenders, other significant creditors and an attorney from the Office of the U.S. Trustee, the branch of the Department of Justice representing the federal government’s interests.

Here, the debtor’s counsel dons its courtroom attorney cap and frames the debtor’s case for the judge, the major players introduce themselves and the tone of the proceedings is set. Most importantly, debtor’s counsel requests authorization of first-day orders approving various debtor actions enabling the debtor to continue operating. Among the first-day orders typical in Chapter 11 are those approving:

- **DIP financing**: Authorizing the hard-fought DIP financing.
- **Use of cash collateral**: Allowing the debtor to continue using its cash, which is often pledged to a secured lender, which, in turn, is usually the **DIP lender**.
- **Employee payments**: Authorizing the debtor to continue paying salaries and other benefits to its workforce.
- **Access to cash management system**: Requiring the holders of the debtor’s cash accounts to grant access to the debtor to its funds.
- **Employee retention plan**: Approving bonuses, incentives and severance packages for management and employees “crucial” to guiding the company through at least the beginning of the proceedings.
- **Retention of professionals**: Authorizing the retention of the debtor’s bankruptcy counsel - you - and financial advisors.
- **Automatic stay**: Ostensibly authorizing the automatic stay. This order is unnecessary from a legal standpoint, as the stay is “automatic” upon the filing of the bankruptcy petition. Many debtors, however, appreciate an order expressly "authorizing" the stay as a none-too-subtle reminder to creditors considering breaching this protective bubble.

These are just a few typical first-day orders. There are a host of other potential first-day orders, depending on what relief is necessary for the debtor to continue operating.

Once the court issues orders granting at least preliminary approval of these requests, the debtor (and its counsel!) can take a quick breath as it morphs into an operating debtor-in-possession. From here on in, the debtor will need the approval of the court for all its major decisions.

**A new player: the official committee of unsecured creditors**

Shortly after the first-day hearing, the U.S. Trustee’s Office selects a small group of at least five unsecured creditors, charged with protecting the interests of the entire body of unsecured creditors and representing them in court during the bankruptcy. The committee usually consists of some of the debtor’s larger unsecured creditors, although the U.S. Trustee also seeks balance in representation of such disparate parties as trade creditors, bondholders and unions.

Formation of the committee is one of the several ways in which the Bankruptcy Code attempts to empower unsecured creditors, who enter bankruptcy with relatively minimal negotiating leverage and protection. Many bankruptcy practitioners work as counsel to the creditors’ committee, and are among the most active attorneys in any bankruptcy case.

**Phase 4: The Long Middle Stretch**

With the case in gear, the debtor enters the long middle stretch of these proceedings. The debtor and its advisors very quickly begin determining an appropriate plan of action - debt restructuring, replacement of management and creation of a new business plan, or sales of particular assets or, in some cases, the bulk of the business. These early days are a time of planning, with the debtor deciding on its ultimate goals and figuring out what it must do to get there.

**Business as usual**

One of the primary benefits of Chapter 11 proceeding is the corporate debtor’s ability to continue operating its business as a going concern. The first day orders permit this from a legal standpoint; from a business perspective, a debtor must take practical steps to streamline and strengthen its business in order to survive bankruptcy. This process is often a brutal carving of fat from the bone. Airlines in Chapter 11, for example, typically terminate unprofitable routes, eliminate first class lounges and in-flight meals and replace jumbo
airplanes with smaller jets. Steps like this are often required by the DIP lenders, and are necessary to keep the debtor’s budget within the constraints of the DIP. In addition, many such actions are part of the debtor’s long-term restructuring of its business for a successful post-bankruptcy life.

Debtor’s counsel helps with the legal aspects of these changes, most notably getting the debtor out of disadvantageous contracts - or, in bankruptcy lingo, rejecting leases and executory contracts (under which the debtor and counter-party owe each other ongoing duties). A typical executory contract is a goods contract in which a creditor provides the debtor with a monthly supply of a particular good in return for a monthly payment. A debtor can reject (as well as assume) its executory contracts and leases as it pares down its business. This process of streamlining the debtor’s universe of executory contracts provides plenty of negotiation and litigation work for counsel for both debtor and counterparties.

