

# **Not Everything Has to End this Way: Strategies for Keeping Your Retailer Out of Chapter 11**

Presented by the Business Reorganization  
and Financial Advisors & Investment  
Banking Committees

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**Retail Bankruptcies: Steps to Salvage Business in Advance (or Instead) of Filing**

**1. Trends in Retail Bankruptcy**

- a. High liquidation rate for retailers
  - i. Since 2005, 55% of retail bankruptcies have ultimately ended in liquidation. In contrast, only one in 20 debtors face the same fate in other industries.<sup>1</sup>
  - ii. Because inventory comprises a high proportion (generally 50%+) of a retailer's asset base, assets can readily be liquidated through going-out-of-business sales at the store level. In some cases, liquidators pay equal to or greater than the cost value of inventory for the opportunity to liquidate that inventory.<sup>2</sup>
    - 1. This has the effect of establishing a guaranteed floor that does not otherwise exist where liquidation values are more opaque, such as manufacturing debtors.<sup>3</sup>
    - 2. It also sets a high bar against which reorganizations and offers to purchase the business must be judged.<sup>4</sup>
- b. Impact of changes to Bankruptcy Code in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005
  - i. Dramatic alteration of timeline
    - 1. Revised § 365(d)(4): Real Estate Leases
      - a. Prior to 2005, a debtor was required to assume or reject a commercial real property lease within 60 days after the bankruptcy filing. However, the debtor could request that the court extend that deadline with or without the landlord's consent. Thus, debtors could delay the decision to assume or reject a lease virtually indefinitely.
      - b. After 2005, a commercial real property lease is automatically rejected if it is not assumed by the 120-day deadline following the bankruptcy filing. This deadline can be extended once for an additional 90 days. Any extension beyond the 210-day deadline requires the landlord's written consent, which may be difficult to obtain.
    - 2. Impact on retail bankruptcies
      - a. Prior to 2005, retailers often spent several years in bankruptcy. In a study of 20 pre-BAPCPA bankruptcy

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<sup>1</sup> *AlixPartners Retail Bankruptcy Study*, ALIXPARTNERS (Nov. 2015), <http://www.alixpartners.com/en/Publications/AllArticles/tabid/635/articleType/ArticleView/articleId/1795/AlixPartners-Retail-Bankruptcy-Study.aspx#sthash.4UJpgjUh.wBRXoJYX.dpbs>.

<sup>2</sup> Justin Morton, *Ch. 11 Changes Make Retail Workouts Tough*, 27 BNA'S BANKRUPTCY LAW REPORTER 1424 (Oct. 22, 2015) (interviewing Holly Etlin and James Hogarth of AlixPartners).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

- cases, the average duration of cases where the debtor was reorganized was 576.5 days.<sup>5</sup> The average sale/liquidation/reorganization period was 12 months.
- b. From January 1, 2006 to June 30, 2015, only 3 out of 16 large retailers (those with more than \$50 million in liabilities) took more than 200 days between filing and plan confirmation. The other 13 reorganizations took an average of only 120 days to obtain plan confirmation.<sup>6</sup> The average sale/liquidation/reorganization period is 3 months.<sup>7</sup>
- c. Because a going-out-of-business sale can take up to 90 days, lenders often try to decide whether to liquidate or reorganize a debtor in just 120 days.<sup>8</sup>
- d. Lenders have been requiring the extension order to be entered within 60 days of the bankruptcy filing.
- ii. Administrative priority to 20-day claims
  - 1. § 503(b)(9): 20-Day Claims
    - a. Before 2005, troubled retailers often “gamed” the system to build inventory before filing, so the retailer would then have goods to sell to gain time to rehabilitate.<sup>9</sup>
    - b. The addition of § 503(b)(9) in 2005, however, granted administrative priority status to the seller of goods delivered to a vendor within 20 days prior to a bankruptcy filing.
  - 2. Impact on retail bankruptcies
    - a. This potential increase of new priority administrative claims in bankruptcy has made it harder for retailers to reorganize, because administrative claims must be paid in full as a condition to a plan of reorganization.

