Keys to Success in the Wind-Down of a Trucking Company

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Feature

Increased fuel costs, coupled with the "freight recession" and economic slow-down, have caused many trucking companies to face overwhelming liquidity challenges to continued operations. With credit markets tightening, trucking companies will increasingly have no choice but to cease operations and sell-off assets to repay creditor constituencies. Trucking company wind-downs, however, present many unique challenges for restructuring professionals. In addition, the success of a trucking company wind-down, to a far greater extent than other liquidations, is determined largely in the first weeks of the wind-down effort. Mistakes and omissions at the outset are rarely correctable. This article identifies key challenges in trucking company liquidations, and best practices to address them.

Selling Assets

Preparing to Sell Tractors and Trailers

Robert Steinberg

Getting tractors and trailers to a staging area for sale is a logistical nightmare, but an effective selling effort requires careful planning and successful execution of a plan to stage trucks for sales. In a trucking company liquidation, the drivers will typically be owed large sums of money. Conversely, drivers may owe the company large sums of money because the company financed the purchase of the truck and the driver is repaying the trucking company over time. These financial leverage points need to be used to get tractors and trailers moved to staging areas for sale.

It may be possible to convince drivers to deliver loads and return trucks to staging areas, even with unpaid invoices, because drivers may view themselves in a better position by cooperating with respect to buying back their trucks or receipt of future payments through such cooperation. The probabilities of cooperation can be further enhanced with monetary incentives and bonuses. However, even with such incentives, a number of drivers will refuse to cooperate, and alternative means, such as court orders and enlisting local law enforcement, may be necessary to recover trucks. In the opening weeks of a trucking company liquidation, management must be rigorously focused on asset recovery and have clear goals and timetables.

Auction vs. Sale by Employees

Once the assets are staged, the next step is to determine how the assets will be sold. It is useful to compare auction house estimates with a forecast of what the company could obtain from using existing employees to sell the tractors and trailers to strategic buyers. Most trucking companies have an individual or group that sells equipment, so they are skilled in this area. Often the return from using in-house employees can far exceed what the auctioneers/liquidators may be able to obtain. However, the ability to beat auction house results will depend heavily on the capability of in-house employees.

To the extent equipment for sale can be staged in fewer yards and it is possible to sell the tractors and trailers to more buyers over time, the return will be maximized. In many cases, however, the trucking company will be unable to maintain insurance, and to avoid loss due to vandalism, selling quickly becomes imperative and thus the inventory may need to be sold to fewer buyers. An advantage of the auction house is that they will have insurance and better security, thus will be in a position to conduct a more orderly sales process. Even in such instances, it is still possible that more value for tractors and trailers can be obtained by selling through in-house efforts.

Leased Tractors and Trailers

It may be possible to maximize recovery through early purchase of certain leased equipment and then sale of that equipment. When the company seeks to pay off leased equipment and then sell it, we recommend having the buyer make the payment to the lessor to purchase the vehicle and then the remaining amount is forwarded to seller, who then obtains and transfers the title. In most cases, the trucking company will have been late on making payments to the lessors; nevertheless, it may be possible to get concessions from the lessors to make the sale happen, as the lessors are better off with a sale than attempting to locate and pickup equipment spread all over the country, and then resell it.

Protecting Assets and Making Claims

Security and Insurance Protection Issues

It is virtually a given that tractors and trailers are going to be stolen and damaged during a trucking company wind-down due to disgruntled drivers or opportunists. It is absolutely imperative to have property insurance coverage in place for as long as possible. It is also imperative to have a good security firm in place protecting the property in case the claims don't hold up. However, even security firms may not be able to protect the assets, and the better option, particularly when insurance coverage has lapsed, may be to place the assets with an auction house that will have insurance and far better security than most local firms can provide in the company's yard, which does not have enhanced security equipment and structures in place.

Claims

Insurance claims for lost or damaged equipment arise frequently in the trucking industry. So many claims arise in the course of normal operations that trucking companies forego making many of them because they would make their insurance cost prohibitive or they would lose insurance altogether. However, once a trucking company is in a wind-down, the inhibition to filing insurance claims is removed, and to avoid claims of prejudice by the insurance carriers, the trucking

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company must act quickly to file such claims.

Other types of claims need to be investigated. Such claims may include potential preference claims and various types of litigation claims, both in contract and tort.