In addition, debtor’s counsel spends plenty of time defending against acts of aggression by creditors - attempts by creditors to get around the automatic stay and stop providing the debtor with goods and services. Many of bankruptcy’s little emergencies arise from such creditor actions; when a creditor threatens to shut down the supply of vital services, it’s remarkable how quickly debtor’s counsel can stampede into court to enforce the stay.

Getting out the gavel

The most colorful aspect of a bankruptcy case is often the sale of a large asset of the debtor, or, in liquidating Chapter 11s, substantially all of the debtor’s assets to a single buyer. Often the bundle of assets includes unrejected contracts and leases, which can be assumed by that same purchaser or purchasers. Best of all for the purchasers, the assets and contracts are transferred free and clear of all liens and encumbrances, safe from later creditor attacks.

This process occurs through an auction or series of auctions, with various parties (ideally) competing to buy the assets. The auction process is sometimes the most substantial event of a bankruptcy case, as the rest of the case focuses on distribution of the sale proceeds.

The sale process begins with the active marketing of the assets (often supervised by investment bankers), including due diligence, and continues with the submission of official bids. The centerpiece is the auction itself, the format of which varies from the simplest, a courtroom auction, to a more complex days-long auction, which often doubles as a purchase agreement negotiation, filled with moments of great suspense and way too much cold pizza. The announcement of a winning bidder climaxes the auction.

From there, the auction transforms into an M&A deal, complete with purchase agreement negotiation, closing and everything in between. The bankruptcy twist is that the sale’s terms must be approved by the court in a hearing, which usually brings many creditors out of the woodwork.

An auction is the best example of bankruptcy’s multisided character, requiring the practitioner, whether representing the debtor, purchaser or competing bidders, to be both M&A transactional lawyer and litigator. Many attorneys draft and negotiate the asset purchase agreement and then argue on behalf of its approval in court. In addition, many asset sales involve a host of other legal issues - antitrust statutes must be complied with, regulatory approvals secured, tax issues resolved, and environmental and telecommunications statutes followed, depending on the nature of the debtor’s assets. Bankruptcy lawyers delve into these areas of the law, changing hats with remarkable agility.

Perhaps most exciting, debtor’s counsel can fulfill lifelong dreams of being an auctioneer, banging a gavel at the winning bid.

At the end of the process, the court must approve the winning bid. Then the lawyers move on to the closing of the sale, in compliance with the court order. The result of this is a pot of money - of which the distribution is the main event in the later stages of the case.

Avoidance (of everything but a good fight)

Debtor’s counsel (and often committee counsel, bringing suits in the estate’s name) also spend a lot of time litigating “avoidance” actions, attempting to “avoid,” or reverse, certain payments and other transfers of value to creditors and debtor insiders made in the months prior to bankruptcy. These avoidance actions bring extra money into the estate, maximizing its value for the creditor body.

So-called preferential transfers are the most common pre-petition transfers avoided in bankruptcy. Equality in treatment among like classes of creditors is a key concept in bankruptcy. A debtor can’t favor his best
friend, the baker, over a mere acquaintance, the butcher. This principle extends to the ninety days (or, in the case of debtor insiders, one year) prior to bankruptcy, as the Code deems the debtor to have been insolvent even then. So if a debtor tried to repay one particular old debt right before bankruptcy - therefore "preferring" one creditor over the rest - that payment might be "avoided" by the court (although it might be protected by several available defenses).

Debtors can also seek to avoid pre-petition fraudulent conveyances, as well as certain recent steps taken by creditors to secure their claims, such as the filing of Uniform Commercial Code (the "UCC") financing statements. The latter exposes bankruptcy attorneys to the world of the UCC, the sophisticated and arcane statutes governing security interests. Bankruptcy practitioners, representing either the debtor or the "preferred" creditors, wear their litigation hats for this portion of the proceedings with each attempt to avoid a transfer a separate adversary proceeding, including discovery and sometimes resulting in a bona fide trial.

Interlude: the boring stuff

On the flip side of the exciting, nature of the practice is the repetitive, administrative work required by bankruptcy practitioners, particularly for debtor and committee counsel. Many of these tasks reflect and guarantee the transparent nature of a bankruptcy proceeding, and are necessary to keep creditors and other interested parties informed.