<sup>5</sup> Lawrence C. Gottlieb, *The Disappearance of Retail Reorganizations Under the Amended Section 365(d)(4)*, AMERICAN BANKRUPTCY INSTITUTE BANKRUPTCY REFORM COMMISSION REPORT 7 (June 4, 2013), [http://commission.abi.org/sites/default/files/statements/04jun2013/Supplemental\\_Written\\_Testimony\\_of\\_L\\_Gottlieb\\_for\\_Commission\\_to\\_Study\\_the\\_Reform\\_of\\_Chapter\\_11.pdf](http://commission.abi.org/sites/default/files/statements/04jun2013/Supplemental_Written_Testimony_of_L_Gottlieb_for_Commission_to_Study_the_Reform_of_Chapter_11.pdf).

<sup>6</sup> AlixPartners, *supra* note 1 (referring to Nebraska Book Co., Shane Co., and Hancock Fabrics, Inc.).

<sup>7</sup> Gottlieb, *supra* note 5, at 6.

<sup>8</sup> Deborah Weinswig, *The Departure of Retail Reorganizations*, THE FUNG GROUP (Apr. 3, 2016), <http://www.deborahweinswig.com/wp-content/uploads/2016/04/Retailers-in-Bankruptcy-Report-by-Fung-Global-Retail-Tech-Apr.-3-2016.pdf>; *see also* Gottlieb, *supra* note 5, at 4–6.

<sup>9</sup> Robert Marticello, *Retail Bankruptcies on the Rise: How to Avoid Becoming A Statistic*, APPAREL EDGELL COMMUNICATIONS (Feb. 24, 2016), <http://apparel.edgl.com/news/Retail-Bankruptcies-on-the-Rise--How-to-Avoid-Becoming-A-Statistic104590>.

- b. Ex: Circuit City's 2008 slide into liquidation was likely hastened by the \$350 million of 503(b)(9) claims that had been filed with the court.<sup>10</sup> In comparison, Circuit City's DIP facility provided for new borrowing of only \$50 million.<sup>11</sup>
  - 3. Courts' application of § 503(b)(9) Claims<sup>12</sup>
    - a. § 502(d) may not be used to disallow an administrative expense claim under § 503(b)(9).<sup>13</sup>
    - b. A creditor whose claim is secured may also assert a right to administrative priority under § 503(b)(9).<sup>14</sup>
  - c. Another challenge: Consignments
    - i. Consignments underwent a radical change in 2001, when major revisions to UCC Article 9 brought all consignments entirely under the scope of Article 9 and removed "non-security" consignments from the purview of UCC Article 2.
    - ii. Consignors must file the proper paperwork to perfect their interest in the consigned goods and give notice about the consignment arrangement to third parties.<sup>15</sup> This safeguards the consignor against subsequent lienholders and the claims of a bankruptcy trustee or debtor-in-possession; however, in order to obtain priority of a consignee's existing secured lender, the vendor must satisfy the UCC's purchase money security interest requirements.<sup>16</sup>

<sup>10</sup> AlixPartners, *supra* note 1.

<sup>11</sup> Jeffrey N. Pomerantz et al., *Everything-Must-Go Sale: The Ins and Outs of Retail Bankruptcies*, AMERICAN BANKRUPTCY INSTITUTE (2016), <http://www.abi.org/education-events/sessions/everything-must-go-sale-the-ins-and-outs-of-retail-bankruptcies>.

<sup>12</sup> See Jeffrey N. Pomerantz & Robert L. LeHane, *SOS for Retail: Only the Strongest Survive*, AMERICAN BANKRUPTCY INSTITUTE (2009), at iv–vii, <http://www.abi.org/education-events/sessions/sos-for-retail-only-the-strongest-survive> (describing various cases that have interpreted § 503(b)(9)).

<sup>13</sup> In re Plastech Engineered Products Inc., 394 B.R. 147 (Bankr. E.D. Mich. Sept. 16, 2008); Pomerantz et al., *supra* note 11, at 147.

<sup>14</sup> In re Brown & Cole Stores LLC, 375 B.R. 873 (B.A.P. 9th Cir. 2007); Pomerantz et al., *supra* note 11, at 148.

<sup>15</sup> David Berliner & Joe Cashel, *Treatment of Consignment Inventory in a Retail Bankruptcy*, Consumer Business Compass (Feb. 23, 2012), <http://blog.bdo.com/index.php/2012/02/23/treatment-of-consignment-inventory-in-a-retail-bankruptcy/>.

