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Charles J. Alaimo

HR Leadership During Bankruptcy and Organizational Change

A Practical Guide

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This book is dedicated to my wife Lisa, daughter Gabriella, and son Anthony. Thanks for putting up with my highs and lows during all the organizational changes I have experienced.
You are my rocks!
Special thanks to my pug Washington for being a solid friend, listener, and for your unconditional love.

Acknowledgments

Those who know me know two things that I hold true. The first is there is no such thing as a bad experience; every experience should be treated as a learning experience. Second, writing for me is cathartic. This book helped me put my thoughts about the last twelve months of my career with Aceto on paper. While I had hoped for a different outcome, I am grateful to have served the company and having had this opportunity to grow and learn.

Throughout the process there were those who were invaluable to me. First and foremost, my family: my wife Lisa who dealt with my ups and downs, the long overseas trips, and dealing with my stress and the manifestations which it caused. There were many times I wondered what the heck I was doing and why I was putting myself through this, and it was for her and my two incredible children, Gabriella and Anthony. Thank you for putting up with the rollercoaster during this time. I'd be remiss if I didn't acknowledge my five-year old….pug, Washington. This little guy was always there to greet me when I walked through the door, melting away stress with a wag of his curled tail. Thanks, Washie!

To my friend, David Zeid, who also served as our external benefits counsel. During periods of doubt or not knowing what the next step may be, David was always available to me. His thoughtful advice and guidance and the many, many phone calls can never be paid back.

To the team at Alix Partners and PJT Partners, thank you for all your guidance.

To my HR team at Aceto and Rising at the time, Sue Rosendorf and Courtney Mazzola. You both displayed incredible poise under a period of great duress at the company. Thank you for the myriad of requests you always completed on time. Sue, thanks for holding down the fort when I was on the road in Europe or attending the many meetings throughout the last year. Courtney, you were a rock of stability. Thank you for your leadership and taking charge to ensure our Rising Pharmaceuticals team were taken care of during the process.

To Al Eilender, thank you for being a mentor and believing in me throughout my time at Aceto.

To Bill Kennally, having been through three CEOs during my tenure at Aceto, I couldn't have asked for a better partner and leader to go through this change with. While this bankruptcy and change was also new to Bill, he listened, took the advice from his team, and made the tough decisions. He displayed the strength, approachability, and wry sense of humor we needed at the time. Thanks, Bill.

Introduction

I started writing this book in 2019 after my firsthand experience with a corporate bankruptcy. The 2020 figures highlighted in my Introduction chapter have eclipsed the 2019 figures I had originally utilized. Little did any of us know how the global pandemic would impact companies, forcing many into bankruptcies. In 2020, according to S&P Global Market Intelligence, U.S. corporate bankruptcies reached their worst levels in 10 years with a total of 630 companies declaring bankruptcy in 2020. This surpassed the number of filings in every year since 2010 (Irum 2021).

With the destabilization in the economy, the loss of jobs, and with much of the country in quarantine it is no surprise that 125 of the 630 companies were in the consumer discretionary sector. These include companies that provide services that are considered nonessential. These include retail, fast food, entertainment, etc (Table 1).

In 2019, at the time my organization, Aceto Corporation and its generic pharmaceutical subsidiary Rising Pharmaceuticals, was completing its bankruptcy, the first half of that year saw close to 200 new Chap. 11 filings according to Reorg First Day. The large majority of these filings (36%) came from the consumer discretionary and healthcare sectors. Half of the consumer discretionary filings were from the retail sector, with more consumers choosing internet shopping over brick and mortar as the major reason for the uptick.

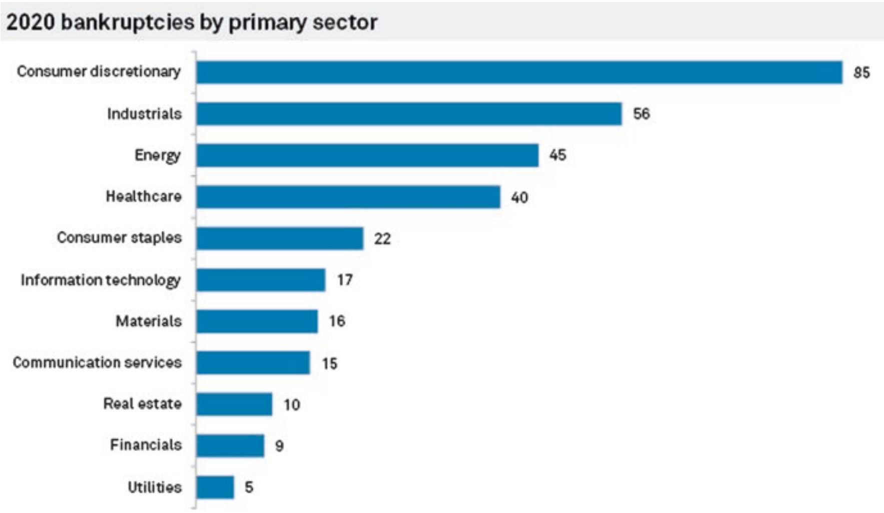
In the healthcare sector, filings by pharmaceutical companies, of which my company was a part, for the six months of 2019 were higher than all the filings in 2016, 2017, and 2018 combined, and accounted for one-third of all the filings in the sector.

Chapters 11 and 7, reorganization, 363...these words, this jargon…and more became the new language for me over the last year as my organization came to the realization that bankruptcy was our only path forward. This was our new reality, and understanding it all was a crash course.

As the head of human resources you can imagine my concern when we started to discuss the real possibility of bankruptcy, which occurred around November 2018, midway through the company's strategic alternative discussions. In April 2018, our Board of Directors decided to pursue what they referred to as "strategic alternatives," which at the time meant reviewing the sale of a division or more; maybe even the entire company.

My concerns were plenty. To the average employee and manager who may have never experienced a bankruptcy, the mere word can cause fear and uncertainty;

Table 1 2020 Bankruptcies by Primary Sector (S&P Global Market Intelligence). Data compiled Aug. 10, 2020. Data as of Aug. 9, 2020. Includes S&P Global Market Intelligence-covered U.S. companies that announced a bankruptcy between Jan. 1, 2020, and Aug. 9, 2020. Companies that filed for bankruptcy are only counted once, regardless of how many bankruptcy filings were announced. S&P Global Market Intelligence's bankruptcy coverage is limited to public companies or private companies with public debt where either assets or liabilities at the time of the bankruptcy filing are greater than or equal to $2 million, or private companies where either assets or Primary sector not available for 104 bankruptcies filed in 2020. Source: S&P Global Market Intelligence



hence, as this was being discussed more and more, many of us simply referred to it as "the B word." Sort of like the Harry Potter novels when they refer to Voldemort as "the one who shall not be named." The intent was not to ignore the issue, but to give those of us time to wrap our heads around this process and get up to speed with what this truly meant for our employees and their future with our company. And as it turns out, it actually wasn't all that bad for our legacy divisions, but not so good for our generic pharma division, but we'll get to that later.

During the process, we were fortunate to have great partners who acted as our guides through the quagmires. They were instrumental in helping us to understand, but as I began to educate myself on the bankruptcy process it was painfully obvious that there was no one definitive source for HR leaders. Instead, I relied on finding information from a myriad of sites and sources that almost always catered to the financial audience: CFOs, restructuring analysts, and the like. While that information was helpful at times, it did nothing to address the human aspects and impact that bankruptcy could have on an organization. For me, it would have been extremely instrumental to have one definitive source to refer to and hence why I wanted to write this book.

Now, keep in mind every company and every situation will be a little bit different. Even for a Chap. 11 reorganization, there will be a different employee base, different Board of Directors with different strategies, and a different creditors committee. But one thing will remain constant, and that is the Chap. 11 process and specifically, the 363 sale process, which is what my organization completed in 2019.

Now, having the ability to step back and think about those last twelve months at my former organization, many things come to mind. This book will not only cover the bankruptcy and Chap. 11 process, but also how to craft your communication plan with employees and stakeholders during any major organizational change. Having been through several organizational shifts, I drew upon my experience, and what I found is that bankruptcy, although quite severe, is no different in terms of how human resources should approach and plan for this type of change.

A key part to achieving success in the bankruptcy and sale process is to ensure that key employees and the brain trust remain with the company. Creating retention plans was the first critical project for me, which took about three to four months to complete. While these plans were created before any discussion of bankruptcy, they had to be created with this in mind; to ensure they were defensible before the courts. The plan did what it was designed to do and kept our key employees in place until the culmination of the process. Notice I used the words, "in place." Engagement was an entirely separate issue, which I will also address in the following chapters. Again, these are all items that I hope to clarify and provide a road map. The goal is to share and provide readers with a straightforward approach; one that is not overly analytical but rather provides the reader a road map.

