

Developing a Multi-Faceted Bankruptcy Communications Plan

Situation Analysis: LHA's client, a leading manufacturer of store brand vitamins, minerals and nutritional supplements and supplier of over-the-counter (OTC) pharmaceuticals, received a list of Form 483 inspection observations from the US FDA related to compliance with good manufacturing practices at one of its facilities. The company voluntarily suspended production and distribution of all OTC products, representing 25% of its sales, and developed a \$40 million plan for quality upgrades and plant remediation, combined with a \$50 million annual cost reduction program requiring the lay-off of 540 employees. Shortly thereafter, however, the rating agencies downgraded the company's debt and liquidity assessment, and the US Justice Department began an investigation of the company's production, control and distribution practices. While the company cooperated fully with the Justice Department and fought hard to maintain its customer relationships and viability, its future was in serious jeopardy. Potential scenarios included:

- a Chapter 11 bankruptcy filing to restructure the company's debt obligations and explore the sale of its business;
- a pre-negotiated consensual Chapter 11 filing combined with a recapitalization by the company's existing lenders and private equity sponsors; and
- a sale of the company as a "going concern" to certain pre-petition lenders. This sale would also be subject to competitive bidding through an auction process.

LHA's Solution: With events unfolding quickly and unpredictably, LHA worked closely with the company's senior management and outside counsel to devise a multi-pronged communications plan that would enable our client to notify and educate customers, vendors, regulatory authorities and employees as needed about the outcome of its business turmoil. Over a three-month period, the working group met daily to be updated on events and develop a comprehensive set of communications documents tailored to each potential scenario. The documents included three complete sets of press releases and media statements, PowerPoint presentations, and correspondence and FAQs for the company's more than 1,000 English- and Spanish-speaking employees. LHA also worked with the company's claims agent to develop the website and telephone information lines required by bankruptcy procedures.

Results: After weeks of explorations and negotiations with its lenders, private equity group, the FDA and the Justice Department, LHA's client filed for Chapter 11 bankruptcy. In conjunction with the filing, a group of pre-petition lenders agreed to provide the company with debtor-in-possession financing to enable it to continue operating until the sale of its assets. Despite a decision process fraught with complexities, communications with the press, regulators, the company's customers, vendors and employees proceeded smoothly, facilitating the company's continued operations.

In the ensuing months, the company received permission from the Bankruptcy Court to implement its plan, negotiated an end to the federal investigation, including a \$10 million fine related to FDA violations, and sold its assets to a well-known manufacturer, marketer and distributor of nutritional supplements for approximately \$370 million.