<sup>16</sup> Mike Parisi, Jordan Myers & David Wender, *When Vendors Are Consigned to a Lower Authority*, ALSTON & BIRD FINANCE ADVISORY (Mar. 25, 2016), <http://www.alston.com/files/Publication/8c61ad76-f35f-4d38-a176->

(FOOTNOTE CONTINUED)

- iii. Ex: Sports Authority
  - 1. Soon after filing, Sport Authority asked judge for permission to sell and keep the proceeds from the \$85 million in goods that the retailer had placed in its stores pursuant to consignment contracts, sparking vendor ire.<sup>17</sup>
  - 2. 160 adversary proceedings were launched over the consignment issue. Vendors contested whether the consigned goods were property of the estate under § 541.<sup>18</sup>
  - 3. The fight may have ruined Sports Authority's prospects of finding a going-concern buyer.<sup>19</sup>
  - 4. Judge eventually approved settlement that provided various percentages of the proceeds from the sale to vendors, ranging from roughly 25 percent to 40 percent.<sup>20</sup>
- iv. The uncertainty of these arrangements, as highlighted in Sports Authority, may make vendor more hesitant to continue consignment arrangements with troubled retailers out of fear that they may not be first in line for consignment sale proceeds and may seek to repossess the consigned inventory.<sup>21</sup>

## 2. Steps Retailers Can Take to Prevent Bankruptcy

- a. Implement a solid finance function.
  - i. The ability to know exactly where you stand with liquidity "is truly a matter of life and death for a company" at risk of bankruptcy.<sup>22</sup>
  - ii. Liquidity is the number one signal of high bankruptcy risk.<sup>23</sup>
  - iii. Retailers should closely manage the firm's cash flows in order to plan ahead, identify the location of cash, and control the firm's commitments.<sup>24</sup>

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e6f30448b497/Presentation/PublicationAttachment/5dc4a76f-0f21-4aa1-90b8-fa5a9af91262/16-795%20Sports%20Authority%20Bankruptcy.pdf.

<sup>17</sup> Jody Godoy, *Sports Authority Consignment Payouts Won't Stop For Appeal*, LAW360 (Apr. 6, 2016).

<sup>18</sup> See David M. Bass & David W. Giattino, 'Sports Authority' Tackles Issue of Title to Consigned Goods, N.Y.L.J. (June 13, 2016).

<sup>19</sup> Matt Chiappardi, *Sports Authority Gets Nod for 'Perfect' Vendor Settlement*, LAW360 (July 7, 2016).

<sup>20</sup> *Id.*

<sup>21</sup> Parisi, Myers & Wender, *supra* note 16.

<sup>22</sup> Gregory L. Segall, *Retail Survival in a Weak Consumer Environment*, VERSA CAPITAL MANAGEMENT, INC., at 9, [http://www.versa.com/news/Retail\\_Survival.pdf](http://www.versa.com/news/Retail_Survival.pdf) (last accessed July 6, 2016).

<sup>23</sup> *Id.* at 6.

<sup>24</sup> *Id.* at 9.

- iv. Having regular dashboard metrics can reveal early signs of difficulty, such as a buildup of accounts payable, a slowdown on vendor payments, reduced foot traffic, or shrinking liquidity.<sup>25</sup>
- v. Many retailers are used to cycles of planning quarterly or monthly, but when retailers are in distress, they need to know their cash position daily.<sup>26</sup>
- b. Improve information collection and sharing.
  - i. Monitoring systems are essential for tracking a business's risks and financial condition.<sup>27</sup>
    - 1. Internal auditing
    - 2. Mystery shoppers
    - 3. Reviewing inventory procedures for accuracy
  - ii. Historically, a significant portion of accounting inaccuracy and fraud has been traced to poor information and inventory tracking systems.<sup>28</sup>
  - iii. Technology can also have a major impact on the information available to retailers.
    - 1. The answer to the question of how to avoid bankruptcy can be found within the company's own databases, such as a way to streamline execution.<sup>29</sup>
- c. Evaluate operations.
  - i. Increase sales.
    - 1. This is a logical step, as it is difficult to save a retailer with cost reductions when the cause of distress is a top line sales problem.<sup>30</sup>
    - 2. Many retailers, however, end up discounting or going off their strategy in order to generate quick short-term sales once they start going into trouble. This may instead result in long-term damage to their business.<sup>31</sup>
  - ii. Take advantage of green tax incentives.<sup>32</sup>
    - 1. Retailers should pursue green tax incentives, as "going green" can be beneficial to the bottom line.
    - 2. Many of these initiatives represent minimal capital investment and feature extremely high paybacks.

