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**UPDATE ON
COMMUNICATING
WITH YOUR
LENDER DURING A
PANDEMIC**



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- Partner in the vehicle finance law firm of Schickler Kaye LLP
 - Clients have included major commercial banks, financial institutions, investment banks, captive and independent finance companies, and leasing companies.
 - Four seasoned finance attorneys, three litigators, and one bankruptcy counsel
- 30-year career in commercial vehicle finance and leasing (President, CEO, and General Counsel)
 - Co Founder of the Advantage Funding group of companies (largest independent financier to the motorcoach industry)
 - Co Founder of Access Commercial Capital (acquired by United Leasing and Finance)
 - Immediate past president and current board member of the National Vehicle Leasing Association (NVLA)
 - Member of the Advisory Board of Leasing News
- COVID-19 Pivot
 - Intimate knowledge of how lenders think, boundaries, and the decision process

DISCLAIMER

MY COMMENTS TODAY ARE NOT INTENDED FOR THE PURPOSE OF PROVIDING LEGAL OR PROFESSIONAL ADVICE.

All the information I communicate on today's UMA Online Town Hall meeting are for informational purposes only and are not intended to serve as a substitute for the individual consultation of your own attorney. While some of my comments may be presented in conclusory, specific, or in summary form, they are not intended to replace individual, specific, legal, and professional advice provided by your own attorney, accountant, or other advisors. Any questions or feedback discussed today does not create a professional or attorney/client relationship and does not create any privacy interests.

YOU SHOULD ALWAYS CONSULT AN ATTORNEY OF YOUR OWN CHOICE.



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**ORIGINAL
PRESENTATION WAS
OCTOBER 15, 2020**

*What's happened since
then?*



Covid-19 Pandemic

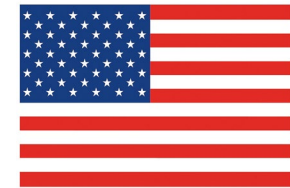
United States

- 29.4M

Total Cases

- 534K

Total Deaths



Worldwide

- 120M

Total Cases

- 2.65M

Total Deaths



- **On December 11, 2020, the U.S. Food and Drug Administration issued the first emergency use authorization for a vaccine to prevent the coronavirus.**

**ORIGINAL
PRESENTATION
WAS OCTOBER 15,
2020**

*What's happened since
then?*



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THE ECONOMIC IMPACT

- **Demand shock**
 - Resulting from quarantine, unemployment and business closures dealt a blow to consumer services
- **Supply shock**
 - Consumer spending and industrial production dropped
- **Financial shock**
 - Unemployment increased
 - Small business revenue significantly declined
 - *Motorcoach companies still down 80-90% of 2019 revenue (100,000 jobs)*

All at once!



**ECONOMIC
IMPACT
CONTINUES**

OPTIONS

While the pandemic continues...



Turn in the keys

Continue to operate as the economy recovers

Downsize your operations

Negotiate more favorable terms with lenders

Merger and Acquisition

Seek relief through bankruptcy



LENDERS CONTINUE TO STRUGGLE WITH THE MOTORCOACH INDUSTRY

- **Deferral Status Varies**
 - Some continue to defer
 - Interest only and partial payments for others
 - Principal and interest payments are becoming due for more lenders after one year
 - Workouts and refinancing
 - Repossessions
- **We are getting to the tipping point**
- **Lenders still do not want collateral back if there is a viable alternative**
 - Many operators have significant negative equity in their fleet



WHAT SHOULD OPERATORS BE DOING NOW?



- **Open and honest communication with lenders is critical**
 - Is there a recovery plan?
 - Revenue updates and forecast
 - Update 2020 financials and prepare a three-to-five-year forecast
 - May help in negotiating with your lenders



WHAT SHOULD OPERATORS BE DOING NOW?

