

*Technology & Intellectual Property/
Young and New Members*
**Crossing the Digital Divide:
How to Use Social Media
to Augment Your Practice**

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2016 ANNUAL SPRING MEETING

American Bankruptcy Institute
34th Annual Spring Meeting
Washington, DC
April 16, 2015

Crossing the Digital Divide: How to Use Social Media to Augment Your Practice

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SOCIAL MEDIA PLATFORMS

* For purposes of this chart, we use the widest possible definition of social media, encompassing any online communication between parties as well as platforms – this goes far beyond what is traditionally and casually used to define “social media”, such as Twitter, Facebook, LinkedIn, etc...

PLATFORM	DESCRIPTION	USE	PRO	CON
AWeber	Email marketing platform	Promote	Measurable tool to connect with customers and prospects.	Requires ongoing planning and execution.
Bing	A search engine that can drive traffic to your website	Promote	Relevant to the user	Google competitor
Blab	Video broadcast content that allows for conversation with an interactive audience	Network	Allows two way dialogue between groups of people (4)	Small user base. More of a social platform.
Blogger	A Google+ blogging platform.	Promote	Simple. Personal use.	No value.
Buffer	Management tool for scheduling updates across popular social media platforms	Share	Easy to use. Feedback with analytics.	Competition
Constant Contact	Email marketing platform	Promote	Measurable tool to connect with customers and prospects. Good analytics.	Requires ongoing planning and execution.
Delicious	Bookmarking service from Yahoo	Share	Visibility for articles, videos, blogs, etc.	Need a lot of traffic to show up on its radar.
Digg	Bookmarking service	Share	Visibility for articles, videos, blogs, etc.	Need a lot of traffic to show up on its radar.

Drupal	Blogging and online forum for serious bloggers.	Promote	Adds search engine optimization value for website. Builds relationship with customers and prospects.	More detailed. Requires ongoing interaction. Takes time to learn how to make most of the platform.
Ello	Platform for staying connected with people you know	Network	No ads.	Facebook without ads. Does not have a large audience of users.
Exact Target	Email marketing platform	Promote	Measurable tool to connect with customers and prospects.	Requires ongoing planning and execution.
Facebook	Platform for staying up-to-date and connected with people you know.	Network	Most popular. Easy to use.	Use algorithms to control who sees what posts. Younger generation less enamored with this than they once were.
Flickr	Photo sharing platform	Promote	Builds awareness and drives traffic to your website. Easy to use.	Not a primary platform for business.
Friendster	Connection to everything you choose that is important to you	Network	Simple interface	Past its peak of popularity.
Google	Search engine that can be used as a social tool to drive visits to websites	Promote	Pervasiveness	Pay to play for advertising and website hits from searches
Google+	Simple interface for connecting with contacts	Network	Uncluttered	Competition – limited adoption
hi5	Hang out (games, videos, flirting, etc) platform	Network	Alternative to MySpace and Facebook	Younger generation's LinkedIn. Not business oriented
HootSuite	Tool for managing multiple social media platforms	Share	Good for company with many social media contributors. Good for	Overkill if you only post status updates.

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			individuals with many platforms.	
Howcast	Website for How To videos	Promote	High quality content.	YouTube competitor
iContact	Email marketing platform	Promote	Measurable tool to connect with customers and prospects.	Requires ongoing planning and execution.
Instagram	Photography application	Share	Fun, quick, easy to use	Competition. Limited capabilities and use.
iTunes	GoTo podcast site for industry expertise.	Promote	Well known.	Need to create something good enough to keep people coming back.
JavaBB	Discussion board/Online forum	Promote	Relationship builder	Requires regular and ongoing interaction for best results.
Joomla	Blogging platform for serious bloggers	Promote	Adds search engine optimization (SEO) value for website.	More detailed. Takes time to learn how to make most of.
Lefora	Discussion board/Online forum	Promote	Relationship builder	Requires regular and ongoing interaction for best results.
LinkedIn		Network	Been around for 13 years. Wide adaption in business community.	Not everyone knows what to do with LinkedIn.
LocalVox	Social media management platform	Share	More in-depth use and experience than HootSuite or TweetDeck.	Takes more time to learn. Requires training for coordinated company efforts.
Meerkat	Mobile-only platform for live streaming videos	Network	Great for instant updates for businesses. Still growing.	Limited audience in business use without a captive audience.
Mobli	Visual media platform	Share	Instagram on steroids. Real-time live uploads and searches. Filters connect users who upload similar content or	Instagram is largest competitor. Small user base.