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 6.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 10.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Jeffrey R. Manning & Jay Indyke, *Saving the Brand: How Retailers Can Avoid Liquidation*, ABF JOURNAL (Nov. 2010), <http://www.abfjournal.com/articles/saving-the-brand-how-retailers-can-avoid-liquidation>.

3. The public relations benefit from these initiatives may also play well with the consumer.
- iii. Adjust to market trends.<sup>33</sup>
  1. Close low-performing stores, but be strategic.
    - a. Closing physical locations may create as much as a 20% drag on e-commerce sales.<sup>34</sup>
    - b. Closing stores in response to sluggish sales may momentarily stop the bleeding, but may impede future growth.<sup>35</sup>
  2. Evaluate online presence.
- d. Utilize contracts, agreements, and alliances to help avoid bankruptcy..
  - i. Creating flexibility in supplier relationships, rather than just seeking the lowest pricing, may increase the retailer's chance of survival.<sup>36</sup>
  - ii. Strategic alliances with suppliers could be a strategy to reduce the risk of financial distress and bankruptcy.<sup>37</sup>
- iii. In times of financial distress, attempt to renegotiate with suppliers and landlords.
  1. Negotiate for inventory cost reductions and supplier rebates.
  2. Negotiate terms of leases.
    - a. Retailers often hire lease negotiation companies (Ex: A&G Realty, RCS Real Estate, etc.) to assist with this.
  3. Negotiate trade credit on more favorable terms.
- e. Other lessons learned
  - i. Buyouts have saddled stressed retailers with debts they cannot pay.
    1. Ex: Sports Authority was loaded with at least \$643 million in debt, a hangover from the \$1.4 billion leveraged buyout in 2006 by investors led by Leonard Green & Partners.<sup>38</sup>
    2. Ex: Deb Shops, Inc. (2007 buyout by Lee Equity Partners), Dots Stores Inc. (2011 purchase by Irving Place Capital)

### **3. Planning for a Successful Reorganization**

- a. Begin planning long before the bankruptcy filing date.
  - i. Advance planning is key for turnarounds.

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<sup>33</sup> Krystina Gustafson, *Retailers Are Closing Up Shop: Here's Why*, CNBC (Jan. 9, 2015), <http://www.cnbc.com/2015/01/09/retailers-are-closing-up-shop-heres-why.html>.

<sup>34</sup> Darrell Rigby et al., *Digital® Retail and Why Stores Matter*, BAIN & CO. (Dec. 18, 2015), <http://www.bain.com/publications/articles/retail-holiday-newsletter-2015-2016-4.aspx>.

<sup>35</sup> *Id.*

<sup>36</sup> Segall, *supra* note 22, at 11.

<sup>37</sup> *Id.*

<sup>38</sup> Lauren Coleman-Lochner & Lindsey Rupp, *Buyouts Saddle Stressed Retailers With Debts They Can't Pay*, 28 BNA'S BANKRUPTCY LAW REPORTER 555 (May 5, 2016).

- ii. If sales do not bounce back and the company has to enter bankruptcy, a detailed action plan that identifies unprofitable or low performing stores that must be closed should be ready to go.
  - iii. The planning should focus on what matters, be practical, and engage stakeholders.<sup>39</sup>
- b. Plan ahead for capital structure issues.
  - i. Financing in the middle market has recently been more challenging because there are fewer lenders and banks willing to lend to troubled and distressed companies. Banks are also under greater scrutiny by regulators.<sup>40</sup>
  - ii. Prior to 2005, a retailer's ability to routinely obtain extensions of the lease assumption/rejection period provided three critical protections to lenders.<sup>41</sup>
    - 1. First, a lender could be assured the retailer was provided with sufficient time to analyze the value of each individual store lease before making the decision to assume or reject.
    - 2. Second, lenders were assured that the value of a debtor's commercial lease could be monetized in the event of a failed reorganization because debtors had an indefinite period of time to assign below-market commercial leases to third parties.
    - 3. Third, lenders were assured they had enough time to conduct a "going-out-of business" sale on the premises.
  - iii. The shortened time period has impacted the availability of these protections to lenders. As a result, most prepetition lenders now refuse to provide any more postpetition financing than necessary to fund an immediate sale or liquidation process.<sup>42</sup>
  - iv. The end result is that retailers can no longer reorganize unless their prepetition lender is interested in owning the company or supporting a reorganization for some other reason.<sup>43</sup>
- c. Monitor liquidity and control inventory levels.
  - i. Liquidity will be crucial to the bankruptcy's success.
  - ii. With liquidity in short supply during bankruptcies, many retailers and landlords have continued the ongoing argument in several jurisdictions over the application of § 365(d)(3) to stub rent.

