

Assignment for the Benefit of Creditors

When a troubled enterprise is faced with uncertainty and evaluating its options, bankruptcy may not always be the most effective or strategic means to address debt. In order to fulfill your duties and obligations to your stakeholders while looking to maximize value, a deteriorating business should evaluate all of its possibilities, including non-bankruptcy alternatives.

The attorneys in Polsinelli's Bankruptcy and Restructuring Group have extensive experience representing entities in all industries in workouts outside of Chapter 7 and 11 bankruptcy proceedings. The most common type of workout is an Assignment for the Benefit of Creditors (ABC) - a longstanding statutory and common law tool used to liquidate distressed companies effectively and efficiently.

An ABC is a voluntary, out-of-court alternative where a financially distressed company (Assignor) transfers all of its assets to an independent, disinterested fiduciary (Assignee). The Assignee is responsible for investigating claims against third parties, liquidating the assets of the company and distributing proceeds to creditors. Any surplus remaining after all creditors have been paid in full is returned to the Assignor.

Why an ABC?

ABC's are efficient and flexible, requiring less administrative expense and can be faster than traditional bankruptcy proceedings. Assignors have the ability to select an assignee with appropriate experience and industry knowledge to facilitate the liquidation.

Because the mechanics of an ABC vary from state-to-state, a distressed business considering an ABC should engage skilled counsel to determine whether an ABC is the appropriate restructuring alternative for its needs. Polsinelli is known nationally for its ABC competence. The team uses its decades of experience to navigate pre-assignment negotiations with creditors, both secured and unsecured, prepare the general assignment legal agreements, draft motions and other court-filings when required, assist in the marketing and sale of the assignment estate assets and address creditor claims against the Assignor.