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			from similar places.	
MyLife	Site that allows you to connect	Network	Easy to use	Not as popular as competition.
MySpace	Gathering place for interests in pop culture	Promote	Well-known and evolving after long period of irrelevance.	Younger crowd. Not business oriented. Long presumed dead.
Ning	Connects people with similar interests.	Network	Defined by expertise	Confusing to use. If connect through similarities, then connecting with competitors.
Path	Location based sharing application	Share	Great for friends	Competition. Not business friendly.
PhpBB	Discussion board software (open source)	Promote	Relationship builder	Requires regular and ongoing interaction for best results – requires management and maintenance
Periscope	Video sharing app for iOS and Android (mobile devices)	Network	Viewability of live stream very manageable and can be restricted or open	Like Meercat; limited usability to business outside of a captive audience
Pinterest	Online visual bulletin boards of information.	Share	Visually appealing. Quick.	Competition. Difficult to separate business and personal.
Plaxo	Address book/contact list management software	Network	Automatic updates to address book; See what people you know are sharing. Easy to use	LinkedIn is more popular.
Quora	Question/Answer platform	Share	Well-educated users offer helpful answers to questions.	Google searches answer the same questions.
Reddit	Source for trending topics across media sources	Share	Visibility for articles, videos, blogs, etc.	Need a lot of traffic to show up on its radar.
Scribd	Largest social publishing site	Share	Great visibility for speeches, presentations, white papers, etc.	Competition

2016 ANNUAL SPRING MEETING

Simple Machines	Discussion board/Online forum	Promote	Relationship builder	Requires regular and ongoing interaction for best results.
SlideShare	Publishing site	Share	Great visibility for speeches, presentations, white papers, etc.	Competition
SocialCam	Video sharing application	Share	No time limit on videos. Easy to use. Integrates well with other platforms, i.e. Facebook.	Automatic sharing on FB unless you program to do otherwise.
StumbleUpon	Publishing site	Share	Visibility for speeches, presentations, white papers, etc. to people with similar interests	Competition. Visibility is based on recommendations.
Tumblr	Blogging platform	Promote	Simple. Personal use.	No value.
TweetDeck	Platform to manage multiple social media channels	Share	Time saver. Easy to use.	Distracting.
Twitter	Real-time communication in 140 characters or less.	Network	Widely used.	Updated so frequently, it can be a full time job trying to keep up.
Typepad	Blogging platform for serious bloggers	Promote	Adds search engine optimization value for website.	More detailed. Takes time to learn how to make most of.
Vanila	Discussion board/Online forum	Promote	Relationship builder	Requires regular and ongoing interaction for best results.
vBulletin	Discussion board/Online forum	Promote	Relationship builder	Requires regular and ongoing interaction for best results.
Viddy	Video platform	Share	Filters out mature and unacceptable content.	15 second videos. Does not filter comments. More for social use.
Vimeo	Video platform	Promote	YouTube for optimistic and creative professionals	YouTube is a competitor.

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Vine	Video sharing platform	Share	200 million users Viddy, Cineverse and Mobli	Competition. 6 second videos.
Vox	Blogging platform	Promote	Simple. Personal use.	No value.
Wikipedia	User-generated on-line encyclopedia	Share	Great place for uploading your useful business content	Not all information is verified. Small print makes it difficult to read.
WordPress	Blogging platform for serious bloggers	Promote	Adds search engine optimization value for website.	More detailed. Takes time to learn how to make most of.
Xanga	Blogging platform	Promote	Simple. Personal use.	No value.
XING	Career-oriented social networking	Network	Over 8 million subscribers worldwide. Over 35,000 specialized groups. Over 150,000 live networking events/year.	Not as popular as LinkedIn.
Yahoo	Search Engine that can be used as social tool to drive visits to websites	Promote	Popular	Tries to be too many things – search engine, online magazine, news site, etc.
Yelp	User-generated reviews	Share	People have to actually post reviews about your business and the work you do.	LinkedIn is more business oriented. Faux reviews for self-promotion detract from credibility.
YouTube	Video platform	Promote	Most popular video platform.	Good for brief messaging only. Cluttered environment.
Zoho	Discussion board/Private online forum	Promote	Relationship builder	Requires regular and ongoing interaction for best results.

