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The Watchful Eye

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 of Rosen Seymour Shapss Martin & Company LLP*

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Greetings!

Welcome to The Watchful Eye - a publication of the Business Investigative and Insolvency Services Group of Rosen Seymour Shapss Martin & Company.

We welcome your questions or comments about the topics discussed or related ones. Please feel free to contact me at 212-303-9027 or by e-mail at rmodansky@rsmcpa.com or my partner and co-chair, Martin Leventhal at 212-303-9030 or by e-mail at mleventhal@rsmcpa.com and let us know how we can be of assistance.

Sincerely,

Robert A. Modansky, CPA
 Martin Leventhal, CPA

Partners and Co-Champions of the Business Investigative and Insolvency Services Group

RSSM has instituted a program in which guest columnists may submit articles for publication in The Watchful Eye. Karen A. Giannelli, Esq. is the guest columnist for this issue.

Ten Warning Signs That A Retail Tenant is in Financial Distress

Declining sales in the retail sector will have a devastating effect upon a variety of business entities, including the retailers themselves, their lenders (whether secured or unsecured) and their suppliers of merchandise. It is anticipated that, like similar periods in the past when the economy was not conducive to a robust retail environment, many retailers will be pressured to restructure or eliminate their debt obligations through a reorganization or liquidation,

either of which will typically include an effort to rid themselves of their unfavorable real property leases. Attorneys with significant experience in business bankruptcies as well as the disposition of real estate are focused on the impact of the current economic climate upon their clients. The magnitude of the loss of landlord income from the extensive listings of planned store closings among the "household name" retail chains appears potentially devastating. With the economic impact of such retail closures in mind, our Distressed Retail Team (comprised of experienced business bankruptcy and real estate attorneys) has developed the following list of ten readily identifiable "warning signs" that a commercial landlord can look for to determine whether its retail tenant is experiencing financial distress:

- 1. Is your tenant late in paying rent, or not paying rent at all?***
- 2. Is your tenant failing to perform its maintenance obligations?***
- 3. Has your tenant reduced staff?***
- 4. Has your tenant reduced operating hours by opening late or closing early?***
- 5. Is your tenant conducting storewide sales or drastically discounting prices?***
- 6. Have you observed a lack of customer traffic or a shortage of inventory?***
- 7. Has your tenant lost its credit or ability to borrow?***
- 8. Is your tenant's management unavailable?***
- 9. Do judgment searches and D&B reports disclose judgments or lawsuits?***
- 10. Has your tenant expanded too rapidly, merged or poorly integrated a recent acquisition?***

While the above list is addressed primarily to the landlords of commercial tenants, it is a useful checklist for all business owners who will be affected by the financial distress of a retail tenant. A tenant in financial distress presents significant challenges to a broad spectrum of the business community since many businesses are dependent, either directly or indirectly, upon a retail tenant's ability to operate its business.

Financial distress will inevitably cause the retailer to engage in either a formal or informal restructuring of its debt. The former would occur in a forum such as the United States Bankruptcy Court. The latter, which is harder to manage as it requires the cooperation of numerous parties, would be in the nature of a "consensual" restructuring of debt outside of a court proceeding. In either event, it is advisable for a business owner affected by such a debt restructuring to seek the advice of professionals who can outline the available strategic options, both in and out of bankruptcy court, and assist you to understand the business implications of the decisions you will be forced to make.

Karen A. Giannelli, Esq, is a Director of Gibbons P.C., with offices in New York, NY, Newark and Trenton, NJ, Philadelphia, PA and Wilmington, DE. She is Chair of the Financial Restructuring and Creditors' Rights Department and can be reached at (973) 596-4505 or kgiannelli@gibbonslaw.com.

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