Halfway through the writing of this book, came another and quite unexpected change not only to our work environment, but life in general, the Covid-19 pandemic. Suddenly HR teams and leaders were thrust into how to make sense of this. How to manage business continuity is the midst of enormous trepidation. Like many people, work became a secondary thought behind the worry of family and loved ones from an invisible enemy killing so many. Work did take on new meaning, for those who retained their roles and were able to adapt and work from home; gratitude for being employed was something I heard over and over. With so many of us still working remotely, the basics of communication, culture, and collaboration continue to be tested. Perhaps the one great benefit is that traditional work norms have been challenged.

Employees all over have shown that they can indeed be productive without having to commute an average of two hours per day and show their faces in the office for eight hours. As companies prepare for a repopulation, they are weighing how much to go back to pre-pandemic practices such as being in the office five days a week and do so at the peril of workers leaving for other companies who have actually learned to be resilient and adopt hybrid working models.

Gartner, the global executive insight leader, in their *Future of Work Trends Post-COVID-19* report, recently surveyed over 400 HR leaders, 300 finance leaders, and spoke with more than 4,000 employees and HR executives to identify how the Covid-19 pandemic has impacted the future of work and what business leaders should anticipate. Not surprisingly, close to half of employees will work remotely at least some of the time. Organizations are also emphasizing resiliency; their employees' ability to pivot and react to various conditions will greatly increase. This raises the need for HR to think about an employee's critical skills and how that evolves in a remote environment (Future of Work Trends Post-COVID-19).

Critical skills and competencies: Evolve modeling of skill needs to quickly course correct as conditions change. Diversity and inclusion: Incorporate D&I into role design; create flexible work systems to ensure you consider employees of all backgrounds and needs. Organization design and change management: Design roles, structures, and processes around outcomes rather than tasks to increase responsiveness and flexibility. Talent analytics: Collect data to support resourcing decisions and define the minimum critical inputs for deciding when to change or flex a process. Talent mobility: Provide employees with more varied, adaptive, flexible careers so they acquire valuable cross-functional knowledge and training.

Bottom line. There were so many things I wish I knew when we were going through the strategic alternative and bankruptcy process. My goal with this book is not to overwhelm you with facts and figures that can be found almost everywhere, but to be your Sherpa and speak to these topics as if we were doing so over a cup of coffee. I want to ensure that any human resources professional and organizational leaders going through a similar situation will be well informed, prepared, and learn from the lessons my team and I experienced, not only through a bankruptcy, but any major organizational change.

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About the Author

Charles J. Alaimo With over thirty years of human resources generalist experience, Charles has overseen all global HR processes including compensation, performance management, policy development, recruiting, learning and development, and has worked closely with organizations' Board of Directors. With a global mindset, he is a self-proclaimed global citizen with a high degree of cultural awareness and sensitivity.Currently, Charles serves as Managing Director, Human Resources for Group One Trading, LP, a privately held derivatives trading firm. Most recently, Charles served as Senior Vice President, Human Resources for Aceto Corporation, where he was responsible for the global HR function and integration activities through three acquisitions and the company's Chap. 11 bankruptcy filing and sale in 2019.

Charles holds a Master's degree in Industrial and Labor Relations from Baruch College, The City University of New York, where he also received his undergraduate degree in Human Resources Management. He has written for a number of outlets and was a contributing blogger to The Huffington Post. Charles has written on a number of human resources related topics, such as aligning human resources leadership styles during organizational change in *Inside the Minds: HR Leadership Strategies: Leading HR Executives on Aligning with Organizational Goals, Developing Employee Talent, and Addressing Changing Workforce Dynamics*.

You can reach Charles at Instagram and Twitter: @cja767 and on LinkedIn at https://www.linkedin.com/in/charlesjalaimo/.

1 Types of Corporate Bankruptcies

Let's face it, to the average person, the word *bankruptcy*, conjures a feeling of negativity, that in some way the business (or you personally) has failed. This was the fear we had at the Company: if our staff got wind of this "B" word, it could have negative effects. I have to admit that even for me, understanding the nuances of the various forms of bankruptcy was truly a learning experience. The best place to start is to understand the various forms of bankruptcy an organization may experience. This chapter will cover the following:

- The various forms of bankruptcies
- Chapter 11 with a 363 sale process
- The Stalking Horse Bidder
- The process

Four Types of Bankruptcies

According to The United States Department of Justice's website, there are four types of bankruptcy that a business may file for, depending on its structure:

1. Chapter 7: The most severe of the options. This is when a company has no likelihood of making it through its financial issues and no viable future. Usually, companies do not have any physical assets which could be sold or leveraged as in a Chap. 11 filing. When a Chap. 7 bankruptcy is filed, the business (the "debtor") almost always stops operating. The Chap. 7 trustee takes over control of the debtor's assets and liquidates them for the benefit of creditors. We've all heard stories of employees showing up to work to find gates padlocked and a sign on the door saying the business has closed.

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2. Chapter 11: This is a better choice for businesses who may have a good likelihood of turning things around and who want to remain in business. In a Chap. 11, the company reorganizes and continues to do business under court-appointed supervision. The company files a detailed plan of reorganization, outlining how it will deal with its creditors. There are numerous nuances, such as having a stalking horse bidder and completing a sale of the company's assets under Section 363 of the U.S. bankruptcy code. From there, creditors will vote on the plan. If the court finds the plan fair and equitable, they will approve it.
3. Chapter 13: These are usually personal or consumer bankruptcies but can be used for sole proprietorships.
4. Chapter 12: Like Chap. 13 and is only for family farmers and fishermen.

We will focus on Chap. 11 bankruptcies in this book. This type of reorganization usually involves a great deal of effort from the employees remaining and therefore both a challenge and opportunity for Human Resource professionals.

Chapter 11 Reorganization

For any company, getting to the point and realizing that bankruptcy may be the only option can take several months. During that time exhausting every other possibility including additional credit lines, loans, etc. When the realization that a viable business is struggling to the point that a Chap. 11 reorganization is the only solution, it can be tremendously sobering. Personally, after sitting through weekly updates which turned into monthly and then quarterly earnings reports, it seemed like the process of arriving at a Chap. 11 was long and drawn out. It was also, in retrospect, defeating.

At Aceto, the good part was we all felt there was a significant interest in our business, both the traditional chemical business as well as the generic pharmaceutical subsidiary and therefore to get through the crunch for cash and bank covenants which were in danger of being breached, a Chap. 11 was the best alternative. Since we were a public organization, our Board took the lead in vetting several restructuring/turnaround specialist firms. In your company this may be your Board if also public, or it could be led by your executive team. The partnership and expertise as a subject matter expert is a vitally important relationship. In our case, the Board approved PJT partners (www.pjtpartners.com) and their guidance was immeasurable.

Prior to any bankruptcy filing, there will be an enormous amount of work with company counsel, strategic partners, and others to secure a company to support the restructuring administration. We had selected Prime Clerk to support the process. Prime Clerk managed everything relating to the firm's bankruptcy and became the portal by which all the firm's actions relating to the filing were kept. This included case background, important dates and information, sale documents, the court docket including claims, dates, and decisions, and parties including debtors, creditor notifications, claims administration and plan distributions and communications. Prime

Clerk's site provided all the information pertinent to the bankruptcy filing and became probably the most visited site by our employees throughout the process.

The Process

While each case may be unique, there is a process by which counsel retained by your firm will follow in accordance with Federal bankruptcy laws. While the process is very involved and complicated, below is a highly simplified version of the process and key steps (Fig. 1.1):

Step 1: Company Files a Petition for Relief Under Chap. 11

A company (debtor) will file a petition with the bankruptcy court in their respective jurisdiction. If the petition incudes a stalking horse bidder, this information is packaged together with the filing. A complete disclosure document will be part of the petition filing outlining the company's plan of liquidation. At the same time a filing is made with the bankruptcy court, the Company will time this with a press release and other communications to the employees to advise them that the firm has entered a bankruptcy process.

The 363 Sale Process and Stalking Horse Bidder

Interest in our various divisions and the whole company had been generated by our strategic advisor, going back to July 2018. Interest in the company was there; most of it focused on our legacy business, as our generic pharmaceutical division continued to struggle and yet another bad earnings call was held. After narrowing the field of interest, we had about a dozen solid private equity firms wanting to proceed to the next step. In December, management discussions started whereby the management team and PE firms and their bankers, and advisors met over a two-week period to review the detailed financials and information which had been posted to the virtual

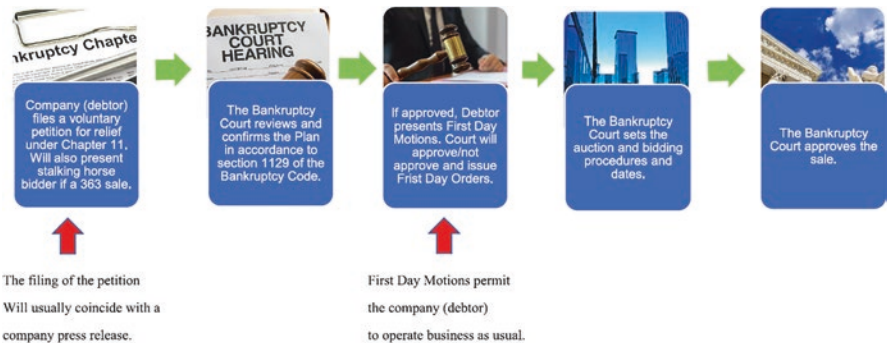

Fig. 1.1 Corporate Chap. 11 Filing Process

data room (VDR). With the very real potential of a bankruptcy filing, the hope was that one of these companies would act as the stalking horse bidder.