<sup>39</sup> Michael Dorn & Bastian Kuhl, *Driving Successful Reorganizations: Centralization, Transparency, and Engagement*, ALIXPARTNERS (Aug. 2013), <http://www.alixpartners.com/en/Publications/AllArticles/tabid/635/articleType/ArticleView/articleId/714/Driving-Successful-Reorganizations.aspx#sthash.MMmxqCw7.dpbs>.

<sup>40</sup> Aleksandrs Rozens, *DIP Financing Gets Tough; Retail 'Always' Source of Distress*, 28 BNA'S BANKRUPTCY LAW REPORTER 682 (May 26, 2016) (interviewing Gregory Segall, CEO of Versa Capital Management).

<sup>41</sup> Gottlieb, *supra* note 5, at 3–4.

<sup>42</sup> *Id.* at 5.

<sup>43</sup> *Id.* at 6.



1. § 365(d)(3) directs a trustee or debtor-in-possession to “timely perform all the obligations of the debtor... arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding § 503(b)(1).”
2. Courts have adopted two approaches:
  - a. Slight majority approach – “pro-ration”/“accrual” theory: Allows the debtor to pro-rate obligations under its leases and pay only that portion of an obligation that accrued after the bankruptcy filing.<sup>44</sup>
  - b. Substantial minority approach – “billing date” theory: If an obligation becomes due, or is billed, after the date of the bankruptcy filing and before the effective date of a rejection or assignment of the lease, regardless of when the obligation accrued, it is an obligation that the debtor must timely perform.<sup>45</sup>
- d. Buy time.
  - i. As an industry, advocate to create a more reasonable Debtor-in-Possession period.<sup>46</sup>
  - ii. Negotiate special deals and gather a consortium of supporters.
  - iii. A realistic appraisal of the business and advance planning can help shorten the negotiating process.
- e. Understand the market.
  - i. There are a limited number of investors who invest in retail properties, and very few with the patience to support the long timeline a viable restructuring can take.
- f. Have a game plan for emerging from bankruptcy prior to filing.
  - i. Stalking-horse bidder
  - ii. Prearranged plan
- g. Focus on operations.<sup>47</sup>
  - i. The ability to reject store leases is a valuable tool for retail companies undergoing bankruptcy.

<sup>44</sup> In re Furr’s Supermarkets, Inc., 283 B.R. 60, 65–66 (10th Cir. 2002); In re Handy Andy Home Improvement Ctrs., Inc., 144 F.3d 1125, 1126–27 (7th Cir. 1998).

<sup>45</sup> In re HA-LO Indus., Inc., 342 F.3d 794, 797 (7th Cir. 2003); In re Montgomery Ward Holding Corp., 268 F.3d 205, 211 (3d Cir. 2001).

<sup>46</sup> See AMERICAN BANKRUPTCY INSTITUTE, COMMISSION TO STUDY THE REFORM OF CHAPTER 11, FINAL REPORT AND RECOMMENDATIONS 2012-2014, at 129, <http://commission.abi.org/full-report> (recommending that “[t]he trustee’s time to assume or reject unexpired nonresidential real property leases under section 365(d)(4) of the Bankruptcy Code should be extended from 210 days to one year after the petition date or date of the order for relief, whichever is later, in the interest of enhancing prospects for reorganization”).

<sup>47</sup> AlixPartners, *supra* note 1.