- **Understand your loan and lease agreement!**
 - Have you ever read it?
 - If not, read it and understand it or hire a professional to advise you
- **The pages of the loan agreement guide the lenders' decision-making process**
 - Expect they will attempt to enforce the terms of the agreement, especially if there is a default
- **Reach out to the lender before your last deferral expires or the loan goes into default**
 - Preferably in writing - follow the notice provision in the contract



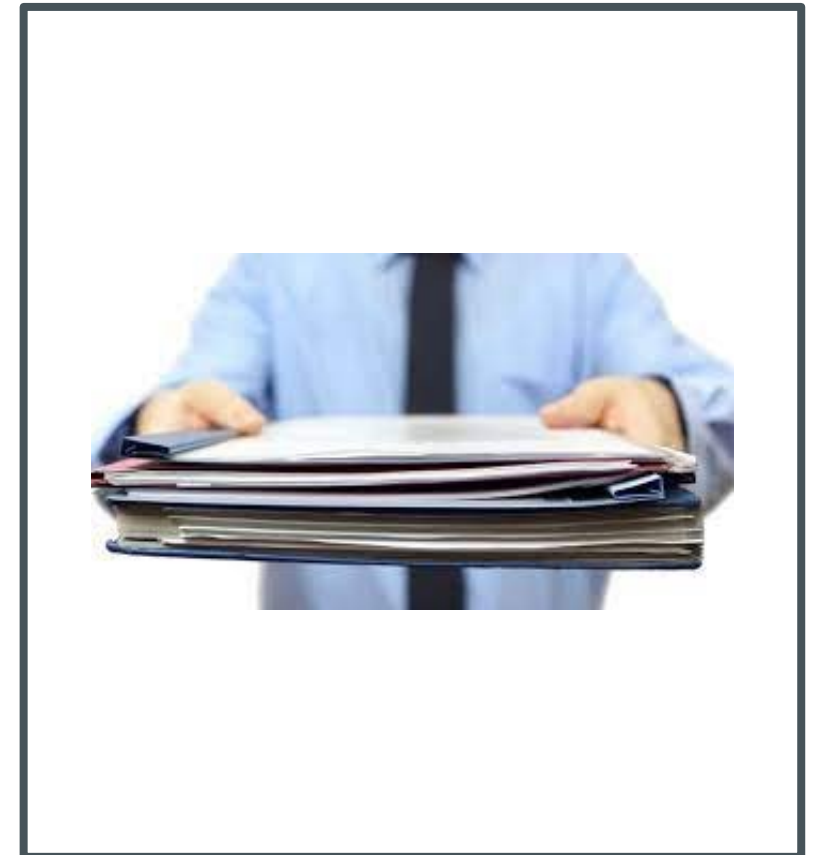
COMMUNICATE WHAT YOU WANT

- **Clearly state your plans and what you hope to accomplish with the lender, understanding many lenders now have guidance and policies in place that may be difficult to overcome**
 - **Another deferral**
 - **Interest only payments**
 - **Partial principal and interest**
 - **Refinance**
 - **Voluntarily surrender collateral**
 - **Discounted payoff (understand the other PPP - Pre-Payment Penalty)**
- **The intimidation factor - engage a professional if you are uncomfortable negotiating with the lender**



SUPPORTING DOCUMENTATION IS CRITICAL

- **Provide financials that support your recovery plan**
 - **If you don't have an internal accountant engage an outside accounting firm**
 - **Year To Date Balance Sheet and Profit & Loss Statement**
 - **12-month forecast (base case, best case, worst case)**
- **If your plan does not have any meaningful and realistic revenue recovery, your options are limited**
 - **Have a hard conversation with yourself, your advisors, and your family to determine if it is realistic to stay in business**



CONSIDERATIONS WHEN YOUR PROPOSAL IS REJECTED

- **Understand what corporate and personal assets are at stake - *asset protection***
 - It may be too late to protect them
 - Hire qualified counsel that can guide you
- **Do you intend to remain in business?**
 - Can you...
 - scale down operations?
 - pledge additional collateral?
 - surrender collateral and negotiate deficiency terms
 - sell underutilized collateral (maximize return)
- **If you were not successful negotiating your plan it may be time to hire an attorney that is not emotionally tied to the discussion.**
 - Problems can snowball out of control and multiply quickly
 - Focus on the result and not necessarily who communicates the message.