In our case, my organization had significant assets in the form of inventory, accounts receivables, and real estate holdings. When it became evident in November 2018 that we would most likely head down the road of bankruptcy, it was clear it would be a Chap. 11 and our hopes were that we would have a stalking horse bidder to package it and present it to the bankruptcy court; enabling us to execute a sale through a 363 process. A big benefit for a company filing a Chap. 11 and 363 sale is that they can avoid having to seek approval from its shareholders on the potential sale.

A 363 sale starts with the company in distress (debtor) marketing the organization's assets to attract potential purchasers. Upon doing this, we generated some serious and attractive offers. The next step in the process is the company, and in our case through the Board of Directors, settles on the highest bidder to act as the stalking horse bidder. This bidder's price works as the base price for the auction bids, and the other bidders will use this bid as a benchmark (Fig. 1.2).

As the illustration suggests, the stalking horse bidder helps set a "floor" price for assets to be sold at auction, thereby protecting debtors from a situation where they might receive unreasonably low bids for their assets. A stalking horse bid is binding and cannot be retracted; and is used only in the most extraordinary situations.

There are benefits and pitfalls to being a stalking horse bidder. They are as follows (Table 1.1):

As I put it to our employees when we had a town hall, the 363 process can be explained this way: Imagine you are buying a house, and you want to buy it free and clear of any liens or issues that the prior owner may have had. Bottom line, a 363 protects the buyer. They are able to acquire valuable assets that are free of liens, claims, or other encumbrances—and often at discount prices. The bankruptcy court grants the debtor-in-possession, or trustee, the power to sell the organization's assets

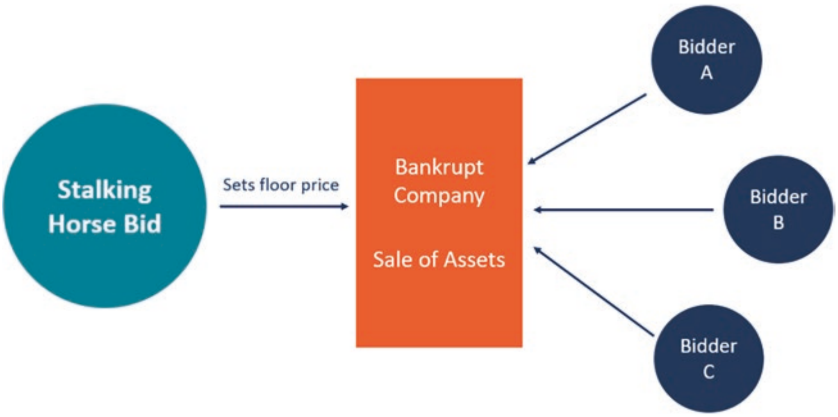

Fig. 1.2 Stalking horse bid process

Table 1.1 Benefits and pitfalls to a stalking horse bidder

Being a stalking horse bidder	
Benefits	Pitfalls
1. Increased time and access to company's financials and more	1. Transparency of the bid. Every other potential buyer knows what they need to bid
2. Breakup fees (1–4% of bid) if another bidder wins	2. Bid may need to come up to meet competitor bids
3. Reimbursement of third-party expenses incurred in connection with pursuing the deal, such as legal fees, environmental consultant fees, and real estate appraisal costs, often subject to an agreed cap	3. Lengthy close of deal due to court ordered auction process
4. Bidder can use its leverage to set terms of asset purchase agreement	

even when there is an objection from junior creditors, after a court hearing of their petition.

The 363 sale gives the debtor-in-possession more control in the disposition of assets than is the case when a trustee is allowed to sell assets under Chap. 7 liquidation bankruptcy. The debtor-in-possession controls the disposal of assets under the protection of the bankruptcy court, giving the debtor the opportunity to control the deal terms offered during a bidding auction. In a Chap. 7 liquidation bankruptcy, the court-appointed trustee disposes of the assets without the involvement of the debtor-in-possession.

Selling the company assets through a 363 sale also benefits the creditors. As key stakeholders in the bankruptcy process, they may object to, or approve of, any motions presented by the debtor to the court. For example, if the debtor seeks approval for the sale of assets to a purchaser at a lower valuation than either the fair market value or the highest bid by another bidder, the court must listen to the creditor's objections before granting approval or rejection.

With a 363 sale, the process must conform to the requirements of the bankruptcy court. If not, the asset sales will not be approved. If the court rules that a sale was not conducted in good faith, the sale may be reversed on appeal and the debtor may have to go through the entire process again in order to successfully complete the 363 sale.

Step 2: The Bankruptcy Court Will Approve or Reject the Plan

To confirm the Plan, the Bankruptcy Court must hold a hearing to determine whether the Plan meets the requirements of section 1129 of the Bankruptcy Code. Only classes of claims or interests that are 'impaired' under a plan may vote, pursuant to the provision of the Bankruptcy Code, to accept or reject such plan.

A claim or interest is considered impaired under a plan if the holder's legal, equitable or contractual rights are changed under such plan. In addition, if the holders of claims or interests in an impaired class do not receive or retain any property under a plan on account of such claims or interests, such impaired class is deemed to have rejected such plan under section 1126(g) of the Bankruptcy Code and, therefore, such holders do not need to vote on such plan.

The Uninsured Creditors' Committee

A major factor in Chap. 11 filings is the creation of a Creditors' Committee, sometimes referred to as the Unsecured Creditors' Committee, or UCC. Creditors' committees can play a major role in Chap. 11 cases. The committee is appointed by the U.S. trustee and ordinarily consists of unsecured creditors who hold the seven largest unsecured claims against the debtor. Among other things, the committee consults with the debtor in possession or administration of the case; investigates the debtor's conduct and operation of the business; and participates in formulating a plan.

A creditors' committee may, with the court's approval, hire an attorney or other professionals to assist in the performance of the committee's duties. A creditors' committee can be an important safeguard to the proper management of the business by the debtor in possession.

Step 3: First Day Motions

First day motions occur immediately after the court approves the debtor's plan. As the name implies, these motions are initiated as soon as possible and include request to the court to pay certain creditors, so that the organization can continue to operate. Most first day motions are approved by the court, so that there is no gap in payments to personnel and essential suppliers. You can imagine that it serves nobody's interests if the court cuts off payroll and payment to vendors and suppliers critical to the normal course of business.

Step 4: The Bankruptcy Court Sets the Auction and Bidding Terms

With the preparation of the asset purchase agreement, the company seeks court approval for the sale of assets at an auction commissioned by the court. Here is where the debtor also seeks the court's approval of the procedures and rules to be used during the auction, as well as approval for any incentives offered to the stalking horse bidder. The bankruptcy auction's competitive bidding format is designed to maximize the price the debtor receives for the assets on the sale. The auction procedures may require things such as minimum bid increments and offer enticements to bidders, such as exclusive rights—for a stated period of time—to bid on certain assets.

The motion for approval may request the court to expedite the bidding process. The approval of procedures may take up to 7 days, after which the debtor informs interested buyers of the auction. The court may allow up to 30 days for the bidders to place bids. The duration of the bidding period typically varies in relation to the type of assets being auctioned. In our case, the auction period was 45 days.

After the bidding period ends, the auction is opened. The debtor makes public the bids from the interested purchasers and then chooses the winning bid in a transparent atmosphere. There may very well be multiple rounds depending on interest.

Step 5: The Bankruptcy Court Approves the Sale

After the close of the bidding and announcement of the winning bidder, the court must approve the sale of the asset before it is transferred to the successful bidder. At this point, if there are parties that object to the sale, they must state the reasons for their objections and make their case to the bankruptcy court. The debtor must also demonstrate to the court that there is a sound business purpose for selling the asset(s) and indicate whether the fair market value of the asset is increasing or decreasing.

The bankruptcy court reserves the right to approve or reject the sale of assets, depending on the issues presented before it. One of the reasons for seeking court approval of the sale is for the court to rule that the sale of assets was for "fair consideration," and thus reduce the risk of a fraudulent conveyance challenge. If the court rules that the asset sale was made in "good faith," that ruling offers the asset sale protection from a possible reversal on appeal.