Nuts and bolts of social networking and social media

by Kevin O'Keefe

Professional and business development in the law is all about relationships and a word of mouth reputation. Never before have lawyers been presented the opportunity to build relationships and word of mouth the way the Internet allows lawyers to do so today.

The key for lawyers is learning how to use social networks and social media effectively. Learning here comes from trial and error.

Adapting to the cultures each social media present is like traveling to a foreign country. You get comfortable over time and keep the faux pas to a minimum as you start.

Listening

Social media and social networking is a means of engaging others in a real and authentic fashion. Just as engaging others in person at a networking event requires you to listen first and talk second, listening is more important than producing content when it comes to networking online.

Listening online requires you to use listening tools that are easy to use and free. The first type of listening tool, and the most effective tool, is a news aggregator (RSS reader). A news aggregator enables you to follow relevant sources (blogs and mainstream media) as well as keywords and key phrases relevant to your work.

A news aggregator allows you to network with your target audience of clients, prospective clients, and the influencers of these two – bloggers, association leaders, reporters, and publishers.

By sharing items from your news aggregator on social networks you'll pick up a following from all three of these groups in your target audience. Engagement will ensue with prospective clients and influencers by virtue of what you share.

A news aggregator is also key for blogging in that you will be able to engage in the existing "conversation" that is being reported and blogged upon.

Feedly is the most popular news aggregator. It's an application for various non-mobile web browsers as well as mobile devices running on iOS and Android. Feedly compiles news feeds from a variety of online sources for you to customize and share with others. Feedly also allows you to monitor key words and key phrases from Google News.

Flipboard is a social network and news aggregator providing stories in an eloquent magazine-style format that users "flip through" on mobile devices, including the iPhone and iPad. Flipboard has proven popular among lawyers because of its intuitive interface that reads like a magazine with heavy imagery. In addition to aggregating items from sources and subjects you have chosen, Flipboard pulls news and

information that has been shared by those you are following on social networks such as Twitter and Facebook.

Flipboard also has a feature where you may select topics and Flipboard will gather the best content from the most influential sources. The more you use this feature, the “smarter” Flipboard gets in delivering you the news and information you’d like to see. Think “Pandora for content.”

Both Flipboard and Feedly allow you to share items from the respective applications directly to social networks, including LinkedIn, Twitter, Facebook, and Google+.

Twitter, LinkedIn’s Pulse, Facebook and commercial tools tailored for the law such as Manzama and Zama can also be used to listen to relevant discussion.

Blogging

Nothing equals a blog for enabling a lawyer to showcase their passion, experience, and care. Rather than publishing at third-party sites, lawyers have a home base they own forever. A law blog’s content will be reached on searches from Google and can be strategically shared by a lawyer with clients and prospective clients.

Niche blogs tend to bring greater success than general topic blogs. Niche blogs become must-have content for certain people and identify the lawyer publisher as a “go to” lawyer in an area of the law and/or locale.

Niche blogs do not pigeonhole a lawyer into one type of work, though many lawyers have welcomed this development. Niche blogs open doors.

Clients seeking referrals to other lawyers will lead to networking opportunities. Other clients, because of the trusted relationship you have established, will look to you to do legal work related to your niche.

Discovering your passion, pinpointing your skills, identifying with your audience, solving a problem, and establishing your goals are the five steps to follow in defining your blog niche. Here’s a [post from my blog \(http://bit.ly/1s0DhOZ\)](http://bit.ly/1s0DhOZ) which details these five steps.

Seven keys in building a law blog

- **Independent site and domain.** A blog should live on a separate site from a law firm website. This enables the blog and the blogging lawyer(s) to achieve a level of authority that could not be achieved through marketing, which is what you have with a blog in a website. Blogs separate from websites will be cited and shared much more. Such a blog also opens up the door to guest posts from and interviews with influencers who may shy from opportunities to participate in your website marketing.

