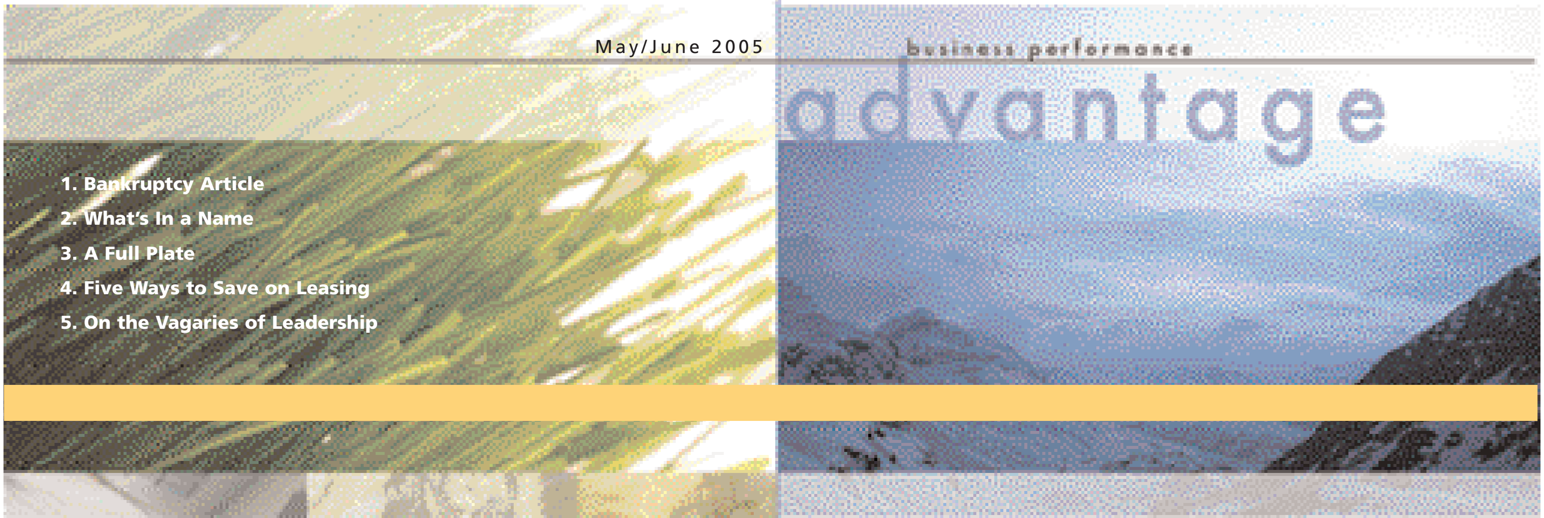

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Amendments to the Bankruptcy Code
by Richard Macias

Recent amendments to the Bankruptcy Code that will take effect by the end of the year will result in a number of changes to the bankruptcy process. Most of the media attention has focused on the changes for individual or consumer bankruptcies. Other amendments, that have not received significant attention in the press, will change commercial cases as well, especially the newly created "small business" debtor rules.

All of these changes will have potential significance for small business owners. As creditors, small businesses often face even greater stress when significant receivables are jeopardized after an important customer files a bankruptcy. The changes attempt to relieve a portion of that stress. Most small business owners operate as proprietors, which mean they are individually liable for the debts of the business. Even for the small business that is incorporated, the individual owners/shareholders frequently must personally guaranty the debts of the corporation. These changes could sharply limit the utility of bankruptcy to such individuals.

The most important changes involving individual bankruptcies will include:
- "Means" testing
- Homestead exemption limitations
- More strict control over the amount of relief an individual debtor may receive.

On the business side, the most significant amendments provide for:
- An expedited procedure for "small" business debtors in Chapter 11
- Limitations on preference recovery actions against creditors
- Reform of the reclamation process for trade creditors.

“Means Testing”

One of the most controversial amendments imposes limits on eligibility for discharge for individual debtors by requiring so called “means testing.” Under current law, individuals file under either Chapter 7, which allows for a discharge of virtually all debt but requires the debtor to forfeit most of their remaining assets, or Chapter 13, which allows debtors to keep most of their property in exchange for repaying a large portion of the debt in a plan over time.