One thing we all took time to understand was that once the assets were purchased, we learned what happened to the 'old' entity. So let's say ZABC, Inc. was purchased. The new entity after the sale becomes ZABCC, LP. Legally these are two different entities. The new company will have a new Federal Tax Identification number and although there may be employees that continue on with the new entity, they are no longer able to speak or conduct business on behalf of the old company (again, in this case: ZABC, Inc.).

As part of the purchase of ZABC, Inc. there will be the proceeds from the sale and continued obligations to wind down the old entity. Therefore, there will most likely be individuals (generally a legal team) who stay on in a consulting arrangement and approved by the uninsured creditors committee, to ensure payment of outstanding obligations per the bankruptcy order, wind down any legal obligations, etc.

In a Chap. 11, the U.S. trustee will work closely with the business and review business operations and finances until the final decree and the courts close the case.

Effect of Bankruptcy on Customers and Contracts

When a company files Chap. 11, that date of the filing becomes a line in the sand, and an extremely critical one as it relates to payments. The dialogue becomes prepetition (the time before the filing) and post-petition. A major reason the Uninsured Creditors' Committee forms is because once a company files Chap. 11, payments owed to the customer, vendor, supplier, etc. are stopped if they fall before the filing date. These payments become part of the money owed. There is no guarantee that monies owed will be paid.

Much time was spent gathering the data on all the money owed to our customers and suppliers. Being a company that relied on our suppliers for the raw materials and not producing anything ourselves, there was a very real concern about them cutting us off and renegotiating or trying to cancel their contracts with us. Under a Chap. 11, contracts in place cannot be canceled or renegotiated. Some vendors may look for more favorable terms but will not be able to gain any.

Effect of Bankruptcy on Key Vendors

A key vendor is one who controls a critical product or service necessary for the conduct of the debtor's business. A clear example of this is when providers of utility services including power, water, and telecommunications are entitled to receive special treatment in the form of adequate assurance of future payment for post-petition utility services. This assurance is often provided in the form of special billing and remittance procedures or deposits. Key vendors, like any other unsecured obligation, may not be paid for pre-petition goods or services after the commencement of the Chap. 11 case without specific court approval.

Employee Claims

Interspersed in the entire bankruptcy process will be claims brought against the debtor from not only vendors and suppliers, but also expect claims from employees. Human Resources would not process these claims as they would be handled through the restructuring administrator, for example Prime Clerk. Employees may submit claims such as severance payments, supplemental executive retirement benefits lost as a result of bankruptcy and so. If an employee does take legal counsel to submit a claim, you should avoid discussion on such cases or claims with the employee.

Effect of Bankruptcy on Foreign Subsidiaries

Bankruptcy, whether Chap. 11 or 7, is a U.S. focused filing. One of the questions we asked ourselves was, "What will be the impact on our foreign offices?" The filing did not affect the foreign operations much at all. As separate subsidiaries, our foreign offices had enough cash on hand to basically operate as standalone businesses.

However, if your organization has foreign offices, it is just as imperative that you invest in being visible and explaining the process. As someone who regularly visited our foreign operations during this process, I found that the concerns from the employees were the same in Europe and Asia as they were in the U.S. You can expect there to be concerns about what a potential new buyer will do with the foreign operations. You also want to be sure that your international teams have all the information they need to keep their customers, suppliers, vendors, etc. informed. Once our filing was completed and made public, a number of our foreign customers and suppliers reached out to our respective sales and management teams abroad with the same concerns as our U.S. customers and suppliers.

Chapter 7 Liquidation

While most of this chapter focused on Chap. 11 Reorganization, a Chap. 7 filing is very different and worth explaining. Some companies are so far in debt or have other problems so serious that they cannot continue their business operations. They are likely to "liquidate"and file under Chap. 7. Their assets are sold for cash by a court-appointed trustee. Administrative and legal expenses are paid first, and the remaining goes to creditors. Secured creditors will have their collateral returned to them. If the value of the collateral is not sufficient to repay them in full, they will be grouped with other unsecured creditors for the rest of their claim. Bondholders and other unsecured creditors will be notified of the Chap. 7, and should file a claim in case there is money left for them to receive a payment.

Usually in a Chap. 7, only a few employees are kept on to execute the liquidation. Stockholders do not have to be notified of the Chap. 7 case because they generally do not receive anything in return for their investment. However, in the unlikely event that creditors are paid in full, stockholders will be notified and given the opportunity to file claims (Bankruptcy 2009).

Chapter Takeaways

- There are several types of corporate bankruptcies: Chaps. 7, 11, 12, and 13.
- Chap. 7 or liquidation is the most severe.
- Chap. 11 bankruptcy is usually the better choice for reorganization and turning things around.
- First day motions occur immediately upon approval of the Chap. 11 filing and secures payments for payroll, vendors, and suppliers.
- Securing a stalking horse bidder provides a company filing Chap. 11 to set the floor for bids from other interested parties.
- In a Chap. 11 filing, a creditors' committee is formed and at times referred as the Unsecured Creditors' Committee, or UCC.
- Bankruptcy is a U.S. focused filing but can still impact foreign subsidiaries.
- Communicate often and transparently.

2 Understanding How the Company Got Here and the Importance of Employee Engagement

When I look back too many of the organizations I worked for and the number of organizational changes the ones who did it right were able to articulate what was happening and what the company was prepared to do to overcome the issue. In many of these situations, the root cause of the organizational change included shifts in the industry at the time, increased competition, or changes in technology.

We can all remember the bailout of General Motors in 2008 which plunged the U.S. auto industry into disarray. The U.S. government had to 'bail out' this automaker from bankruptcy, and in effect save the U.S. auto industry. In the last few years, notable names filing for bankruptcy have included Toys R Us and Sears, filing Chaps. 7 and 11 reorganization, respectively.

Let's avoid 2020 for now since it was just an anomaly with the pandemic, however going back to 2019, in the first half of that year there were 103 new Chap. 11 filings between January and March and 94 new cases in the second quarter. To put these figures in perspective, for the first quarter this represented a 5% increase from 2018 and 18% increase from 2017. For the second quarter, the numbers were up by 29% over 2018 and a 13% decrease from 2017. The reasons behind these filings are just as numerous, ranging from low occupancy at facilities (continuing care facilities) to underperformance of drugs (pharmaceuticals).

It is difficult to see the forest through the trees and sometimes when you are deep into a situation, it is difficult to do an analysis of why we got to where we did. This is a question any leader must ask and understand. How do you avoid or prepare for something if you are unable to see it happening?

Having the benefit of time since going through my own experience with corporate bankruptcy, I believe everyone involved understood why and how we got to the strategic alternative decision and even the Chap. 11 filing. It was just not one event; rather, a potpourri of poorly timed decisions, changes in the generic pharmaceutical market, and the lack of contingency planning…call it the perfect storm, cliché but true.

C. J. Alaimo, *HR Leadership During Bankruptcy and Organizational Change*, Management for Professionals, https://doi.org/10.1007/978-3-030-95048-4_2

Over 8 years, the Board and management was aiming to be more of a life sciences company. We made some smaller acquisitions that worked out well. They were small enough to be assimilated without any large hiccups. To be blunt from the start, the acquisition of Citron Pharmaceuticals in 2016 did us in. As part of the deal, we would now be reliant on one supplier for close to 50% of our product pipeline, a supplier who was also in the same product line, as they would be supplying to us. So right from the start this drew a lot of concerns from the team.

No matter the change your organization is about to undertake, understanding the root cause that got the organization to that point is incredibly important. The most relevant saying, which I use all the time, is

> To know where we are going, we must understand where we are now and how we got here.

Think about it, how can you develop an effective communication strategy or know what success looks like if you do not know the root cause? Let me just say this, in order to properly address the solution, be honest about what the issues truly are. It does no one any good when the root causes are minimized or brushed aside, especially if they pose an inconvenient truth.I would argue that it is easier to discern how a company got to where it is rather than the change process itself. When you are looking at the reasons for why your organization may have arrived where it did, consider the following:

1. **Industry trends and dynamics**: Understand what is happening in your industry and how this has affected your company. There are a few examples I can think of. For example, there had been a series of changes in the generic pharmaceutical industry since 2012, which started the snowball. There were a number of consolidations and partnerships between wholesalers and the chain drug companies. For instance, Red Oak Sourcing was a partnership between CVS and Cardinal Health. These partnerships affected how 80% of the products would be sold. No longer would drug companies such as ours have any leverage. Instead, pricing and competition became more of a 'me too' approach.
2. **Product development and pipeline**: Has your company kept apprised of the latest technology? Has it contributed sufficiently to R&D to feed the pipeline for years down the road?
3. **People:** Organizations need to change to keep up with industry trends and new markets. Has your talent done the same? Do you have the right skillsets to successfully drive the organization forward? Are the individuals committed and able to make the tough decisions with convictions to get the company back on track? These are all questions you should be asking yourself, not only for staff, but for leadership as well. If the answer to many of these questions is no, then develop a plan to get the right talent in the doors, pronto!
4. **Decision-making**: Having a painfully slow decision-making process and/or leaders not willing to take action on difficult decisions will seal your company's fate. I have seen way too many times where employees made recommendations to improve the health of the company and were told no or 'we'll think about it,"

> only to have these decisions stagnate. The last thing you need is to have decisions stagnate by people who have no in-depth understanding of the business. Rather than relying on the subject matter experts, these leaders decided that in order to make the needed changes, it would require incredible effort or unthinkable defeat.