- **Brand with blog title first.** Your blog is a publication published by the law firm or lawyer. Think Nevada Water Lawyer on the spine of a treatise – subtly saying its published by the law firm of Smith and Jones. Claim that mantle of expertise a blog can give you.
- **Value of design.** First impressions matter. Like it or not, people judge lawyers by their dress and their offices. Bad design is second to only bad content in turning off potential readers. Good design adds to your credibility.
- **Authenticating information.** Share information about you, your firm, what you do (especially as it pertains to your blog niche), and your office location on interior pages of your blog. This information separates you from those who may be blogging in their mom's basement.
- **Comments.** Enable comments. It shows you listen. Not to worry, you will get few, if any comments. The only people more afraid of comments on a law blog than you and your firm are the people who may leave them. Those left tend to be academic and all comments should be moderated before they go live. Note that much law blog commentary today takes place on social networks – Twitter, LinkedIn, and Facebook.
- **Viewable on social readers.** Content moves socially. Your blog must be easy to read and navigate for users on Facebook, LinkedIn, and Twitter.
- **Mobile first.** Forget non-mobile devices. Good mobile design and development, preferably responsive design, will render well on non-mobile devices. Upwards of 50% of your blog readers will be reading their content on mobile devices. Mobile users are also more apt to share blog content, something critical for your blog's distribution.

Four keys to blogging success

- **Write to the medium.** A blog post is not an article, alert, or email newsletter. A blog should be written in a conversational tone. Being real and authentic is key, no one else writes a lawyer's blog posts. Link liberally, blogging is a conversation where you are referencing what others are saying (writing). Make your posts "scannable" with bullets, block quotes, and brief paragraphs.
- **Be strategic.** Rather than just sharing information, think about who you can engage through a blog post. Referencing people and organizations in your posts will draw their attention to you and what you said. Offer the ability to do guest posts to referral sources, business leaders, and experts in the field. Email interview those same people with four questions – the answers can be turned into a post. These people will share word of their interview, their guest, of you and your blog.
- **Be time relevant.** When legal, business, and consumer news relevant to your niche is breaking, the news will be reported and commented upon by bloggers and reporters. These bloggers will include other lawyers nationally and in your community. Blog then, not a week from then, so you are relevant and get seen by those in the discussion.
- **Be socially relevant.** Tap into what is being discussed in your "community." Listen to what is being written and engage those bloggers and reporters. You'll be blogging on items people are most interested in and find more people sharing your blog posts on social media.

Elements of a post

- **Title of post.** Keep titles brief and descriptive of your post. Four to six words and sixty to seventy characters is optimal. Such a title will properly display in Google's search results, be easy to view by email and news aggregator subscribers, and be readable on mobile.
- **Image.** A clean image at the top of a post draws readers' eyes. Your post will be more attractive in news aggregators and on mobile devices. Look at popular news sites a la The New York Times or Mashable. Images are everywhere.
- **One point.** When you get to the second and third point, think of doing a second post. Blogs tend to cover a point and conclude.
- **Brevity.** There is no perfect word count for a blog, but a good blog post may be 350 to 500 words. We're not talking articles 1,200 words long. People, especially the influencers, consume a lot of blog content. They won't return to blogs with posts that are always long.
- **Keywords and SEO?** Do not blog thinking of keywords and SEO. Clear titles and valuable content that people can not get elsewhere, combined with sound technology, will get your posts at the top of Google search results.

LinkedIn

- **Personally crafted profile.** Take the time, maybe five or six hours to personally write your profile. Do not copy and paste from your law firm bio. Put in information for each position you've held and what schools you've attended. Why you worked here, what you learned, why you left etc. Your title next to your name should describe what you do, not list your title. "Patent Lawyer" is much better than "Partner." Get all of your contact info in – email, phone, cell phone, website, blog, Twitter, Facebook etc. Help people who are looking for you. Seek out recommendations, not endorsements, even from peers and mentors.
- **Build your network.** Connect with those people you meet in person and online. Send a personalized request to connect, it says a lot about you. Accept connections from people who work in areas relevant to what you do, don't limit connecting to those people you have met before. Dig your well before you get thirsty.
- **Share items in news update.** Feedly and Flipboard enable you to share blog posts and news on LinkedIn with an accompanying comment from you. By doing so LinkedIn will learn about your interests and suggest to others with similar interests that they connect with you.
- **Network with people you engage on LinkedIn.** People will share, comment upon, and like items you share. Take the opportunity to engage those people, as appropriate with an inMail on LinkedIn.
- **Take contacts face to face.** LinkedIn is a perfect stepping stone to meeting in person. Ask to meet with connections when traveling to their communities. Same for reporters, bloggers, and other influencers.