Homestead Exemption

Current law allows debtors to exempt a certain amount of equity in their personal residence, a “homestead”, from the assets that can be reached by creditors. This has led to great controversy since there is wide variation among the states about the size of this exemption. Florida and Texas, for example, allow virtually a 100 percent exemption regardless of the value or outstanding debt on the home.

The amendments will cap the exemption available in bankruptcy to $125,000. The Bankruptcy Court may deny the entire homestead exemption to a debtor that has changed address within 10 years prior to the bankruptcy if the court finds the move was for the purpose of hindering or defrauding creditors.

Individual Debtor Control

The current standard Chapter 13 individual debtor repayment plan is three years. The new law would require that debtors with income above their home state median increase the payment plan to five years. Debtors with income less than state median would still only have the three year obligation.

In order to be eligible for bankruptcy an individual must consult with an approved credit counseling agency within six months prior to filing. The court is allowed to reduce a creditor’s claim by up to 20 percent if that creditor refused to negotiate a reasonable alternative repayment schedule proposed by a credit counseling agency consulted by the debtor prior to the bankruptcy. Finally, the debtor must attend an approved financial education course as a condition of discharge.

Small Business Debtors

The new law establishes a special Chapter 11 bankruptcy category for “small businesses,” which the amendments define as a business with less that $2 million of aggregate assets. The small business debtor will have a 180 day “exclusivity” cushion in which to file a plan of reorganization without competing plans from creditors. Businesses in this category will be allowed to expedite the bankruptcy process by using standard forms for disclosure statements and reorganization plans. The court hearing on the debtor’s disclosure statement and confirmation of the plan of reorganization can be combined. Generally, the small business debtor must have a court order plan confirmed within 300 day of the filing of face conversion to Chapter 7.

Preferences

Under current bankruptcy law, payments made to unsecured creditors in the 90 day period preceding the filing of a bankruptcy may be “preferential” and therefore recoverable by the bankruptcy estate. The theory behind the law is that it prevents a debtor from conferring a special benefit on preferred creditors and ensures a more equitable distribution to creditors from the debtor’s limited assets.

There was considerable Congressional debate suggesting that small business creditors were most susceptible to claims where the preference amount was less than $10,000. As a result, under the new law, preference recovery actions against a creditor will be limited to claims exceeding $5000. Also, if the claim is for less than $10,000, the preference recovery lawsuit must be filed where the creditor has its principal place of business. Under current practice such suits are always filed in the state where the bankruptcy case is located, often putting the out-of-state small business creditor at a considerable disadvantage.

One of the most often used defenses to a preference claim has been modified and simplified as well. Under the new law, the preference claim can be defeated if the creditor can show the payments were either, paid consistent with the "ordinary course" of dealing that existed between the debtor and creditor or were consistent with business standards within the industry. Under current law, many bankruptcy courts have required that a creditor meet both of these test in order to establish the "payment in the ordinary course" defense to a preference claim.

Reclamation

Under current law a vendor creditor can seek to recover goods shipped to a debtor that is insolvent or files a bankruptcy. The old bankruptcy law allowed the vendor creditor to demand return for any goods that are received by the debtor with 20 days of the bankruptcy filing.

The amendments modify the reclamation process in a bankruptcy situation. The vendor creditor would now be allowed to seek a return of the goods received by the debtor within 45 days of the bankruptcy filing. Alternatively, should it the debtor be unable to return the goods (a frequent occurrence in manufacturing and distribution) the vendor creditor would be entitled to an administrative priority for goods shipped and received by the debtor in the 20 days proceeding the filing. The advantage to being an administrative creditor is that in a Chapter 11 the debtor's plan must include full payment for all administrative claims before the final plan can be approved whereas the distributions to unsecured creditors are usually minimal.