Keep in mind, stagnating a decision is a decision in itself. Leadership made the decision not to move. You've heard the term 'analysis paralysis,' a deliberate tactic (in my opinion) to delay difficult decisions. I've been on the receiving end of this more times than I care to admit. We were good at 'kicking the can down the road' in the months and years leading up to the ultimate crisis of bankruptcy. We had no champions willing to stick their necks out to make the difficult decisions and, even more critically, they didn't have the conviction to stick by those decisions. The effects of all this on the team cannot be overlooked or underestimated. It results in incredible frustration for those managers who care and want to do something, but are stymied at the inability to do so, especially when the leadership team is afraid to rock the boat. These are all things my former company was all guilty of doing.

Hindsight and the Signs

Looking back on the final 18 months at Aceto, the signs were there; not all at once, but over a period of time. We had a new CEO come into the picture in October 2017. Bill Kennally was a sharp guy and knew the pharma industry. Bill worked at Greenstone, LLC, a generic and authorized generic pharmaceuticals supplier which became a wholly-owned subsidiary of Pfizer, Inc. In 2010, Bill became Regional President of North America; Global Established Products for Pfizer, and prior to his retirement in 2015, he was the Regional President North America Advisor, Global Established Pharma with Pfizer. Bill served on Aceto's Board of Directors starting a year earlier, in September 2016.

Six months after Bill joined us, a chain of events was set in motion that would solidify our fate. Our CFO advised us in December 2017 of his retirement in March 2018. We hired his replacement in February 2018, also an established industry veteran. At the same time, Aceto's Board decided to pursue what they called "strategic alternatives" in response to the company's continuing financial slide. It was at that time they engaged PJT Partners as their financial advisor through the process. PJT and their team were well-versed in restructurings and their assistance was truly invaluable from the very onset of the relationship. It was at the time they were engaged, when the new CFO resigned, and a new search ensued. Understanding the financial precariousness of the company, which was outlined in a press release issued that week, indicating the company was expecting to take a noncash charge of between $230–260 million, due to products acquired from the Citron acquisition failing to meet targets, along with the strategic alternatives; PJT assisted with an interim CFO search. (Aceto 2018)

It was at PJT's Park Avenue Manhattan office that we were introduced to Alix Partners and Becky Roof, who would become our new interim CFO. Under her direction a number of initiatives were developed, including a thirteen-week rolling cash balance plan, extensive outreach to our banks and financial partners, and directing our internal finance team on measures to ensure success.

I mention all of this not to be overly detailed, but to let you know that the company took steps and actions to avoid where we ultimately ended up.

In a more standard organizational change, the question is not only "how did we get here?" but more "Where is it that we want to go?" "Why is this change needed?" Building a clear vision of the change will be key as you build out the communication strategy. During any change, employee engagement will be critical, and engagement is a bit more difficult to measure.

Employee Engagement

The employee that comes in early each morning, is he engaged? What about the employee who stays late each day to make sure her desk is clean and the last email answered. Is she engaged? My answer to these questions…." perhaps" or "hard to tell."

So just how do you identify who is an 'engaged' employee? Employees are engaged when many different levels of employees are feeling fully involved and enthusiastic about their jobs and their organizations. They are emotionally connected to the success and they contribute.

Engagement is the willingness and ability to contribute to company success and the extent to which employees put discretionary effort into their work. It should be noted that employee engagement should not be confused with employee satisfaction. You can have engaged employees who are not completely satisfied with the direction of the company, leadership, etc.

Engagement and satisfaction are both personal choices.

I've had the good fortune, or misfortune depending on who I speak with, to have been with companies who have gone through dramatic change. Those who know me know that I yearn for things to remain the same, I am self admittedly a nostalgic. But then what is it about me that seems to get me drawn into the whirlpool of change and upheaval and do well within the chaos? I've come to the conclusion that I have a calling, to be the human resources person to shepherd companies through change, to be the strong and steady force for the employees. By all accounts I've done well in this role. Change drives me, it engages me.

Having several years of change management, I've witnessed how when times get tough how this can expose everything. When things are going well at a company, the money, the profits, tend to mask things that are not going well within the organization. It is when things begin to sour, when profits dry up, and ultimately when change is needed that those issues that were hidden and dormant come to the forefront.

I've also seen engagement gone bad; my first experience came in late 2007.

At the time my current employer, TDK Electronics, was in the final stages of an acquisition. Although I was quite busy with all the activities that went along with this, I was also actively looking for my next opportunity. I had been interviewing and was on my third interview with one particular advertising/media company. My initial interview was telephonically, and I really enjoyed the discussion with the recruiter who was a contract employee with the company. As most of these initial discussions or ‘screening’ interviews go, most of the time I’ve found the recruiters to be quite professional and knowledgeable trying softly to sell you on the company.

The next round was also on the telephone about 2 weeks later and again, found the recruitment manager to be personable. I was beginning to really like the company at this point and my interest was peaking. I guess I did well because a few days later I was scheduled to come into the New York office and meet with some members of the recruitment team. I was impressed by the casual environment, people working hard at their computers; a certain relaxed and creative atmosphere engulfed the office. I connected with the team and about 2 weeks later I was scheduled to have a call with the VP, HR. That call went ok, not the best interview, she was tougher and harder to read over the phone. It was just ok.

Then came 2 weeks of silence. No word.

I decided to reach out to the recruiter who by now I had developed a good friendship with. She told me that they liked me that I would have to go through one more step, to make a presentation to members of the executive team. I nailed this but still had to wait further and during a trip to California, make a special trip to meet the VP, HR who had not witnessed my stunning presentation. At the end of the visit I went home with an offer in hand. Despite the long wait, the endless amount of interviews, I was excited. I was engaged.

The warning signs were there and I should have noticed. In retrospect, I believe my engagement was more about getting the job and being employed. Once I was an employee and on the inside, the dysfunction and lack of engagement was palpable. Senior leadership was practically non-existent. I kept remembering my first walk-through of the office with the facilities manager and she mentioned proudly, “We have bagel Wednesdays!”

“It’s Not Just about the Bagels?” was all I could think of. No amount of bagels could make up for the incredible lack of leadership and engagement that existed at this company. I found it an odd contrast, that one of the items touted was ‘bagel Wednesdays’ when not much attention was paid to anything else meaningful.

I’ve come to respect that employees are savvy and we should always treat them that way. While bagel Wednesdays, dress down Fridays and the like are important, they can also be superficial items which band-aid bigger issues employers may not want, or may not know how, to face.

Through any organizational change, no matter how small you or management may think the change is, keeping employees informed and engaged is critical. Remember, any type of change will impact someone. It’s easy to confuse employee engagement with employee satisfaction. I would argue that these are two separate and distinct areas.

Perhaps the easiest way to define satisfaction is when an employee is happy in their role. They may be content with the hours, pay, and workplace environment. They also may be happy to show up at 9 AM and leave at 5 PM. An engaged employee needs to be satisfied in their role, but they possess a higher level of involvement and loyalty, looking for ways to constantly improve their company. I had an opportunity to witness this type of engagement firsthand when back in 2006, my organization at the time was about to be acquired.

Engagement in Action

Beginning in 2006 I worked on a communication strategy firsthand with my firm at the time, TDK Electronics, the consumer arm of TDK, a global Japanese company. I was brought under the tent in October 2006 when it became evident that we were going to be acquired by Imation Corp. As discussions progressed it was becoming evident that Imation was interested in purchasing the 'brand' and would not keep a great majority of the team.

For several months prior to the announcement, I worked with my president and head of finance to develop a comprehensive approach to retaining employees through what would be a transition of up to 9 months from the time of the public announcement. During this time there would be a three-phase separation of employees. The approval process was a long one and required several meetings with Japan and our former CEO who had since returned to TDK in Japan. Retention was a new tool and so there was a lot of persuasion and rationale used to support why it was needed in this case. In addition to the retention, I wanted to be sure we included outplacement services.

The announcement was made in April 2007, and the first wave of layoffs were scheduled for September, followed by another wave in October and the next in November. The last phase, which included a small contingency of key workers including the president, vice president, and finance, came in January 2008.

What was critical during the transition period was keeping everyone engaged and motivated. How was this even possible with employees knowing that their time was limited? I also thought of the impact of those watching wave after wave of their friends and coworkers leaving the company. What psychological impact would it have on their ability to perform?