Twitter

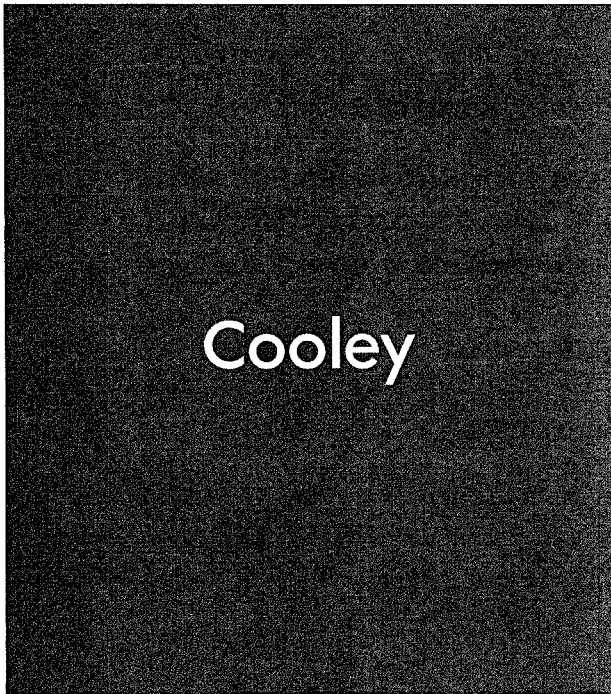
- **Start by following and listening.** If Twitter is new to you, it is much easier to listen than to open your mouth. Look for people you know and trust who are using Twitter. Follow them. This may include lawyers from coast to coast, reporters, authors, and leaders in your local community. Do a Google search on best people to follow on "X" subject. Look at who Twitter suggests you may want to follow.
- **Retweet and reply.** Start to get seen by favoriting a tweet, replying to a tweet with a comment, or retweeting items you believe your followers would find of value.
- **Create lists.** Following every tweet from everyone you follow can be like watching all 500 channels on DirecTV at once. By creating lists of people sharing relevant people and people who you would love to get to know, you can manage what can feel like noise.
- **Share items with a Twitter attribute.** Feedly and Flipboard allow you to share items on Twitter directly. Attribute the item you are sharing to its author by including the author's Twitter handle. The author will see your Tweet leading to possible engagement.
- **Meet people in the wake.** Engage those people you'd like to get to know who are following you, favoriting your tweets and retweeting items you've shared. You can do this via Twitter, LinkedIn, or even email.

Facebook

- **Get comfortable with privacy.** The concept of a company monitoring your digital behavior for the benefit of advertisers leaves many lawyers uncomfortable. However your web behavior has been monitored by Google and other companies for years. Your buying behavior has been monitored by grocers, drug stores, catalogues and credit card companies for decades. The benefits of relationships and word of mouth outweigh privacy concerns. Lawyers, of course, need to be discriminate in what they post.
- **Social is personal.** Relationships are built on a person to person basis. It is difficult, or impossible, to separate your personal and business life, especially on Facebook. Law firm pages do not work as well as Facebook personal accounts in building word of mouth and relationships.
- **Share personal and business items.** As you use Facebook more, its algorithms will display your posts to those friends interested in the item you shared. Not every "Friend" sees everything you post. Get comfortable sharing those items you are passionate about, whether it be personal or business.
- **Add "Facebook Friends."** Do not limit your "Friends" to just personal friends. Look also for people whose Facebook posts may add value to your life. Think of Facebook as the front page of your news brought to you by people you have come to trust. "Friends" may include people you meet in person and online. Overtime Facebook will suggest people you may wish to befriend. Consider reaching high to befriend people in business, the law, and the media when you have a fair amount of mutual friends.
- **Short form posting.** Though a blog will always be a lawyer's home base, Facebook is an excellent place to share a blog post or news story accompanied by a short post by you. Three to five paragraphs can work to generate "Likes" and "Comments." Share your blog posts with an introductory comment or question.

