

From the desk of Jeanne M. Kerkstra, Esq., CPA

Viewpoint

Ducking Responsibilities Never Pays

In healthy economic times, having a successful business is challenging. However, in difficult economic times, good business practices determine viability.

A prime example straight from the headlines is the abrupt closing of Republic Windows and Doors' Chicago plant in December, 2008. Apparently, the Company's owners had given the employees just one day notice prior to closing the plant, which was a union plant. When the owners shut down the plant, a large number of the employees staged a sit-in and got media coverage. The employees claimed that they were cheated out of their vacation and severance pay and were not given the 60-day notice generally required by federal law. It is interesting that after almost a week of sit-ins (and visits from various public officials, including former Governor Blagojevich), the employees received a settlement financed from loans from Bank of America and JPMorgan Chase. The settlement was for about \$1.75 million and included a certain amount of salary, accrued vacation pay and health care coverage. The Company had filed Chapter 7 bankruptcy and was liquidated.

However, that is not the end of the story. The National Labor Relations Board ("NLRB") has filed an unfair labor practice charge against the Company alleging that the Company failed to notify or negotiate the closing of the plant and transferred the business to a new plant that was non-union in Iowa. The new company probably not so ironically is called Echo Windows. Allegedly Echo Windows was a plant that was purchased shortly before the Chicago plant was closed. However, the NLRB views it differently. They view Echo Windows as an alter ego of Republic Windows. Consequently, Echo Windows now has all of Republic Windows' baggage. The NLRB is investigating whether it will require Republic Windows to re-open its Chicago plant. This isn't far fetched if indeed Echo Windows is simply an alter ego of Republic Windows. It would appear, at least at first blush, that Echo Windows was established to get around negotiations with the union. If so, this would have been a costly mistake. If a company is in financial straits, it loses all credibility if it attempts to duck its responsibilities to its employees, creditors and vendors. The best time for a company to negotiate is while it is still a going concern. It is at that time that a company could attempt to gain concessions from its employees, vendors and creditors. However, if a company chooses to go the quick and dirty route and simply establish a mirror company, it is only setting itself up for disaster.

Bottom Line: If your company is having financial troubles, certainly don't feel alone. These are unprecedented financial times. Start early on a plan so that by negotiations with your employees, vendors and creditors, everyone is better off. No one benefits when a company closes its doors.

<p>Jeanne M. Kerkstra, Esq., CPA KERKSTRA LAW OFFICES LLC 53 W. Jackson Blvd. Suite 1530 Chicago, IL 60604 312.427.0493 312.675.0500 (fax) jmk@kerkstralaw.com</p>	<p>KERKSTRA LAW OFFICES LLC Problem? Solved.®</p> <p>asset protection • estate planning corporate work • business succession planning forensic investigation • litigation and more</p>
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