- ii. A retailer should conduct a four-wall profitability analysis well in advance of a filing and in many cases also initiate rent negotiations with landlords against the backdrop of a potential filing. Beginning this process can possibly achieve rent savings as well as inform store closure decisions with an understanding of the potential go-forward lease expenses.
- h. Communicate proactively with stakeholders.
  - i. Nervous lenders will react swiftly and negatively to “surprises.”
  - ii. Companies need to thoughtfully manage its senior lender and vendor relationships so these parties understand what is going on with the business.
  - iii. Each stakeholder may have different information requirements.<sup>48</sup>
  - iv. Communicate disappointing news in a straightforward manner to avoid the creation of “credibility gaps.”<sup>49</sup>
  - v. Transparency in all information dissemination and decision making is critical to the reorganization effort.<sup>50</sup>
- i. Make tough decisions quickly with seasoned professional team.<sup>51</sup>
  - i. The short timeline for bankruptcies means that retailers have to make hard and tough decisions (e.g., closing stores and merchandizing targets) quickly before senior lenders start pushing for liquidation.
  - ii. Good outside advice is key.
  - iii. Reorganizations can be implemented quickly and efficiently only if they are managed centrally.<sup>52</sup>

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<sup>48</sup> Dorn & Kuhl, *supra* note 39.

<sup>49</sup> Manning & Indyke, *supra* note 32.

<sup>50</sup> Dorn & Kuhl, *supra* note 39.

<sup>51</sup> Manning & Indyke, *supra* note 32.

<sup>52</sup> Dorn & Kuhl, *supra* note 39.

**Selected Reading**

**Industry Studies**

*AlixPartners Retail Bankruptcy Study*, ALIXPARTNERS (Nov. 2015), <http://www.alixpartners.com/en/Publications/AllArticles/tabid/635/articleType/ArticleView/articleId/1795/AlixPartners-Retail-Bankruptcy-Study.aspx#sthash.4UJpgjUh.wBRXoJYX.dpbs>.

Deborah Weinswig, *The Departure of Retail Reorganizations*, THE FUNG GROUP (Apr. 3, 2016), <http://www.deborahweinswig.com/wp-content/uploads/2016/04/Retailers-in-Bankruptcy-Report-by-Fung-Global-Retail-Tech-Apr.-3-2016.pdf>.

**ABI Reports**

Jeffrey N. Pomerantz et al., *SOS for Retail: Only the Strongest Survive*, AMERICAN BANKRUPTCY INSTITUTE (2009), <http://www.abi.org/education-events/sessions/sos-for-retail-only-the-strongest-survive>. (Note: Most ABI panel discussions on retail bankruptcies have included this article in their materials.)

Lawrence C. Gottlieb, *The Disappearance of Retail Reorganizations Under the Amended Section 365(d)(4)*, AMERICAN BANKRUPTCY INSTITUTE BANKRUPTCY REFORM COMMISSION REPORT (June 4, 2013), [http://commission.abi.org/sites/default/files/statements/04jun2013/Supplemental\\_Written\\_Testimony\\_of\\_L\\_Gottlieb\\_for\\_Commission\\_to\\_Study\\_the\\_Reform\\_of\\_Chapter\\_11.pdf](http://commission.abi.org/sites/default/files/statements/04jun2013/Supplemental_Written_Testimony_of_L_Gottlieb_for_Commission_to_Study_the_Reform_of_Chapter_11.pdf).

**Panel Discussion**

Brett Berlin et al., *Business Bankruptcy Panel: Hot Topics in Retail Bankruptcy*, 25 EMORY BANKRUPTCY DEV. J. 343 (2009) (discussing different issues in retail bankruptcy, including DIP financing for distressed retailers and section 365(d)(4)).

**News Articles**

Jeffrey R. Manning and Jay Indyke, *Saving the Brand: How Retailers Can Avoid Liquidation*, ABF JOURNAL (Nov. 2010), <http://www.abfjournal.com/articles/saving-the-brand-how-retailers-can-avoid-liquidation>.

Robert Marticello, *Retail Bankruptcies on the Rise: How to Avoid Becoming A Statistic*, APPAREL EDGELL COMMUNICATIONS (Feb. 24, 2016), <http://apparel.edgl.com/news/Retail-Bankruptcies-on-the-Rise--How-to-Avoid-Becoming-A-Statistic104590>.