The Code and bankruptcy rules require the debtor to keep the Court informed of its financial health - through monthly financial reports, preparation of which is not a favorite task of associates. Committee counsel also has the unique job of keeping the committee informed, and associates spend much time coordinating meetings and faxing information reports to each committee member. For all parties, the multiparty nature of a bankruptcy proceeding makes notice and service issues far more complicated than a standard adversary proceeding; any party filing a motion must serve each party in the case, including many (and sometimes all) creditors, unless the court has ordered otherwise.

The most notorious administrative feature of bankruptcy, however, is preparation of fee applications. Professionals retained by the debtor and committee, including their counsel and financial advisors, do not get paid without court authorization. Appropriately, such professionals must file fee applications, complete with detailed time diaries, with the court every few months (or, in some cases, every month).

Although some firms are fortunate to have a special bankruptcy paralegal trained to prepare these applications, associates at other firms - typically the most junior associate - are often stuck with this tedious and time-consuming task. It can be the bane of the junior bankruptcy associate's existence, although it also provides the associate with relatively undemanding work between fire drills.

Phase 5: The Plan and Creditors

As the case proceeds, the focus moves towards creating and confirming a post-bankruptcy plan of reorganization or, in cases where the debtor sold substantially all of its assets, a plan of liquidation; ascertaining the validity and amount of creditors' claims; and determining how the debtor will satisfy such claims through distribution of the estate's proceeds or new debt and/or equity in the post-bankruptcy company.

The plan and disclosure statement

Ultimately, the debtor hammers out a plan of reorganization outlining its reorganization and treatment of its creditors. The plan is both the culmination of the entire bankruptcy process, containing all agreements among debtor and creditors arising during bankruptcy, and a blueprint for the debtor's post-bankruptcy future. The plan might outline the debtor's new corporate structure, describe the restructuring of debt and equity, or map out the debtor's post-bankruptcy business plan. If the bankruptcy involved a sale of substantially all of the debtor's assets, leaving no operable business, the plan would be considered one of liquidation, contemplating the distribution and use of the sale proceeds. Regardless of whether the plan contemplates reorganization or liquidation, it details treatment of creditors, indicating distributions to each class, or type, of creditor.

In addition, debtor's counsel must also prepare a disclosure statement, a handy cheat sheet that looks very much like a securities offering circular. Both the plan and disclosure statement are subject to much negotiation and often take weeks or months to draft. As with any major decision or process in bankruptcy, the court must approve the disclosure statement. In addition, the court must ultimately confirm the plan, concluding that the plan meets various standards outlined by the Code, including equality in treatment.
among similarly situated creditors and that the debtor proposed the plan in good faith.

Before the court can confirm the plan, however, it must be approved by all "impaired" classes of creditors - those creditors who do not receive full payment for their claims, or whose rights under the claim are otherwise altered. So a voting process is put into place, culminating in the creditors’ filing of bona fide ballots. Fortunately for debtors, the Code contains cramdown procedures, allowing approval of the plan over the dissent of impaired creditor classes if certain standards are met.

**The claims process**

In order to decide how to treat creditors, however, the debtor must first determine the universe of claims. Appropriately, much of the middle of the case involves determining the extent of creditor claims. All creditors receive notices of the bankruptcy and of the bar date, the deadline by which to submit proof of claim forms detailing their claim. If the creditor and debtor disagree as to either the validity or amount of the claim, the court must determine whether it is allowed. The debtor might also attempt to equitably subordinate certain claims, including those arising from creditor misconduct. Eventually, the court gives its stamp of approval on the amount and priority of each claim, bringing finality to the claims process.

The claims process involves skill in negotiation and dispute resolution on the part of debtor and creditors’ counsel. Given the sheer number of claims disputes in most proceedings, the claims process is an exercise in efficient case management. Junior associates typically spend much of their time working on the claims process, which also provides many opportunities for courtroom appearances.

**Phase 6: Lumbering Into Port**

At last, the end is in sight. The debtor’s debt and equity have been restructured. The business plan is in place. Assets have been sold. All claims and avoidance actions have been resolved, and the plan has been approved by the creditors and confirmed by the court.

Now it’s time to distribute the money that awaits the creditors. Cash and/or new debt or equity in the reorganized debtor is distributed to creditors (and perhaps equity holders) via a priority system. Under this scheme, creditors receive distributions only after the debts of all creditors with a superior priority are completely satisfied.

