

Customers in Bankruptcy

A Survival Guide By Kenneth J. DeGraw, CPA/PFS, CFP®



Ken is a shareholder based in WS+B's Somerville office.

The changes made by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 were specifically designed to give creditors more leverage and a greater chance of collecting on debts owed. Although there is no replacement for effective credit and collection procedures, it is in your best interest to be prepared for a customer's bankruptcy filing.

The ramifications to you as the unsecured creditor will depend on a number of factors, including the code section or chapter that your customer has filed under, the underlying cause of the bankruptcy and the prevalence of secured debt and tax obligations that encumber the debtor.

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You may also consider discussing the matter with your own bankruptcy professionals. While this may sound counterintuitive, bankruptcy law is federal law and requires specialized financial and legal knowledge to navigate. Corporate counsel and traditional accounting professionals alone may not be able to effectively represent your interests.

Assuming you are among the 20 largest creditors, you will be given the opportunity, if selected, to serve on the creditor committee. The creditor committee's duties include providing oversight on behalf of all the unsecured creditors as well as input for the reorganization plan. You will also be provided with ongoing information on the progress of the case.

In asset cases, the court will send all creditors a proof of claim. This is your opportunity to document that you are, in fact, due a sum of money. Inevitably, the amount will be different from the amount disclosed by the debtor. Nevertheless, the more documentation that you can provide in support of your claim, the better your chances are for reimbursement of the entire amount.

Reclamation actions can be brought to reclaim goods delivered to the debtor during the 45 days prior to filing for protection. In the vast majority of cases, a perfected security interest is in place, which will defeat the reclamation claim; however, a new provision giving administrative priority to goods delivered within 20 days of the commencement of the case has been added.

Preference actions are often brought to recover payments made within 90 days prior to filing. They are intended to assure that no one vendor receives a monetary advantage over others in their class. Preference actions are not automatic. There are a number of statutory defenses that can be utilized to avoid the necessity of repayment. This is one area where the new law provides several new tools.



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- To learn more about the recently enacted bankruptcy law and how to protect your rights when a customer files for bankruptcy, contact your local WS+B office.

Alimony

Periodic Payments or Lump-Sum Buyout—Which Is Better and for Whom?

By Roy H. Kvalo, CPA/ABV, CVA



Located in WS+B's Red Bank office, Roy is a manager of the Firm Litigation/Valuation/Forensic Accounting Services.

Accountants are often asked by one party to a pending divorce, either the husband or the wife, if it is better to receive or pay one large lump-sum payment up front in lieu of periodic spousal-support payments. Obviously, this question cannot be properly addressed without first considering all of the relevant financial as well as personal factors unique to a specific case.

If the decision process was limited to considering only financial issues, a simple mathematical model could be used based on the premise that alimony is generally tax deductible to the payor and taxable to the payee.

Therefore, under a periodic alimony arrangement, assuming the payor spouse is in a higher marginal tax bracket than the payee, shifting income from the payor to the payee would decrease the combined effective tax rate of the couple, resulting in more cash available for the couple. Conversely, a lump-sum distribution is not generally deductible to the payor and is not considered taxable income to the payee spouse.

In arriving at a decision, several factors must be considered. Two important aspects are the financial acumen and responsibility of each party. Will the payor faithfully make the periodic alimony payments? Is the payee spouse prepared to accept the fiscal responsibility that comes with a large lump-sum payment? Considerations must also include potential changes in future circumstances, such as loss of job, failure of a business and even death or disability. All these factors bear various degrees of risk to at least one of the parties. While death and disability are generally insurable, the continuity of premium payments is also an important consideration.

Another major issue that cannot be overlooked is the possibility of a remarriage. If someone is waiting in the wings for the payee spouse, a lump-sum payment would clearly be more beneficial for this spouse, since alimony could cease upon remarriage or cohabitation. A payor spouse may even consider a somewhat reduced lump sum and encourage such a remarriage.

Also, does the payor have access to sufficient cash? A small business owner may not have the liquidity for a lump-sum payment. On the other hand, a lump-sum arrangement would be a significantly discounted sum, considerably less than the sum of the potential periodic payments due to risk, the time value of money and the fact that it is not taxable. These factors, as well as others unique to any given situation, need to be considered.





Taking Stock of Your Insurance Needs

By Anthony M. Sardis, JD, LLM, President, Insurance & Investment Advisory Group, LLC, an affiliated company of WS+B

Tax season is an ideal time to reassess your insurance portfolio. Many individuals and businesses fail to review their needs and policies on a regular basis, if at all. For example, over 70% of trustees do not have any guidelines for managing life insurance, and many have not even reviewed the policies within the past five years.

The reason is simple – many view insurance as a commodity instead of a dynamic financial instrument. Insurance planning, however, manages the risk of loss in estate, business succession and deferred compensation planning among others. As such, insurance planning is a key component in responsible financial planning.

Examples of Recurring Circumstances Necessitating Review

General	Business	Personal
Product enhancements	Change in # of employees	Death of a spouse
Pricing efficiencies	Death/disability of a partner	Births
Income fluctuations	Death/disability of employee	Marriages
Change of address	Property transactions	Retirement
Amendments to laws	Sales or purchases of businesses	Change in employment status

WS+B advisors help identify, evaluate and restructure insurance portfolios through strategic alliances with select product providers. These affiliates offer objective solutions from the leading product manufacturers in the country at competitive prices as exemplified in the following case studies.

Case Study #1

Client is a closely-held business with an existing buy-sell agreement funded with life insurance. Client also provides health insurance to its employees. Working in tandem with WS+B and the client's attorneys, the following results were achieved:

- **Improved Cash Flow.** Cash flow improved \$400,000 (60%) in the first year and \$130,000 (18%) on a recurring basis.
- **Life Insurance.** The premium reduced \$65,000 (24%) and, unlike the prior product, is guaranteed.
- **Health Insurance.** The premium reduced \$63,000 (18%) with enhanced benefits and improved employee satisfaction.

Case Study #2

Client is an individual with an existing life insurance policy. The policy did not perform as expected over time, and policy loans were taken to pay the unexpected premium. The following results were achieved:

- **Face Amount.** The new product generated a higher death benefit.
- **Premium.** The new product required no premium payments, guaranteed.
- **Loan.** Options for the tax-free management of the loan were provided.

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WS+B Is 'BEST OF THE BEST' Eight Years Straight



WithumSmith + Brown has been named to the "BEST OF THE BEST" list of accounting firms in the U.S. by *INSIDE Public Accounting* (IPA). This marks the eighth consecutive year that WS+B has been included in the list of top 25 accounting firms, a distinction earned by a small percentage of the several hundred firms reviewed.

"**We've grown in size and scope** tremendously over the last year," said Ivan C. Brown, managing director of WS+B. "This award indicates that we're staying on track with our commitment to client service and overall firm management, while gaining recognition within the accounting industry. We are honored to receive this accolade consistently for the past eight years."

WS+B earned the designation because it is considered "one of the overall best firms through wise management and near excellence in performance that exceeds others in all areas of financial management" based on criteria reviewed and gathered by the publication. *IPA's* Annual Analysis of Firms provides the only independent report focusing on the management and operations of America's accounting firms.

INSIDE Public Accounting is an independent newsletter that reports and analyzes the news, strategies, trends and politics that affect accounting professionals, their firms and the profession.

