

Bankruptcy Strategy

Industry insiders are predicting an un-merry holiday season for retailers.

“We think it will be terrible,” Ivan Friedman, president and CEO of RCS Real Estate Advisors told *SiteTalk*. “We don’t see any change in economic conditions until the third quarter of next year.”

Based in New York City, RCS helps retailers evaluate their real estate portfolios, shed underperforming stores and trim occupancy costs. The company also provides services to retailers looking to grow.

Friedman believes retailers should plan for bankruptcy before filing.

“In terms of store leases, you should decide which of three options you want to pursue for each lease,” he said. “Which leases do you want to keep as they are, which would you like to keep if you can lower the rent through negotiations with landlords, and which ones do you want to reject or auction off. Make these decisions before filing Chapter 11, and as soon as you file, you can put the stores into the appropriate buckets.”

“Once you file, you have a lot of power. You can ask the landlord to accept less rent. If the landlord refuses, you can give the lease back and be done with it,” Friedman added.

In 2005, the U.S. Congress modified the laws dealing with bankruptcies. The key change set a firm limit on the time a company has to complete its reorganization.

“Today, there is an initial limit of 120 days followed by a single extension of not more than 90 days,” Mark Sherrill, an associate with the Washington, D.C., office of the Sutherland law firm, told CPN Online. “If you don’t file a reorganization plan by the deadline, anyone else can come in and file a plan.”

To ensure that the debtor, the company in bankruptcy, has time to complete a reorganization plan, some advisors suggest a pre-packaged bankruptcy plan.

“Forming a reorganization plan, negotiating new terms with creditors and soliciting enough favorable votes from creditors can take a while,” Sherrill added. “In a pre-packaged bankruptcy, everything is worked out with creditors before the bankruptcy filing.”

While a retailer may not talk to landlords about leases prior to filing, decisions about which leases to reject, which to accept as is and which to negotiate down can be determined ahead of time.

By pre-packaging everything, retailers can retain control of the process by not running afoul of the shorter deadlines.■