Collection Efforts

Use of Third-party Carriers and Collection of AR

Most trucking companies hand off business to other carriers because of logistical issues or because of efficiency concerns. However, in a wind-down, if these carriers have not been paid, they will go directly to the customer and claim they hold a priority lien over the trucking company that referred the business to them. It is well-established law that a carrier holds a lien on goods its transports covered by a bill of lading; however, when this lien is released differs by state. Even in states where the lien is lost after delivery, the third-party carriers can nevertheless create enough doubt in the mind of the customers about who to pay that customers may well file an interpleader action and let the court determine who is the proper party to pay.

To some extent, the lien issue can be mitigated based on how bills of lading are filled out and terms of the contract. For example, the trucking company may list the shipper on the bill of lading as the third-party carrier instead of the originating trucking company, which gives the third-party carrier a strong argument that the customer owes money to them instead of the originating company. Contracts with third-party carriers and bills of lading should be reviewed with legal counsel to minimize the impact of lien issues.

The impact of the third-party carrier lien claims can be mitigated by winding down in a very low-profile manner. An informal wind-down may be preferable to an assignment for the benefit of creditors (where a vendor notice provision is required) or a chapter filing.

It is necessary to move quickly to collect AR as soon as possible through a very focused, planned effort. Even with such steps, one can expect that large customers will file interpleader actions. However, by moving quickly to collect, a great deal of AR can be reduced before the onslaught of carrier claims cause customers to cease further payments.

AR Collections and Delivery of Scheduled Freight

Recovery of AR may be optimized by continuing to deliver scheduled freight and not outsourcing AR collections. By delivering scheduled freight, one can create goodwill with the customer base and a longer period in which the customers continue to pay AR in the "ordinary course." Having the past collectors call the customers, rather than a new outsourced group, also helps create a more "ordinary course" feeling by the customers, which enhances collections efforts. In addition, relatively small commissions to collectors, who have likely never received collection commissions before, can be highly motivating. In one instance, by paying a commission of roughly $25k to the head collector, which was equal to her yearly salary, an extremely positive incentive was created and performance of this employee resulted in 80 percent collection of outstanding AR.

Employee and Contractor Payment Issues

Electronic Payments to Drivers

Trucking companies typically outsource electronic payment disbursements to firms. These companies allow the trucking company to distribute funds to drivers for payment of gas, repairs, compensation and other needs. If the electronic payment company becomes concerned about a potential filing or shutdown of the trucking company, they may prevent access to their system, stranding drivers and wreaking havoc in the customer base.

It is imperative that a backup vendor or backup plans be established for maintaining operations in the event the electronic payment vendor ceases to support the company. In one case, the outsourced payment firm waited until a Friday, when the trucking company needed to put a large sum of money into the account to cover weekend deliveries, and then grabbed that money and refused to provide any payment services to the drivers. The damage was mitigated because an alternative plan for payment had been developed that avoided serious damage to relationships with customers and, to some extent, drivers. Had the company been totally flat-footed about a potential shutdown of the payment disbursement system, the wind-down effort would have been harmed enormously.

Employee Retention and Compensation

Because of the difficulty of getting equipment to staging areas for sale, it is often necessary to maintain a fairly large staff in a trucking company liquidation, particularly if the company has terminals across the United States. An important question is whether to maintain terminal managers to continue to work during the wind-down. It can be argued that such employees have a broader skill set and can help make final deliveries, convince the drivers to work with the company, etc. However, our experience is that better results may be obtained by paying low-level administrators in the terminals a meaningful stay bonus. Higher-level employees will be focused on their next jobs and may be difficult to motivate.

A "commission"-driven stay bonus system for the wind-down is extremely important for trucking company liquidation because of the complexity involved. Due to fears that an involuntary bankruptcy could be filed, disrupting employees' ability to obtain their bonuses, it is helpful to pay employees a part of their bonuses earned to date on a periodic basis. This approach incentivizes the key employees to deliver results, but also incentivizes them to stay to collect all of the bonuses they earned.

Conclusion

Trucking company liquidations present myriad unique problems. Without careful preparation and planning, diminution or loss of asset value can occur quickly and recovery to creditor constituencies can be negatively affected. How management intends to deal with each of the issues above should be discussed and carefully considered in the development of an effective liquidation plan. The eventual success of the liquidation will depend on management's success in the opening weeks, and poor planning, mistakes and oversights at the start of the trucking company wind-down will have a clear and obvious impact on the overall recovery obtained. ■

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