Conclusions

The changes for both individual and business bankruptcies are controversial. Most of the lobbying for the changes came from banks and credit card companies which argued these changes were necessary to stem bankruptcy abuse. Others have pointed out that the changes for individuals will severely limit the second chance offered by bankruptcy, a unique element of American entrepreneurship that allowed individual visionaries as diverse as Henry Ford and Ray Kroc to make a second try at business success.

From a practical standpoint, whether as creditor or debtor, the scope of the changes for both individual and business bankruptcies are significant. In all likelihood, these changes can be expected to have an impact on small businesses and the individual owners of these companies.

Richard Macias is with the Los Angeles commercial law and bankruptcy law firm of Creim, Macias & Koenig LLP (www.cmkllp.com). He may be reached by email at rmacias@cmkllp.com.

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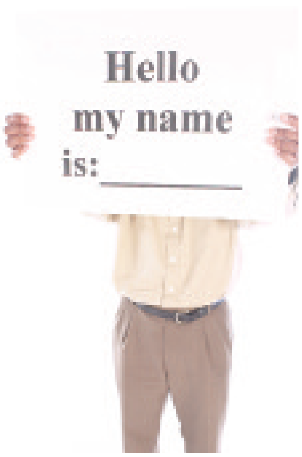

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What's In a Name?

By Suzanne Gray

When someone says, "There goes another Pink Lady," What comes to mind? Want a great burger? Go to the "Home of the Whopper." Need some fries with that delicious double-patty burger – drive on down to Mickey D's, or as some know it, "Those Golden Arches."

Mary Kay. Burger King. McDonald's. Everyone knows these merchants by name recognition. Another term associated with the concept of name recognition is "branding." Marketing consultants long ago devised this methodology, which is highly effective and evolves with your business, making it a must-have for any profit-making business.

From the smallest neighborhood dry cleaner to the Burger Kings and McDonald's all over the globe – all working businesses intuitively know that branding and name recognition are key to keeping a business name and its product in the forefront of the customer's mind when that customer thinks of a consumable product, therefore continuing that profitable retailer-has-what-consumer-wants-so-consumer-shops-with-retailer-and-keeps-coming-back idea moving ahead at full locomotive speed. Everybody gets what they want – a win-win deal to be sure.

How does a business develop and maintain name recognition with its ever-changing and increasingly discerning buying public? Work with your marketing gurus or hire a top-notch consultant, and start with the basics:

- Establish and develop a viable and consumable product – something the customer will want again and again.
- Determine your business's market place – locally, nationally, internationally.
- "Personalize" the branding and name recognition of your company's name with a distinctive eye-catching logo, a unique color scheme, and a killer slogan.
- Initiate your branding/marketing/name recognition campaign – and keep it going – in whatever advertising venue best suits your niche, and is cost effective to your growing business.
- Then, go to your buying public, reaching as wide an audience as possible within your chosen niche and geographic location – your name recognition campaign could be via radio, television, billboard, door-to-door flyers, the Internet, and/or business-to-business reciprocal referrals.

Companies like United Parcel Service (UPS) and Target have mastered this name recognition methodology. UPS and Target, among a multitude of other small to large corporations "get it" in knowing the value of effective branding and name recognition – your business can achieve these same results.
What does it take?

1. Vision and belief in your product.

2. The willingness to spend some money to advertise and market your business and its product so you will have a return on your branding and name recognition efforts.

3. Perseverance to continue to check the consumer barometer from time to time to confirm your product is still a viable consumable, that your business is still branded in its unique name recognition with your buying public (a.k.a. market research).

4. Continual tweaks and improvements as necessary.

Think of UPS and the color brown immediately pops into your mind, right? Try thinking of the color brown without thinking of UPS. Can you? Brown is everywhere; their UPS trucks, their uniforms, their logo, and even their slogan: "What can brown do for you?" With this kind of visually effective color association to product and company name, UPS guarantees itself a large customer base by branding and name recognition: think brown; think package delivery – call UPS.

