



Private Companies Group  
*Approach*

April 2009

Dear Clients and Friends:

Private companies today are facing extraordinary challenges from multiple directions. How does a company survive in this environment, where risks and opportunities keep increasing, while the resources to manage those risks and seize those opportunities are under constant pressure?

Welcome to the first issue of the Schiff Hardin *Approach*. Here we share a few stories of recent challenges faced by some of our private company clients. We briefly describe for you the approach taken by attorneys in our Private Companies Group, working closely with the client team, to plan and execute the right strategy to meet each of those challenges. In future issues we will feature more stories like these, plus other items of interest such as the enclosed "Proactive Creditor" checklist, from the breadth of legal issues confronting private companies in today's environment. We hope you will find these stories and resources useful in meeting your company's own challenges.

Whether your company is a start-up or a seasoned corporation, our Private Companies Group brings together experienced lawyers from a broad range of specialties in a collaborative, "right-size" approach to help you and your business succeed. Our attorneys understand our clients' diverse businesses, their challenges and risks, and their opportunities. We understand the often intense pressure on their key resources: money, personnel and time. We help our clients thrive in this environment.

*This is the Schiff Hardin Approach.*



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A distributor seeks to develop an integrated strategy to protect itself from financially distressed and bankrupt customers.

A major industrial parts distributor sought to develop an integrated strategy for its accounts receivable and customer credit practices, to better protect itself during these difficult economic times. Schiff Hardin teamed with the client to review its existing practices and develop practical strategies to minimize the risks associated with aging accounts receivables. We suggested improvements to the client's standard commercial forms, contracts and credit practices, and developed new strategies involving Uniform Commercial Code remedies for use with troubled customers prior to a bankruptcy filing.

For its customers that had already filed for bankruptcy protection, we helped the client implement procedures from the enclosed checklist, "The Proactive Creditor: 7 Practical Tips to Make the Most of Your Customer's Bankruptcy Filing." This checklist identifies a number of immediate steps to minimize losses when a customer files for bankruptcy protection, and provides guidance on how best to maximize the results of a customer's bankruptcy filing. It also identifies potential "critical vendor" treatment, available in certain jurisdictions to provide relief to essential creditors.

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A specialized equipment manufacturer restructures its equity and secured debt. Its senior management team needs counsel to protect their interests and negotiate key retention and equity incentives.

A leading manufacturer and distributor of specialized electronics equipment was refinancing its secured debt and restructuring its equity ownership. The senior management team, many of whom were under employment contracts and owned company stock, had potentially separate interests from the company and its lenders under various outcomes of the restructuring, and thus needed separate counsel. A key factor in the lenders' willingness to complete the refinancing was the retention of key managers.

Attorneys from our Private Companies Group – using expertise from our Corporate, Tax and Employee Benefits disciplines – worked closely with the CEO and management team to devise new employment and severance protections, intermediate retention and performance pay incentives, and long-term equity incentives to help ensure the management team remained intact and motivated to expand the company's business. We worked with the company, its lenders and their counsel to implement these provisions and complete the restructuring.

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A client with nationwide operations had a confidentiality breach that threatened its ability to compete, and turned to Schiff Hardin’s Private Companies Group for help. Our attorneys had a deep understanding of the client’s business, and our intellectual property litigators immediately filed a complaint and motion for Temporary Restraining Order and injunction in federal court. Within days, the court granted our motion and an order directing expedited discovery. The former employee not only admitted he downloaded material from his company-issued computer to his thumb drive, but also admitted that once at his new employer’s offices – one of our client’s competitors – he destroyed the evidence. On the strength of the case built by Schiff Hardin, the court entered an agreed order permanently enjoining the former employee from using any of our client’s confidential and proprietary information.

Key sales executive of client resigns and takes critical confidential and proprietary information with him to a competing company.

Since the successful conclusion of this trade secrets matter, this company continues to turn to Schiff Hardin for matters ranging from corporate issues, mergers and acquisitions, insurance coverage advice, property damage litigation and complex environmental matters.

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A leading trade and educational publisher was expanding its headquarters in a rapidly growing new business region in greater Chicago. It sought to realize significant cost savings and improvements to its employees’ workplace environment, and the environment in general, by using “green” technology in the project.

A printing company seeks to expand its facilities and realize greater cost savings and employee welfare by incorporating “green” technology and practices in the project.

A team of attorneys from our real estate, construction and public law practices worked closely with the client to acquire the land, finance the project, obtain zoning variances and permits, and complete construction of the multi-million dollar facility. The building features environmentally conscious materials, native plant landscaping, natural daylight for 95% of employees’ workspaces, and water- and energy-efficient systems. In addition, the owner endeavored to purchase materials and employ trades and vendors within a 300-mile radius, to reduce the overall carbon-footprint of the project. The facility has been recognized as an environmentally responsible (awaiting “Gold” LEED certification) and architecturally significant enhancement to a newly developing community.

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**SCHIFFHARDIN**LLP  
Private Companies Group

Schiff Hardin is a client-focused, general practice law firm with offices in Atlanta, Boston, Chicago, Lake Forest, Illinois, New York, San Francisco and Washington, D.C. With nearly 400 attorneys admitted to practice in 31 states and six countries, Schiff Hardin offers a diversified practice covering almost every legal discipline, with the broad reach to meet the needs of domestic and international clients.

Our Corporate and Securities Group, which includes the Private Companies Group, provides a full range of services for private and public companies throughout the United States and abroad, from start-up businesses to Fortune 500 corporations. Our tradition of excellence in service to our clients – many of whom we have enjoyed working with for decades – enables us to anticipate their legal needs and provide solutions to help them drive their businesses.

For further information about our Private Companies Group or these materials, please contact any of the attorneys below. Please visit our Web site to learn more about Schiff Hardin.

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## 6. Proof of Claim Issues

- File proof of claim before receiving official form from the Bankruptcy Court
- Before filing, however, (i) consider potential preference exposure and (ii) determine if you agree with debtor's schedules (since claim may be unnecessary)
- Consider pursuing other third parties obligated under the debt
- Determine value of claim – for claims sale purposes (to consider if you want to sell your claim)

## 7. Miscellaneous Considerations

- Consider a Motion Requesting Service of All Pleadings or authorize counsel to receive and monitor case via e-filing
- Consider authorizing counsel to file an appearance on your behalf
- If your prepetition claim against the debtor is significant, consider monitoring the debtor's case for any "critical vendor" motions and, where appropriate, raise objection to same if you are not identified as a critical vendor

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Schiff Hardin represents clients on all sides of corporate reorganizations, restructurings, workouts, liquidations, foreclosures and bankruptcies. This includes debtors, secured and unsecured lenders, major trade creditors, lessors, and committees of unsecured creditors and equity holders.

Our trial lawyers have successfully litigated lender liability, fraud, fraudulent transfer and preference cases in all levels of the federal and state judicial systems.

We represent clients who initially hire us for bankruptcy matters, as well as regular firm clients who are landlords or institutional lenders, in secured and unsecured financing, real estate lending, floor plan financing, venture capital lending and leveraged buyout financing.

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