

Important Questions and Answers about the Hostess Bankruptcy

Here is a summary of frequently asked questions pertaining to bankruptcy and the Hostess Brands Bankruptcy in particular.

Q. What is a bankruptcy?

A. A bankruptcy is a legal proceeding with a special set of rules and standards governing a company's rights and obligations (as well as the rights and obligations of creditors and other parties) after the company files a bankruptcy petition.

The laws governing a bankruptcy are contained in the U.S. Bankruptcy Code. Bankruptcy proceedings are supervised by the U.S. Bankruptcy Courts, which are divisions of the U.S. District Courts.

Q. What are the differences between a Chapter 11 and a Chapter 7 bankruptcy? What is the Hostess Brands bankruptcy?

A. A Chapter 11 filing is a reorganization proceeding that is intended to give a company an opportunity to restructure its operations and finances and emerge from bankruptcy pursuant to a plan of reorganization. In Chapter 11 bankruptcies, companies seek a seamless transition in operations upon a filing so customers do not recognize a break or difference in service. In a Chapter 11 bankruptcy proceeding, a company may attempt to reorganize its operations in a "stand-alone" reorganization or to sell some or most of its assets as a going concern. A company that has filed a Chapter 11 petition is referred to as the "debtor."

Though a Chapter 11 bankruptcy filing is structured to prevent liquidation, a liquidation can occur in a Chapter 11 proceeding if attempts to reorganize fail.

Hostess Brands was filed as a Chapter 11 bankruptcy on January 11, 2012 in the United States Bankruptcy Court for the Southern District of New York in White Plains, New York.

A Chapter 7 filing is a liquidation proceeding where a company terminates operations. A trustee sells off all assets and pays out available funds to various classes of creditors pursuant to rules provided in the Bankruptcy Code.

Q: What is a Chapter 22?

A: "Chapter 22" is not a technical term. When a Company like Hostess files a second Chapter 11 people often refer to the second filing as a "Chapter 22" (11 + 11 = 22)

Q. What are the rights a company obtains when it files for Chapter 11?

A. A company filing for Chapter 11 (known as the "debtor") obtains the right to seek court authority to reject otherwise binding contracts. Pursuant to the automatic stay, which becomes effective immediately upon a bankruptcy filing, there is a suspension of most creditors' efforts to collect on their debts and most litigation - these collection efforts and litigation are officially and automatically put "on hold." Debts become what are called bankruptcy "claims," which are usually dealt with in a plan of reorganization.

Q. What are exceptions to the automatic stay?

A. Exceptions to an automatic stay include certain "First Day Orders," which may authorize the company to pay various prepetition bankruptcy claims as they come due instead of waiting for the end of the case. In this Hostess Brands case an order was approved to authorize (but not direct) the payment of most employee related claims as they come due, including wages and vacation pay, as well as claims by key vendors. The Company did not seek authority to pay prepetition pension fund contributions.

While most litigation is stayed, grievance and arbitration proceedings under a labor contract may go forward, although any monetary damages are usually dealt with in the bankruptcy process.

Q. What happens in the Chapter 11 bankruptcy process?

A. When a company files a petition for Chapter 11, the automatic stay takes effect and the company immediately comes under the supervision of the bankruptcy court. The debtor may ask the court for the authority to reject or assume contracts. The company ultimately negotiates a Plan of Reorganization (“POR”) with creditors and other involved parties in the bankruptcy. The POR is a legal document that provides how the company will pay creditors and how it will be governed following emergence from bankruptcy.

Q. How is the POR approved?

A. The company’s management has the exclusive right to file a POR for the first 120 days after filing the petition, although the bankruptcy court may shorten or extend that “exclusive” time period (the extension can't be for more than 18 months after the filing of the petition). Before a POR may take effect, it must be approved by the bankruptcy court and gain the required positive vote of various classes of creditors. There are usually prolonged negotiations over the POR between the company and various groups involved in the bankruptcy, as the approval of the POR comes towards the end of a bankruptcy proceeding.

Q. How is a company financed under Chapter 11?

A. A company filing for Chapter 11, now called the debtor-in-possession (“DIP”) because the debtor is still in possession of the business, often seeks new financing, called DIP Financing. DIP financing is often provided by pre-petition lenders who seek fees and improved priority, terms, and/or collateral. This financing is used to pay for the operating needs of the company.

Hostess negotiated a debtor-in-possession financing for a total of \$75 million. The bankruptcy court approved the DIP financing on an interim basis on the second day of the bankruptcy. There may be additional litigation or negotiations over the DIP financing before it is reviewed on a final basis, including because the DIP financing requires that the Company meet some very expedited milestones, including in connection with attempts to change its labor contracts.

Q. What is the role of the bankruptcy judge?

A. The judge oversees the bankruptcy legal process and must review the debtor’s “non-ordinary course” decisions, which includes any requests for rejecting labor contracts or selling substantial assets. The judge is required to follow and implement the Bankruptcy Code and will defer to the debtor’s business judgment on many decisions. Bankruptcy Judges do not manage or administer the business of the Company in bankruptcy they only interpret the bankruptcy law in relation to the motions brought before them. Bankruptcy judges are former bankruptcy lawyers, not former lawyers for unions.

Q: Who is the judge assigned to the Hostess bankruptcy?

A: The bankruptcy judge assigned to the Hostess Brands cases is Bankruptcy Judge Robert A. Drain, who sits in White Plains, New York. Judge Drain has some experience in large Chapter 11 cases involving labor issues. He was the judge assigned to the Frontier Airlines, A&P supermarket, and Delphi case, each of which involved complicated labor issues.

Q. Who else is involved in a company's bankruptcy filing?

A. The unsecured creditors (creditors who are owed money but do not have a lien or mortgage on the Company's property to secure the debt) have a formal role in a Chapter 11 bankruptcy. An official body called the Unsecured Creditors' Committee, usually consisting of the seven largest unsecured creditors, is appointed by the United States Trustee, a government official, to represent the interests of unsecured creditors.

Each committee member receives one vote. This committee can hire professionals, often including lawyers and accountants or investment bankers, to monitor the company's actions.

While any party can appear on any matter before the bankruptcy court, the court tends to pay special attention to the views of the committee.

Q. Who is on the Unsecured Creditors' Committee in this case?

A. The U.S. Trustee appointed a seven-member committee in the Hostess Brands bankruptcy, including the IBC-IBT National Negotiating Committee, five pension funds (including the Central States Pension Fund and the New York State Teamsters Pension Fund) and a trade creditor.