MERGER AND ACQUISITIONS

- In crisis lies opportunity. Deals are getting done!
- Opportunistic buyers meet eager sellers in the coach industry
 - Forward thinking leaders need to act now and assess opportunities coming out of the downturn
- Earn outs are the norm
 - Considering solvency challenges (even for strong companies)
- Take stock in your company and evaluate opportunistic plays
 - Look beyond the immediate horizon
 - Hire professionals in the industry and develop a deal strategy



BANKRUPTCY



- Continued government relief programs and lender deferments have helped many motorcoach operators weather the economic challenges.
 - 2020 bankruptcy filings sink to lowest level in 34 years
 - Chapter 7 filings decreased 31% over 2019
 - Chapter 13 filings decreased 46%
 - Chapter 11 filings increased 29%
- Nonetheless, this crisis will no doubt lead to the failure of many businesses in 2021



SUBCHAPTER V OF CHAPTER 11

- **The Small Business Reorganization Act - SBRA**
 - **Enacted February 19, 2020**
 - **Easier, less expensive, and quicker version of Chapter 11 reorganization for small businesses and individuals provided their debts are primarily business debts and “engaged in commercial or business activities” (potentially a Covid-19 lifeline for the motorcoach industry)**
 - **Originally it capped secured and unsecured debt to \$2.75M but was increased to \$7.5M for a year as part of the CARES Act**



SUBCHAPTER V

- **Similar to CH 13**
 - **Personal guaranties can be extinguished**
 - **Debt can be repaid over 3 to 5 years**
 - **Disposable income must be paid to creditors (benefits both creditors and debtors)**
 - **Debts are not discharged until the plan is completed**
 - **To file, the business needs to submit a recent balance sheet, statement of operations, cash flow statement, and the most recent federal tax return**
 - **The Plan must be submitted for approval within 90 days of filing and a status conference is held 60 days after the filing**
 - **Extensions of time are limited to circumstances beyond the debtor's control**



SUBCHAPTER V

(CONTINUED)

- **Subchapter V**
 - **A trustee is automatically appointed but *the debtor retains equity and control of its assets and operations***
 - **Trustee's role is essentially to act as a mediator to facilitate a settlement among creditors**
 - **No Creditors' Committees (unless there is cause)**
 - **If the Debtor's principal used her primary residence as security for a loan to fund the business, the Subchapter V plan may modify the loan**
 - **Will allow small businesses to pause their obligations for long enough to negotiate with lenders, landlords, and other creditors**
 - **Subchapter V filings will likely surge once PPP funds run out, particularly among businesses who find themselves unable to meet the loan forgiveness criteria**



SUBCHAPTER V (CONTINUED)

- **Other highlights**
 - **Cramdown is easier**
 - **Motor vehicle loans to individuals in a Subchapter V case will force the lender to accept payments equal to the value of the vehicle even though the value is less than the full amount of the vehicle loan (lien is retained by creditor)**
 - **All creditors must be treated equally (you cannot pick and choose)**
 - **Debtor must commit all of its disposable income for plan term of 3 to 5 years**
 - **Operating and TRAC Leases may be treated differently under Subchapter V**
 - **Slow Start to adopting Subchapter V**
 - **But there has been a steady increase in month over month filings for the past six months**



TAKE AWAYS

- **Develop plans to either stay in business, recalibrate your operation, M&A, or exit strategy**
- **Understand the detailed loan agreement terms - it's not too late to negotiate with lenders**
- **Communication is critical (either through a professional or yourself)**
- **Protect your assets (if it's not too late)**
- **If all else fails, contemplate filing Subchapter V bankruptcy to protect your assets and business**
- **Consult with qualified counsel before you make any rash decisions**



Q & A AND MY CONTACT INFORMATION

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