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A Survival Checklist for Upper Management

Salene Mazur Kraemer, Esquire
Bowles Rice LLP

Salene Mazur Kraemer is an attorney in the Southpointe, Pennsylvania office of Bowles Rice. She focuses her practice on creditors' rights and bankruptcy law, business and corporate transactions and commercial and banking law.

Over the course of her career, Kraemer has worked on complex, multimillion dollar matters including corporate and commercial bankruptcy work for creditors, and has provided counsel on issues relating to tax modifications, business formation, financing and general corporate matters for small to large companies.

She was named a Rising Star in the fields of Business Law and Bankruptcy by West Virginia *Super Lawyers* magazine, and has served as a panelist for various conferences including the American Bankruptcy Institute's Mid-Atlantic Conference. She is a certified turnaround analyst by the Turnaround Management Association.

To pivot is to rotate, swivel, revolve, spin. Change course. Can your company change course in response to setbacks and an ever-changing business landscape?

Look at retail. With the surge of online shopping, the rise of Amazon and declining mall traffic, the retail industry has been decimated. Social media-addicted teens no longer hang out at malls for social connection. A viral Instagram picture of a celebrity sporting a designer's hat, not a retail storefront, can spawn a new trend. Indeed, the internet, iPhone apps and social media have forever changed the American retail experience. Some beleaguered retailers should have changed their business models to escape the fate of liquidation. But how?

As a business and bankruptcy attorney and turnaround consultant, I have long been a student of consumer trends and industry movements, and I regularly subject a client's business model to rigorous examination. Filing a chapter 11 bankruptcy petition is, strategically, usually the last resort. In the plan process, a debtor must disclose why it filed and the factors leading up to the filing. A debtor also must demonstrate that a plan is "not likely to be followed by the liquidation, or the need for further financial reorganization." See 11 U.S.C. § 1129(a)(11) (in part).

No C-Suite executive wants his or her business to be snuffed out, whether overnight or over the long haul, by an innovation, competitor or regulatory change. "Organizational decay" is the slow deterioration of a firm's operations, caused by the inability to change and adapt to shrinking financial resources, profitability and market demand. Don't let this happen to you. Based on my experience and recent research of "stories" behind chapter 11 filings, I developed the following 12-point "organizational survival" checklist for upper management.

1. **Environmental Adversity.** The C-Suite should be able to identify, with specificity, external opportunities and threats, such as general and regional economic, employment, competing and industry conditions. An economic downturn or market crash impacts interest rates and spending for technology, real estate and advertising, to name a few. With the rise of the internet, competition can be fatal. Instead of a five-mile radius, businesses must now compete with national and international companies online.

   Keep a close eye on new entrants. How low are barriers to entry? Jamba Juice, the quick stop for squeezed juices and smoothies, was pushed out by the pop-up of several new, healthy fast-food entrants. Consider also Pebble, a Silicon Valley startup that beat Apple in creating and launching the Smartwatch in 2012. Pebble eventually lost the market completely when Apple released its watch in April of 2016. Witness

how the “athleisure” marketplace (wearing casual athletic clothing to places other than the gym) has become increasingly crowded with the entrance of big-box retailers who offer cheaper prices (i.e., Wal-Mart and Target). Competition and price pressure have forced various retail outlets, i.e., Sports Authority, to buckle.

2. **Finance.** Cash is king. Gauge your company’s current and future ability to obtain short or long-term financing and meet financial performance requirements. Look at your balance sheet. Are you overleveraged? How liquid are your assets? A viable firm should have a strong enough cash flow to support operations and recover the fair value of long-lived assets. Consider how long it takes for your firm to recognize revenue. Do not ignore open tax matters. Period.

3. **Supply Chain.** Review the company’s ability to obtain trade credit. What is your firm’s Plan B if there is a threat of disruption to your supply chain?

4. **Sales.** Do not ignore your sales figures. Has there been a material (5 percent or more) drop? Price competitively and be able to articulate your competitive edge or “unique selling proposition.” Outline and implement growth initiatives. Analyze which product lines or services are making you the most net profit.

5. **Operations.** Execute cost-cutting initiatives. Renegotiate lease obligations, the cost of raw materials or client contracts.

6. **Labor.** A healthy company will attract and retain knowledgeable, motivated, productive and skilled labor. Be aware of the need to communicate openly and demonstrate a continued concern for employees.

7. **Leadership.** Ineffective leadership is one of the most significant causes of business failure. Well-connected, competent and trustworthy leaders must create the agenda for change and build an implementation environment. Avoid in-fighting and scapegoating.

8. **Technology.** Can a new invention shut down your business? With the advent of digital cameras, SD Cards and USB cables, technology killed Kodak. Will a new phone app push you out? Publicly-traded Rosetta Stone cornered the learn-a-new language market for years. In 2012, however, the internet and the iPhone began providing alternatives and Rosetta’s annual profit plummeted.

9. **Customer Mix and Behaviors.** A secure business diversifies its client mix. Savvy upper management constantly monitors a customer’s buying habits. Products or services must remain relevant. My use of my iPhone has made items in my home obsolete (i.e., an answering machine, a landline phone, an alarm clock, workout DVDs, paperback books, CDs and even a guitar tuner).

10. **Location.** Scrutinize location choice. How can you increase customer traffic and ultimate conversion? You may need to selectively shrink your footprint. Do what auto dealers have been doing; use showrooms and order new inventory online at the point of sale.

11. **Marketing.** Is there a positive brand perception and recognition with staying power? Engage in the goldmine of social media.

12. **Law.** Are you compliant with industry and trade regulations and rules? Do you anticipate regulatory or legislative change? How likely is potential future litigation?

One of my favorite places to be is Starbucks, a company that “sells human connection.” In a podcast interview, CEO Howard Schultz described the up-and-coming, two-level, Disney-like, experiential Starbucks stores. “We have to keep reinventing, keep dreaming. You cannot embrace the status quo of running a business today.”

So, I urge you, be prepared for change. Keep reinventing. Adapt to change and overcome. V