Other Resources

- [LinkedIn in an hour for lawyers](#) – ABA
- [Blogging in an hour for lawyers](#) – ABA
- [Twitter in an hour for lawyers](#) – ABA
- [Facebook in an hour for lawyers](#) – ABA
- [Social media for lawyers: The next frontier](#) – ABA
- [Real Lawyers Have Blogs](#) – thousands of posts by Kevin O’Keefe archived in sections covering social media, blogging, Facebook, Twitter, LinkedIn, and more.



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Robert L. Eisenbach III
Cooley LLP

Three Key Social Media Steps

- Step One: Create a Presence
- Step Two: Build a Personal Brand
- Step Three: Engage with Others

Step One: Create a Presence

- The easy: LinkedIn, Twitter, Facebook
- More commitment: A blog, or articles on LinkedIn, Medium
- Chart new ground: YouTube, Instagram, Snapchat, Periscope
- Highlight: Social media links in email signature and firm bio
- Ethical Issues: Rules vary by state (see proposed California ethics opinion)

Step Two: Build a Personal Brand (A Blogger's Perspective)

- Readers: Identify your target audience
- Perspective: Keep your readers in mind
- Style: Make easy to read
- Value: Offer useful content
- Tone: Be knowledgeable but conversational: this is not a law review article
- Voice: Sound like yourself
- Frequency: More is better, but truly valuable content is best

Blog Resources

- Blog topics: Issues in your practice, court decisions, recent industry developments
- Include photos in blog posts (see example)
- Sources for Creative Commons photos
 - The Stocks: thestocks.im
 - Pexels: www.pexels.com
 - DesignersPics: www.designerspics.com
 - Flickr: www.flickr.com/creativecommons

Step Three: Engage With Others (The “Social” Part)

- Link to blog posts or articles on Twitter and LinkedIn
- Comment on other blogs, Twitter, LinkedIn
- Integrate social media with emails and other platforms
- Reader comments and potential client inquiries
- Consider ethical and client relation issues

Better Living Through Twitter

- Enhance Twitter profile
- Engage on Twitter
 - Retweets/quote tweets
 - Likes
 - Mentions: e.g., @abiworld, @amyr Gavin, @kevinokeefe
 - Hashtags: #bankruptcy, #restructuring, #ASMBK16
- Track impressions and engagements (see Engagements page example)
- Add pictures to tweets when appropriate
- Use TweetDeck or other programs to manage Twitter feeds

A Few LinkedIn Ideas

- Complete LinkedIn profile, remembering ethical issues
- Reach others through LinkedIn Groups
- Post and contribute
- Use likes, comments and shares to engage
- Search function to find connections to new contacts

IN THE (RED)[®] THE BUSINESS BANKRUPTCY BLOG

Published By Robert L. Eisenbach III of Cooley LLP

The Venture-Backed Company Running Out Of Cash: Fiduciary Duties And Wind Down Options

By Bob Eisenbach on February 16, 2016



Many start-up companies backed by venture capital financing, especially those still in the development phase or which otherwise are not cash flow breakeven, at some point may face the prospect of running out of cash. Although many will timely close another round of financing, others may not. This post focuses on options available to companies when investors have decided not to fund and the company needs to consider a wind down.

Fiduciary Duties And Maximizing Value. Let's start with a refresher on the fiduciary duties of directors and officers of a Delaware corporation in financial distress. Please note that this high-level overview is no

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substitute for actual legal advice on a company's specific situation.

- Under Delaware law, directors and officers owe fiduciary duties of due care and loyalty. The duty of due care requires directors and officers to make fully-informed, good faith decisions in the best interests of the company. The duty of loyalty imposes on directors and officers the obligation not to engage in self-dealing and instead to put the interests of the company ahead of their own.
- When a company is solvent, the directors and officers owe their fiduciary duties of due care and loyalty to the corporation and its stockholders. That remains true even if the company is in the so-called "zone of insolvency."
- When a company is insolvent and will not be able to pay its creditors in full, the directors and officers still owe their fiduciary duties of due care and loyalty to the corporation. However, upon insolvency, the creditors have the right to bring derivative (but not direct) claims for breach of fiduciary duty against directors and officers.
- Follow this link for more on the key Delaware decision discussing the fiduciary duties of directors and officers in the insolvency context.
- Remember, it can be challenging to determine whether a company is just in the zone of insolvency (meaning still solvent but approaching insolvency) or whether it has crossed the line into actual insolvency.
- Discharging fiduciary duties when a company is insolvent means a focus on maximizing enterprise value. This is a highly fact-dependent exercise with no one-size-fits-all approach. In some cases, maximizing value may mean continuing operations — even though that burns dwindling cash — to allow the company to complete a sale that the directors believe is likely to close and produce significant value for creditors. In other cases, it may mean winding down (or even shutting down) operations quickly to conserve cash, especially if any asset sale is not expected to generate more than the cash required to pursue it.
- These complexities make it critical for directors and officers of a company in financial distress to get legal advice tailored to the specific facts and circumstances at hand.