On April 6, 2007, we had our all-hands meeting to make the announcement. Jim, our president, began first by announcing the news and spoke of the acquisition for the first half, then came my part. It wasn't until a week prior to this announcement did I fly to Anaheim to meet with my team and bring them under the tent. Up until that point it had been close to 7 months of working on the retention and severance plans in private with not even my staff knowing what was going on. They were somewhat shocked, and surprised that they never once got any impression from me that anything was up. It has always been my philosophy that HR is a barometer, and our employees look to us for guidance when times are tough, so the fact that I was able to carry on in my business-as-usual style without any hint of worry was a testament to this.

At our all-hands meeting that April morning, I addressed what the change meant for the employees individually and what the company and Human Resources would do to support them. A flood of emotion took over me and at one point my voice cracked as I regained my composure.

My team and I were prepared to handle a negative reaction, but instead we were overwhelmed with so many positive responses from our staff. As we met with each employee to review individual packages, they were actually asking how *we* were coping and many commented at my genuine reaction during the all-hands meeting. Our employees were engaged; we were all in the situation together and they felt that the company cared and was doing everything possible to ensure that everyone was taken care of.

The measure of engagement was palpable. Over the course of the next 9 months, we only lost 2.6% of our workforce (4 out of 150 employees) who decided to find other jobs rather than stick around for the severance package. Throughout the transition it was business as usual, and the staff made every effort to ensure their areas were covered and all critical tasks completed. In the end, we made a deep impression on the acquiring company. The pride we took in our work and engagement at every level was inspiring. This was perhaps one of my proudest moments, that through this adversity, we all pulled together and I was the architect.

Having been through this acquisition was life altering and also gave me the tools needed for all the other organizational changes I had to lead through. It provided me a fresh, yet harsh perspective of the realities of evolving corporate dynamics and economies. While I learned a great deal through this exercise, the constant question I asked myself in future positions was *how do I replicate the level of engagement I witnessed from the TDK staff?* I came to realize that there are a number of simple and pragmatic steps to improving engagement that every company and human resources team can implement without a lot of cost – whether it be during times of organizational change or not.

I was curious as to what made most of the team stick in there and remain engaged enough to see through this acquisition. I reached out to my former coworkers and peers, asking them three simple questions:

1. What was it about the TDK environment that kept you onboard and engaged during the acquisition?
2. What did the company do right? What could have been done better in hindsight?
3. What were the main engagement drivers for you during this time? Was it the money, or working with colleagues one final time taking pride in the work?

With regard to the environment, many of them had similar things to say. They were appreciative of the transparency and communication. They felt the company was really doing everything possible to ensure the employees were taken care of. This kept them going under the tough circumstances.

Measuring Employee Engagement

If you do not currently measure employee engagement at your firm, you should! Depending on the organization, this could be an annual cadence, while others may prefer to conduct a survey every 2 years. It really is critical to take the pulse of your company, not only when there's change afoot, but when things are humming along as well.

Measuring engagement can take many different forms from surveys to focus groups. The easiest to administer and ensure confidentiality would be the survey route. You want employees to answer truthfully and to do this they need to know that their responses will be confidential. Therefore, I never require a name on the survey. Having worked in small companies where there may be two people in a department, requiring a department may scare employees. In this case they may feel it would be easy to deduce who may have responded the way they did. For companies with multiple offices, it's best to ask employees to identify their location. This will enable you to break out the responses and provide targeted data to your domestic and/or international managers and determine which offices are doing well and which need further employee engagement. Bottom line, it's paramount to ensure confidentiality.

You don't need to spend a lot on software to design and distribute to your population. I've had the best luck with tools like Survey Monkey (www.surveymonkey.com) where you can design and format your surveys, and choose if you want questions in multiple choice format, ranking, etc. You can also select which questions require a response.

I am reminded of the 12 questions developed by Gallup and highlighted in the book, *First Break All the Rules, What the World's Greatest Managers Do Differently* by Marcus Buckingham and Curt Coffman. The 12 questions include:

1. Do I know what is expected of me at work?
2. Do I have the materials and equipment I need to do my work right?
3. At work, do I have the opportunity to do what I do best every day?
4. In the last 7 days, have I received recognition or praise for doing good work?
5. Does my supervisor or someone at work seem to care about me as a person?
6. Is there someone at work who encourages my development?
7. At work, do my opinions seem to count?
8. Does the mission/purpose of my company make me feel my job is important?
9. Are my co-workers committed to doing quality work?
10. Do I have a best friend at work?
11. In the last 6 months, has someone at work talked to me about my progress?
12. This last year, have I had the opportunity at work to learn and grow?

A key aspect is maintaining confidentiality, so it is important to communicate to your employees that the survey responses are confidential. For companies with multiple offices, be sure to have a spot for employees to identify their location. This will enable you to break out the responses and provide targeted data to your international managers and determine which offices are doing well and which need further employee engagement.

Implement the survey annually, using the same exact questions year over year. This way you will be able to track your progress in areas that still need to be improved. The survey is a great way to determine those areas still requiring attention and use it as a platform for focusing and building the HR initiatives for the coming year. Believe me, there will always be areas needing improvement.

Whatever you do, act on the survey findings! Communicate the results of the survey; after all, employees took the time to respond, they would also like to know the outcome—both good and bad. Start with the positive, then communicate the collaborated HR and company plan on how you will improve the areas that didn't do so well. For any HR professional, the survey findings could be a great way to set your agenda and goals for the coming year, selecting areas from the survey to improve and how you will determine and measure success.

Don't overpromise and under deliver. Pick and choose which areas to focus on. Go after the 'low hanging fruit' to get some small wins and make an immediate impact. Show your employees you take their feedback seriously.

Engagement in the Age of COVID

The corporate world was turned upside down in 2020. With many companies scrambling to get their workers set up and productive was a massive undertaking. None of us had a clue how long this would initially last. Not only did our employees and managers have to get use to this new reality and very quickly, we had to do so and manage in a remote and virtual world.

No longer were employees in the office and those informal and organic discussions which happen in the hallway (my personal favorite) disappeared mid-March 2020. Like many other companies, Zoom became the replacement for those employee pulse opportunities. If you're like me, it was challenging in the beginning, I reached out to employees via our chat platform, checking in on a set number of folks per day. What was missing was the spontaneity along with the fear that our outreach would not appear genuine.

So how were companies expected to engage employees? Would the pandemic results be an outlier versus normal years? In 2020, Gallup tracked 190 organizational employee engagement surveys from April through July across more than 300,000 employees in 18 industries. What they found was that there was very little change in response rate (Inc).

Working in our favor, was the fact we had employees who have been with the company for several years. From March 2020 we were also onboarding new employees and it was important to keep them engaged while never meeting any of us outside of Zoom. Luckily, we employed several different tools to keep our employees feeling like they were still part of a team. While the pandemic stressed the boundaries of any norms we had encountered, it was, and is, a valuable lesson on what companies can do to in times of change.

If you take a moment to think about your organization, the pandemic affected every individual differently. While many were happy to be working at a time when so many others were unemployed, gratitude was evident and prevalent in every discussion. As the months passed, the stress of working remotely took its toll in a variety of ways. For some, the daily ritual of not commuting was a blessing but now there was more time to snack and eat, concerns about the virus and family members, feelings of being overwhelmed with the distractions that came from working at home, and feelings of isolation started to manifest. The most valuable action was to show empathy. This came from our leadership, allowing our team to step away. If you want to grab lunch, take a walk and grab lunch. If you had a doctor's appointment or needed to get tested, go do so. We were empathetic to everyone's situation understanding that no two were alike.

In the early months of the pandemic, I referred quite often to Maslow's Hierarchy of Needs and felt, more than ever, that the applicability was apropos. The hierarchy was developed by psychologist Abraham Maslow, who in 1943 published *A Theory of Human Motivation where he laid out the pyramid we now know*. For us, the safety and security of our employees, the Basic needs, had to be met at the pandemic's onset. Many of us were fearful of the unknowns of the virus and being able to work from home and be safe was a start but not the end all (Fig. 2.1).

Employees who lived in crowded buildings and in urban areas opted to work from other locations such as the country, or closer to their family. Since we were all remote already and had proven we could work from anywhere, we permitted this as well; another tangible step to securing the basic needs of our team.

