

## SEATBELTS FOR BUSINESS: BEST PRACTICES TO PROTECT YOUR BUSINESS WHEN THINGS DON'T GO AS PLANNED

Seatbelts are something that every car has but no car owner hopes to ever need to save their life. Rather, they are there in case things do not go according to plan. Sometimes in business, things do not go as planned. Whether it is the financial struggles of customers or vendors, challenges with employees, litigation against the company, or a pandemic, a company's ability to survive such adversity depends in large part on its ability to promptly identify and efficiently respond to the adversity. A panel of employment and bankruptcy attorneys, along with in-house counsel and a chief financial officer will talk through how to spot and address nascent issues and what systems you will need to have in place if the proverbial "crash" occurs.

### FACT PATTERN

Our story begins with the brilliant idea of the founders who launched a consumer products business. With \$100 million in capital they launch a successful startup in Chicago. Backed by strong economic factors and consumer demand, the company expands both in terms of its locations, its product offerings, and its workforce. In a time of rapid growth, the company utilizes a significant number of contingent workers from temporary staffing agencies and a roster of independent contractors who helped deliver company products, and they expand into markets geographically far beyond their home base in Chicago.

Fast forward more than ten years, and the company suddenly announces that it is closing its doors and laying off all employees. The public is stunned, employees are shocked to be without a paycheck or any advance warning, and suppliers and vendors are scrambling to redistribute products and collect on balances owed.

For purposes of our discussion, in a room filled with in-house counsel from thriving businesses, let's rollback the clock and talk about key moments in time when there may have been warning signs, and what steps might have been taken to prevent those warning signs from turning into red flags.

Our panel today includes speakers who have first-hand experience guiding businesses through warning signs, preventing those warning signs from turning into red flags, and in some unfortunate situations picking up the pieces in the aftermath of the ultimate financial step – bankruptcy.

### Jeremy Glenn

Chicago Office Managing Partner, Cozen O'Connor  
(312) 474-7981 | [jglenn@cozen.com](mailto:jglenn@cozen.com)

### Brian Shaw

Member, Cozen O'Connor  
(312) 474-1644 | [bshaw@cozen.com](mailto:bshaw@cozen.com)

### Christopher Hennessy

Member, Cozen O'Connor  
(312) 474-4493 | [chennessy@cozen.com](mailto:chennessy@cozen.com)

### Neema Varghese

Managing Director, NV Consulting Services  
(630) 697-4402 | [nvarghese@nvconsultingservices.com](mailto:nvarghese@nvconsultingservices.com)

## WARNING SIGNS THAT COULD BE RED FLAGS IF NOT ADDRESSED PROACTIVELY

### STRAIN ON WORKING CAPITAL/CASH FLOW/BURN RATE

- Accounts receivables become older, slower, and stale
- Accounts payable may need adjustments to conserve cash
- Consumer buying power decreases

### SUPPLY CHAIN ISSUES

- Crucial ingredients, raw materials, or other items become scarce or costly
- Disruption due to labor issues, transportation, or other factors

### COST OF MONEY INCREASES

- Interest rates climb or traditional sources become more difficult
- Investors become hesitant
- Easy money seems alluring – MCAs

### BURDENSOME ASSETS

- Unnecessary or underutilized assets
- Underperforming leases
- Redundant assets

### EMPLOYMENT ISSUES

- Review independent contractor relationships
- Beware joint employer concerns – control over terms and conditions
- Reduction in force – OWBPA
- WARN Act – mass layoff or plant closing

### LITIGATION MATTERS

- BIPA lawsuit/data breach/cyber hack
- Independent contractor misclassification
- Restrictive covenants

### MATTERS THAT INCREASE RISKS OF PERSONAL LIABILITY FOR DIRECTORS AND OFFICERS

- Tax and other trust fund liabilities such as PACA and PASA
- Wage claims
- Pension withdrawal liability
- Corporate formalities – piercing the veil
- Insurance coverage/lapse

## ABOUT THE FIRM

Ranked among the top 100 law firms in the country, Cozen O'Connor has more than 850 attorneys in 31 cities across two continents. We are a full-service firm with nationally recognized practices in litigation, business law, and government relations, and our attorneys have experience operating in all sectors of the economy. Our diverse client list includes global Fortune 500 companies, middle-market firms poised for growth, ambitious startups, and high-profile individuals.