Claims are repaid according to the following priority scheme:

- **Super-priority "carve-out" claims**: such as debtor and committee professional fees and employee bonuses, if (and only if) they are subject to “carve-outs” in the DIP financing agreement;
- **DIP financing claims**: DIP claims take priority only on two conditions: that the order approving the DIP facility grants the DIP lenders “super-priority status” senior to post-petition “administrative claims,” and that the order also grants the DIP lenders a lien on the debtor’s assets superior to pre-existing liens held by secured lenders. Otherwise, the DIP financing has a lower priority than secured claims and is either higher or equal in priority to administrative claims;
- **Secured claims**: up to the value of the secured creditor’s collateral;
- **Administrative expense claims**: arising from such bankruptcy-era expenses as "the actual, necessary costs and expenses of preserving the estate," post-petition taxes, and compensation of trustees and professionals, to the extent they are not covered by the DIP carve-out;
- **Other priority unsecured claims**: such as certain employee wages, government claims, and spousal and child support claims, among other pre-petition claims;
- **All other pre-petition unsecured claims**: including the remainder of secured claims above the value of the collateral; and
- **Equity claims**: which are typically valueless.

Now a new entity arises - a reorganized company ready for business. The debtor receives a discharge resolving all liability for pre-petition debts and allowing it to move on with a clean slate. All of the debtor’s post-petition assets are now free and clear of all liens and encumbrances. For one bright, shining moment, the debtor is newborn and pure.

If the reorganization turns out to be a complete liquidation with no post-bankruptcy operating debtor, the debtor doesn’t get the discharge. Then again, that’s a moot point, given that the now-liquidated debtor has no assets against which a creditor could go after.

Bankruptcy practitioners often help to effectuate the plan and resolve post-bankruptcy issues. But, most importantly, counsel can savor success, or least breathe a sigh of relief that this proceeding is over.
The Attorney's Role in Chapter 11

So now you have a sense of the road traveled in a typical Chapter 11 proceeding. Many things can happen in a bankruptcy process. Some involve significant union negotiations, requiring attorneys with significant labor expertise. Others involve complex litigation, including lawsuits among shareholders, former directors and officers and accounting firms (as in the Enron bankruptcy).

Every Chapter 11 proceeding is unique, involving different key issues and areas of expertise among the practitioners involved. But the sample Chapter 11 proceeding in this guide gives you a peek into the form of most proceedings, and many of the major issues.

More important, however, is fully appreciating the variety of roles played by the bankruptcy practitioner during the process. If you choose to practice bankruptcy law, you might well end up wearing the following hats.

**Litigator**
- Motion practice, including motions authorizing most significant debtor actions, such as DIP financing and asset sales.
- Litigate all aspects of adversary proceedings, including those concerning avoidance action (of both preferential transfer and fraudulent conveyance).
- Claims disputes and equitable subordination actions.
- Related litigation involving non-bankruptcy law, such as securities fraud.

**General counsel**
- Advise debtors and potential debtors in consequences and mechanics of bankruptcy, and guiding them through the bankruptcy process.

**Commercial financing**
- Negotiate and draft DIP financing agreements and extensions and amendments to pre-bankruptcy credit agreements.

**Uniform commercial code/security interests**
- Review validity and perfection of security interests on property of the debtor estate held by allegedly secured creditors.
- Effectuate perfection of claims of DIP lenders.

**Mergers and acquisitions**
- Coordinate auction and sales process.
- Work with investment bankers in marketing debtor’s assets.
- Represent potential bidders for assets.
- Due diligence concerning assets and debtor’s business.
- Draft and negotiate asset purchase agreements.
- Secure antitrust and other regulatory approvals.

**Labor and employment**
- Negotiate employee and management bonus, retention and severance plans.
- Coordinate communications with employees concerning bankruptcy proceedings and, often, mass lay-offs.
- Settle disputes with unions.

**Tax**
- Resolve tax claims.
- Tax planning for reorganized debtors.

**Bankruptcy (bankruptcy-specific tasks)**
- Prepare fee applications, monthly financial reports and other administrative forms.
- Create bankruptcy petitions and schedules, including schedule of assets and liabilities.
Coordinate and supervise creditors committee.
Supervise and effectuate claims and plan voting process.
Negotiate and draft plan of reorganization and disclosure statement.

And, as discussed above, any other number of other areas of the law - everything from environmental law to telecommunications law to Federal Aviation Authority regulations - might also be involved in the proceedings, depending on the nature of the debtor’s business.

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