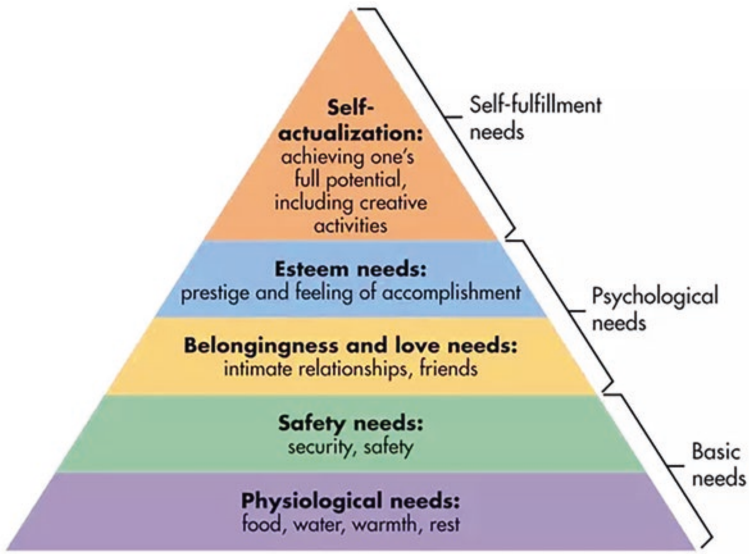

Fig. 2.1 Maslow's Hierarcy of Needs (Reproduced from Simply Psychology)

To satisfy the psychological needs of our team were a bit more difficult, understand and respecting individual boundaries were and are critical. It's important to be respectful and listen to what employees need rather than feeling forced into a sense of belongingness. We did a lot of Zoom get togethers during this time, celebrating anniversaries, happy hours, all hands meetings. But there came a point for many where the amount of Zoom calls became intrusive and that obligation to join another virtual event became too much. We listened.

I mentioned earlier that for new employees we onboarded during the pandemic, having never met any member in person, it was vital to make sure they felt like part of the team. Throughout their training plan, we made sure to frequently touch base with each and make every effort to connect. For a small group of new hires in New York, we invited them to an outdoor dinner with members of our leadership team to break the ice.

Chapter TakeawaysUnderstanding the why and how of your organization's bankruptcy or change needed is key to implementing your communication strategy.

- Employee engagement and employee satisfaction are not intrinsically linked.
- Periodically, and consistently, measure employee engagement. Annual or bi-annual surveys are a great vehicle to accomplish that.
- Share the survey findings with employees!
- Maslow's Hierarchy of Needs is a great resource in any organizational change. Your employees need to feel that their basic needs are being met before psychological and self-fulfillment needs.

3 Creating an Effective Employee Retention Plan

Change is a great destabilizer and affects employees differently, that is why during any significant organizational change, retention of key employees should be front and center. However, in a bankruptcy there are added details that cannot be overlooked, and we will get into what they are shortly. Being in HR and senior management, I spent many a sleepless night questioning how our employees would think of the impending news and would we start to lose people.

The company was really bifurcated at that point; we had our legacy businesses where turnover was low and the average length of service was close to 17 years, and then there was our generic pharmaceutical division which we spent a bulk of our time building and adding to the team. The average length of service was less than 2 years. Being a people-intensive company with no manufacturing or tangible assets, losing people, especially team members who had been with us a short time, could have had a catastrophic effect on the valuation in a sale.

When you set out to work on a retention plan, understand this should not be done unilaterally. It involves a lot of discussions and input from our senior leadership team and comprehensive input from third party resources. I will break down the steps I took and key takeaways to keep in mind during the process. First and foremost, you need to remain flexible and expect your initial retention plan draft to morph several times because of the changing nature of the company's progress.

I mentioned earlier that there are added dimensions and details when designing retention plans in a bankruptcy. With increased scrutiny from shareholders, uninsured creditors, and appointed trustees, any retention plan MUST be defensible!

Our stock price was dropping, our bonuses suffered, and so on; the plan was designed to keep these factors in mind and benchmarking the compensation of the roles we identified to the market. This became vital as bankruptcy became more of a reality and knowing I would have to defend the plan to the UCC and attorneys. With that being said, the steps that follow can be used in any organizational change when a retention plan is needed.

C. J. Alaimo, *HR Leadership During Bankruptcy and Organizational Change*, Management for Professionals, https://doi.org/10.1007/978-3-030-95048-4_3

Step 1: Conduct a Departure Risk Heat Map

To really understand who your retention plan should target, you must first understand who is at risk to depart if the going gets rough. This exercise should provide who is most likely to leave the organization, combined with how their departure would negatively impact the company. For example, of the employees identified as high risk for departure, determine if they possess unique knowledge or skills, or perhaps have deep relationships which customers or suppliers that would make their departure critical.

There are many variations of this risk heat map, some versions with multiple boxes. However, I like to utilize the 9-box model which captures the same information. A sample of what this looks like can be found here (Fig. 3.1).

The best way to proceed is to hold meetings with the functional or department head best equipped to comment on each individual, your CEO/COO and Human Resources. Depending on the size of the department, your department head may want to invite a subset of his direct reports especially if they are responsible for much of the day-to-day management and may have more in-depth information on the individuals who report to them. Ideally all your department heads should be fully aware of the organizational change before the meeting otherwise there may be concerns.

If your department heads are not informed, and the information is still highly sensitive and non-public (for public companies), you may need to get creative and explain that this is a new annual workforce planning assessment, and the goal of the

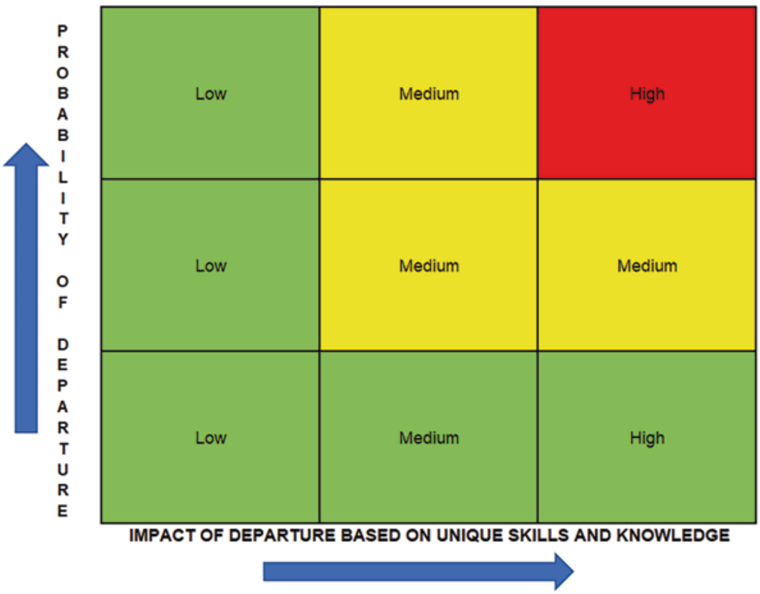

Fig. 3.1 9 Box departure risk model

meeting is to benchmark the organization's talent and where it stands currently. When we went through this exercise it was shortly after our new CEO joined so the timing was ideal and made a lot of sense. However it may still raise some eyebrows but overall, when I conducted this review, it was well-received, and the feedback and analysis afterwards was very useful not only in developing the list of retention participants but also helped to identify where the organization was well positioned and where we were not going forward.

Now you may be saying, "How would we know if an employee is at risk of leaving if they keep this to themselves?" This is a great question and one that we tackled by keeping aware of any telltale signs from our team such as

- Has the employee been dialing it back? If they were once staying until 6 PM every night, are they now out of door at 5:01 PM?
- Is there an increase in time off requests or sick days?
- Are assignments being neglected?

Once this chart and the names of the individuals were placed into the appropriate square, we proceeded to the next step.

Step 2: Identify Retention Plan Participants

Sounds like an easy enough thing in theory, but in all practicality, this can be a tough exercise. Once you have the actual number of people in each of the high-risk areas for departure and criticality, you must review if that criticality of skill can be filled elsewhere on the team. As part of the defensibility aspect of the plan that I stressed early on, your imperative should be to keep the number of participants to no more than 10% of the entire population. For us, that meant not having more than 30 people on the plan.

An important point to stress is that retention participants may not always be only the top people; in fact, it may very well be the case, as was my experience, where you have individuals identified to be on the list while their manager is not. Obviously, there was a great deal of sensitivity, which I will address further on.

When implementing Step 2, as throughout the process, you must be objective about who has the skill and knowledge needed and sometimes that does not translate to the person who runs the group nor a star performer.

Each executive had the opportunity to review the list for their respective teams once this was completed. It gave us the opportunity to make any last-minute changes before proceeding to the next step.

Step 3: Compensation and Retention

Once the list of participants is complete, you should benchmark the expected total cash compensation of each individual against the market rate for their roles. By having this information, you will be able to develop a retention amount for each individual employee. To put this into practice I'll share the steps I took.

Our compensation had taken a hit for two straight years with below target annual bonuses which were metrics-based and reflective of the financial situation we were in, combined with no equity grant. Annual equity grants for many senior leaders represented anywhere from 50% to 150% of their base salary; losing this was a significant blow.

For each position, I annualized the expected compensation using the base salary and forecasted bonus. The total compensation for each position was then benchmarked using our external benchmarking database which was Radford's Global Life Sciences survey. The delta between forecasted total direct compensation (base salary plus bonuses plus equity) and the market for these positions became the retention amount.