Legal Options For A Wind Down. When the board decides that the company needs to wind down, options range from an informal approach all the way to a public bankruptcy filing. Note that if the company owes money to a bank or other secured creditor, the lender's right to foreclose on the company's assets could become a paramount consideration and affect how the wind down is accomplished. Although beyond the scope of this post to analyze each wind down option in detail, the following is a brief overview of different approaches, together with links giving more information.

- **Informal wind down:** In an informal wind down, the company typically tries to find a buyer for its assets, eventually lays off its employees, and shuts down any unsold business operations, but does not complete a formal end to the corporate existence. This lack of finality can leave legal loose ends, so alternatives should be carefully considered.
- **Corporate dissolution:** A corporate dissolution is a formal process under Delaware law, typically managed by a company officer, for winding up the affairs of the corporation, liquidating assets, and ending the company's legal existence. A company may choose to do a corporate dissolution when it doesn't need bankruptcy protection (and prefers not to file bankruptcy) but wants a formal, legal wind down of the corporate entity. Follow this link for more details on corporate dissolution.
- **Assignment for the benefit of creditors:** Many states, notably including California and Delaware, recognize a formal process through which a company can hire a professional fiduciary and make a general assignment of the company's assets and liabilities to that fiduciary, known as the Assignee. In California, no court filing is involved. The Assignee in turn is charged with liquidating the company's assets for the benefit of creditors, who are notified of the ABC process and instructed to submit claims to the Assignee. If a buyer has been identified, an Assignee may be able to close an asset sale soon after the ABC is made. Follow this link for an in-depth look at the ABC process.

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2/17/2016

The Venture-Backed Company Running Out Of Cash: Fiduciary Duties And Wind Down Options | In the Red - The Business Bankruptcy Blog

- **Chapter 7 bankruptcy:** A Chapter 7 bankruptcy is a public filing with the United States Bankruptcy Court. A bankruptcy trustee is appointed to take control of all of the company's assets, including the company's attorney-client privilege, and the directors and officers no longer have any decision-making authority over the company or its assets. A Chapter 7 trustee rarely operates the business and instead typically terminates any remaining employees and liquidates all assets of the company. The filing triggers the bankruptcy automatic stay, which prevents secured creditors from foreclosing on the company's assets and creditors from pursuing or continuing lawsuits. The trustee has authority to bring litigation claims on behalf of the corporation, often to recover preferential transfers but sometimes asserting breach of fiduciary duty claims against directors or officers. Unlike a dissolution or an ABC, the bankruptcy trustee in charge of the liquidation process is not chosen by the company.
- **Chapter 11 bankruptcy:** A Chapter 11 bankruptcy is also a public filing with the U.S. Bankruptcy Court, and it similarly triggers the bankruptcy automatic stay. Unlike a Chapter 7 bankruptcy, in Chapter 11 — often known as a reorganization bankruptcy — the board and management remain in control of the company's assets (at least initially) as a "debtor in possession" or DIP. Business operations often continue and funding them and the higher cost of the Chapter 11 process require DIP financing and/or use of a lender's cash collateral. One primary use of Chapter 11 by a venture-backed company is to sell assets "free and clear" of liens, claims and interests through a Bankruptcy Court-approved sale process under Section 363 of the Bankruptcy Code. Follow this link for a discussion of how a Section 363 bankruptcy sale in the right circumstances can maximize value for creditors and shareholders.

Conclusion. When a company's cash is running out and investors have decided not to provide additional financing, the board may conclude that a wind down is required to fulfill fiduciary duties and maximize value. The discussion above is a general description of certain wind down options. Determining whether any of these paths is best for a particular company is fact-specific and dependent on many factors. Be sure to get advice from experienced corporate and insolvency counsel when considering wind down or other restructuring options.

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