Conjure in your mind a bulls-eye – that distinctive, huge red and white round circle – and you instantly associate this with Target, the store for every man and woman. How can you avoid it? Along any major highway strip mall is that larger-than-life bold red and white bulls-eye and the name Target right there in huge block letters. Target shoots the arrow dead-center bulls-eye for its consumers with its on-target slogan: "Expect more. Pay less." What could any cost-conscious consumer think is a better deal than this? It grabs you. And even better, keeps you coming back to Target to get super value for not a lot of your bucks. Name recognition mission on-Target!

The next time a consumer needs something whether it is moisturizer, foundation, a great burger and fries, some dishwasher soap, or a great new pair of trendy jeans or hiking boots, this customer could call up the Pink Lady she knows in her neighborhood for her Mary Kay products, then hop in the car and drive down to Burger King or McDonald's for that tasty meal, and then buzz over to Target and finish up with the household staples and pair of jeans – maybe buy those affordable and high-quality hiking boots too.

It's all in a name – name recognition in direct relation to branding. Small and mid-sized companies do this just as well as the big guys do by staying true to their vision and consistently delivering the goods or services over and over again. For more insight about your opportunities in this area, give us a call.

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A Full Plate!

I was at a local family-owned neighborhood bistro recently when my server asked if I was interested in "ordering up" my size selection. After asking the difference in my initial choice in comparison to the server's suggested, "size-up" portion, I acquiesced, and "Super-Sized" my cup of soup to a bowl of soup. Why? The server very convincingly implied that for just a few pennies more I'd be getting a much more substantial serving for the money – a tiny outlay more, yet a vast difference in size...a deal, right? Why not savor a larger portion of that amazing Tomato Basil homemade soup for less than a dollar difference. Sounded appealing to me and, more importantly, to my wallet.

At least that's the buzz I'd been hearing all over the radio and on the TV: "More is better!" While waiting for my now Super-Sized bowl of soup to arrive at my table, I idly glanced around at the other patrons' food choices.

Go to any fast food establishment, the most highbrow eatery, or even the local mom-n-pop bistro and notice the portions: they are overly generous and any single entree could easily feed a minimum of two people. Yet, it is rare to see anyone sharing one of these portions. And it is not common to see someone requesting a take-home box at the end of their meal – instead the uneaten food from the over-sized entree on the majority of most eaters' plates comes back through the kitchen and lands in the trash where it becomes waste.

So what does this mean to you if you are a restaurateur? There are several ways you can increase profits, including:

- **Reducing food costs** – Even slightly reducing portion sizes can increase profits – without creating a need to change the cost of the plate.

- **Maximizing your menu** – Effectively marketing items on your menu can increase profits across the board by selling more to each customer – use easy-to-read symbols, easy-to-understand descriptions, and combo meals that keep clients moving through a menu-line.

- **Reducing theft** – When the profits leave in the form of spirits or liquors in employee pockets, it's time to break out the security cameras. A great company that caters only to the restaurant industry is Digital Witness www.digitalwitness.net. This company helps restaurant owners keep more of what they earn!

- **Improving productivity** – What keeps satisfied customers coming back for more? Well, good service, of course! Digital Witness can again help restaurant owners who want to know exactly how long it takes to turn a table or seat a guest. Suddenly, improving productivity is as easy as running a report!

- **Introducing cost-effective techniques across the board** – Reducing waste (for example, putting fewer rolls in a basket), implementing cost-saving processes and systems, creating a cost-conscious culture, and aligning client expectations with actual food and services are just a few of the ways a restaurant can dramatically increase profits/reduce expenses.

In one of the fiercest and most competitive industries today, making a profit has never been more important. More than 50 percent of all restaurants are owned by families or are considered "mom-n-pop" shops. Follow these steps for higher profits, and for more information, give us a call today! ■

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Five Ways to Save On Leasing Office Space

Being in business for yourself has its perks and many issues to be aware of. One to be sure to take into strong consideration is office space – if you do not have the good fortune of owning your own space, you will more than likely be looking into leasing office space. Leasing is the way to go for most businesses; however, keep these five tips in mind for creative and cost-effective leasing strategies.

