

Peck in Law360: In Amazon Age, Struggling Retailers Face 'Tough Sell'

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PRACTICES Retail, Restructuring

As distressed brick-and-mortar retailers continue to feel the pinch of a shift in consumer habits, their ability to successfully reorganize in fast-paced bankruptcy proceedings is no longer a sure thing, [Law360 reported](#), noting that increasingly a retailer's fate is determined by its ability to negotiate with creditors before filing.

The story said that, with the rise of Amazon.com and the growing ubiquity of online shopping, it's much harder for distressed retailers with a large-scale physical footprint to survive than in years past, but a 12-year-old amendment in the U.S. Bankruptcy Code is also complicating the process. That 2005 change limits the time that retailers have to assume or reject commercial leases after filing for bankruptcy to 120 days, or 210 days with court permission. ...

"That is probably the biggest challenge, ... making those decisions and negotiating with both your landlords and your lender during the time available," [Ian Peck](#), chair of Haynes Boone's Bankruptcy and Business Restructuring practice, told *Law360*.

Moreover, lenders generally are reluctant to keep a distressed retailer afloat without the assurance of a viable plan for the future, Peck added. Compound unease over a merchant's ability to continue as a going concern with the administrative costs that accrue over the duration of a bankruptcy, and securing the money to reorganize through Chapter 11 becomes "a tough sell," he said. ...

Taken together, the Bankruptcy Code-imposed time constraint on critical lease decisions and the technology-inspired shift in consumer behavior have made reorganizing a retail company more difficult than ever before, according to the story. But, it reports, some recent success stories include the Chapter 11 cases of BCBG Max Azria Group Inc. and Payless ShoeSource Inc., retailers that recently confirmed plans to reorganize after entering bankruptcy with a strategy already in place to close multiple unprofitable stores and recapitalize.

Excerpted from *Law360*. To read the full article, click [here](#) (subscription required).