1. **Profit from another's misfortune.** Sometimes businesses hit a down cycle. Another's misfortune could be your gain. It's the age of downsizing and rightsizing and that means empty office space. If you are lucky, you can save as much as 25 to 35 percent on lease space. Even if the downsizing craze subsides, subletting is always one of the best sources of discount space.

2. **Let yourself be lured.** Many communities offer incentives to relocating businesses, and some have economic-development zones, where the city provides tax abatements, low-interest loans, and other incentives to attract businesses. Many of today's large suburban and evolving cities are aggressively developing their downtown and otherwise declining neighborhoods. This could prove to be extremely profitable for you and your business. With space location and potential client base in direct relation to business growth potential, this may be an option worth exploring.

3. **Share.** Roommates aren't just for twenty-somethings and for the general public. Sharing space with another business partner could be a great idea if your company is structured for it. Financially the benefits are many, including potential reciprocal business that may come in the form of referrals. You can get into a bigger space for a lower cash outlay monthly than you would have had going on your own. Sharing a common area, such as a kitchen also minimizes what you normally would pay. Enter into a lease-agreement with a partner in much the same way you would entering into a business together: sign a contract, know the terms up-front, and have an exit strategy in case one of you leaves the situation early.

4. **Strike a deal.** Don't be shy. Speak up. If you don't ask, you won't know. If you are looking for brand new space or renewing existing space, offer a deal that works for everyone – you and the property management. Deals can always be made. Keep in mind the prevailing market rates for spaces your size, do a little number crunching and offer the management company a workable deal that benefits them and you.

5. **Do without.** Of course, the thought of paying any rent could make you want to ditch the corporate office idea altogether. Homeward bound. This could be the way to go if you can deal with perhaps having your workforce telecommuting from their homes and you don't mind converting your dining room or guest bedroom into your office headquarters. The cost savings is certainly at the top of the benefits list when thinking of taking the office home. Studies show that telecommuters actually work more – not less – than those employees who go to an office each day. If this strategy sounds like it may work, the benefits are there!

Each business owner's situation is unique and never like another's. Think about your company's needs, risk factors, employee concerns, and strike the best deal for your circumstance. For lease negotiations, we can help review contracts and look for pitfalls that may lurk in contracts or sublease arrangements. Give us a call today to discuss your options.

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On the Vagaries of Leadership

By Michael Gerber, E-Myth.com

What a dismal day it was yesterday.

Nothing went right.

Everyone seemed to be stuck in emotional glue. Sticky, sticky, sticky.

Imagine yourself in a dream, walking on fly paper, pulling one foot up, and then another, the glue not letting you go. See yourself moving in slow, slow motion. That's how it felt to me, trying to disengage everyone from their sticky, sticky place. And it seemed like they just didn't want to make the effort. They simply wanted to go to sleep. Well, that's not true, I'm being too generous here they did just want to go to sleep. To sleep in the past. To sleep in the past of our business. To sleep in the comfort of our old, old bed.

But I wanted something different. I wanted to get everybody up!

I wanted to open the windows, open the doors, throw out all the old furniture, tear up the carpets, strip the floors down to the concrete, and scrub, scrub, scrub. I wanted to create something new, something bright, something we hadn't seen before. I wanted something fresh. And I wanted them to see it without making me work too hard to get them interested.

"Wake up," I felt like shouting. "Get out of bed!"

And frankly, that's the worst job in the world. Trying to wake other people up; trying to get them out of bed, when all they want to do is sleep. Sleep. Sleep. "Go away," my son said this morning when it was time to get ready for school. "Mmph!!" my daughter said, to no one at all, when I turned on the lights in her room and said, "Good morning!" with the most courage I could muster for the distasteful task ahead.

"Mmph," my people muttered yesterday.

Yes, leadership is a soup pot of vagaries.

And all I wanted to say was, "Who gets me up?"

But of course, no one would be listening.

Michael Gerber is chairman and founder of E-Myth Worldwide. He reminds you that the opportunity is to go to work ON your life not IN it, and in the process to experience the sweet, radiant, extraordinary joy of the fully-lived moment. His Web site is www.emyth.com.