Keep in mind, and this was a point that many on the retention plan failed to appreciate, this plan was designed to make them whole and to ensure participants were receiving a retention payment based on the market compensation. There were a number of individuals who saw retention as a get-rich-quick scheme and that could not have been further from the truth. Again, a major point to stress, you will have to defend this plan later at some point. You would be served well by fully documenting the process, which includes maintaining all compensation studies and a clear worksheet by person/role highlighting their individual forecasted compensation and the market rate as outlined in the compensation studies. This will be a key piece in the defensibility of the plan. It was for me.

Step 4: Determining when Retention Gets Paid

Before determining when and how much of the retention should be paid, you will need to understand the milestones and the associated dates by which they need to be met. This not only applies to bankruptcies but any organizational change.

If the goal is to sell the company in 8 months, you are obviously not going to pay a substantial amount of that retention now. You also must consider how long after the sale you will need these individuals, then ensure the retention keeps them onboard through that period.

Using my former company as an example, we had made our announcement in April 2018 and after months of work which started in February of that year, our retention plan was approved in May 2018. We anticipated an 18-month timeline and we decided that the retention would be paid as follows:

May 2018: 10% of the individual's retention amount.
August 2018: 15% of the individual's retention amount.

Ultimately, the CEO and CFO had discretion to make another payment if they felt that there was a severe risk of departures and/or to keep morale up. Therefore, a payment of 15% of the individual's retention amount was made.

September 2019: Remaining amount (60% of the individual's amount).

I just want to say a few things about the retention plan and payment schedule. The payments, timing, and discretionary aspects of the plan were done so after vetting from our partner at Mercer, the Compensation Committee and their independent advisor, and our legal counsel. The timing and amounts of payment coincided with key deliverables expected during the transition.

Step 5: Obtain Approval

For public companies, such as ourselves, this meant getting the approval on the final retention plan from the Compensation Committee, who took it to the full Board. The good part is they were kept informed about the process, as I was working with their independent advisor as well as Mercer to secure all the benchmarking and supporting documentation to get this approved quickly. In our case, time was of the essence. It had already been 3 weeks since the major April announcement was made and we had several leaders at my door every morning inquiring about this. We needed to do it quickly, but we had to make sure it was done right.

Depending on who you require approval from, make sure you have a succinct proposal that does the following:

1. State why retention is critical.
2. Provide the results of the risk heat map and the information to suggest who is at risk of departing due to the anticipated organizational change.
3. Supply benchmark data: In our case that is where our work with Mercer was invaluable. They were able to provide a breakdown of what other companies were doing in our space who had been through this. He was also able to provide us information on the cost of the total retention package in relation to total valuation of the company. The data reflected that our plan was well within the acceptable ranges.
4. Provide total cost of the plan and the timeline for when retention will be paid in relation to key milestones.
5. Outline the clawback provision, should individuals leave shortly after receiving an installment. Your compensation committee and board will want to know this.

Step 6: Form of Retention Agreement

Once all the details are finalized, they must be outlined in a Form of Retention Agreement that includes: the names of participants, their individual retention amounts, schedule of payments, and a plan of what to do if the employee resigns voluntarily after receiving an installment. This is best drafted by legal counsel. Once these agreements are drafted, the human resources team should go to work to individualize each agreement for individual participants with their respective numbers. Of course, make sure to retain a copy of the agreement in the individual's personnel file.

Step 7: Meet Individually with the Retention Participants

Perhaps the most critical step is the one that occurs after all the heavy lifting has been accomplished, speaking with the retention plan participants. A decision you will need to make is who executes those discussions. As we were contemplating this, we decided that the functional leaders would speak with each of their team members on the retention list. To assist the management team, HR provided a full set of frequently asked questions (FAQ). Ultimately, we knew, and you should be prepared, for the one main question each employee, whether on a retention plan or not, will have is "How does this change affect me?" This is the driving question that any HR professional must address, no matter the type of change and no matter how small we think it may be. A full set of questions to include on an FAQ document can be found in the Bold Communication chapter.

One thing to keep in mind with respect to these agreements, is to set a deadline. Participants should review and return by a specified date, do not let these drag on. We had a few individuals who had their own attorneys review and came back wanting to negotiate the amounts, this was quashed immediately. The amounts of retention were the amounts. They were approved by the Compensation Committee and the full Board and I wasn't about to go back to start this process again. While these participants were not pleased about this, they ultimately signed.

After providing the retention plan documents the work doesn't end there, you must keep engaged with the team to ensure that milestones are achieved and the day-to-day work is being executed. One lesson learned is that having a retention plan does not guarantee that employees will truly remain engaged. In a handful of situations, the retention served as a way to keep people at the company, but not much more. Dealing with the mindset that we were ultimately going to be sold, the stress of having three times the work during this period, and the uncertainty was too much to overcome for some, even with a lucrative retention program.

Non-Cash Retention Ideas

There may be times when cash is not the only retention strategy. It could be combined with other incentives. In a 2010 article by McKinsey (Cosack et al. 2010), the argument they outlined was that companies often throw financial incentives at their star performers or rain makers and in effect waste that money on individuals who wouldn't have left in the first place. Rather they make the case using the example of a European industrial company which used extensive communication to understand the deeper mindset of their teams determining what was critical to them. The alternative incentives are items most leaders would find doable and simple, they include:

- Praise from one's manager
- Attention from leaders
- Promotion opportunities
- Opportunities to lead projects
- Fast-track management training programs

As I mentioned at the onset this chapter, at the time the retention plans were designed, we had no idea that bankruptcy was even an option. We set out to create this plan to ensure that the key employees needed for the difficult period that lay ahead would remain with us. As our situation changed, we pressure-tested the plan to make sure it would hold up to the scrutiny of trustees, attorneys and the like. In the end, there was good news. The winning bidders of both our generic and legacy businesses included in their asset purchase agreements, the commitment to pay out the remaining balances to the retention participants on September 13, 2019.

The Two Types of Retention Plans: Key Employee Retention and Key Employee Incentive Plans

As you embark on an organizational change, a key issue you must begin to think about is whether you need to develop a retention plan. Specific to bankruptcy and reviewing participants of such a plan, you will need to know if they will be part of a retention or an incentive plan: Key Employee Retention Plan ("KERP") or Key Employee Incentive Plan ("KEIP"). There are critical distinctions which are imperative to note, as it can mean the difference of the bankruptcy judge, trustee, or creditors' committee approving or not approving the plan(s).

Keep in mind, at the time we were designing the KERP and KEIP plans around April/May 2018, we had no idea if we would even be filing a Chap. 11. But with guidance from our consultant at Mercer, we designed the retention plans with the potential of either a Chaps. 11 or 7.

To explain the differences between these two plans in the simplest of terms, Key Employee Retention Plans are typically time-based and merely require the passage of time. These are easier to attain by the employee but may very well be cancelled in a bankruptcy proceeding. In fact, there may even be an attempt to claw back any payments made prior to a bankruptcy filing. Key Employee Incentive Plans (KEIP) are tied to performance and are metric-based. KEIPs must be drafted to include very specific and meaningful performance-based metrics that are designed to achieve an outcome (e.g., maintain liquidity, generate financial model, sale of division, etc.). These have a far higher likelihood of being sustained in a bankruptcy but may be less attractive to employees as a specified outcome, not merely the passage of time, will be viewed less favorably.

While both agreement types have bankruptcy risk, to the extent it can be argued that the employees are required to realize value in the on-going enterprise, new agreements with similar benefits are often confirmed as part of the bankruptcy proceeding.

Background

Under section 503(c) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), Congress imposed strict limitations on payments made specifically to retain key employees of companies in Chap. 11 bankruptcy and narrowed the circumstances under which these payments could be made. Under sect. 503(c), Chap. 11 debtors may pay a bonus to certain employees under a KERP, upon approval of the court and after a showing that certain required factors have been satisfied. Debtors may pay a bonus or incentive under a KEIP to certain employees after they attain certain measurable, difficult-to-reach milestones.

In addition, there were limitations placed on payments to key employees. Prior to this section being added in 2005, key employees were frequently given bonuses, in addition to their regular compensation, as part of a KERP, with the resulting obligations treated as administrative-expense priority claims under section 503 of the Bankruptcy Code. Section 503(c) reflected disfavor of the preferential treatment of a company's or debtors' "insiders." Insiders are usually defined as, among others, directors, officers, and other controlling individuals or entities.

Key Employee Retention Plan

A KERP is designed to specifically retain key employees and does not have any performance-based features. To incentivize "non-insider" employees to remain with the company during a bankruptcy period, "stay" bonuses are implemented through a KERP. The payments are usually distributed throughout the transition period and may be tied to major milestones in the reorganization or sale process with the final payment usually the largest and tied to the process resolution, which may be the sale, emergence from bankruptcy, etc.

Having designed the KERP for Aceto, there were a number of steps I followed, which are outlined in Chap. 4.

KERP plans are subject to the restrictions under section 503(c)(1). This section prohibits retention payments to "insiders" unless the following criteria are met:

1. The services provided by the employee are vital to sustaining the business;
2. The payment is essential to the retention of the employee due to a bona fide job offer from another company of equal or greater compensation (e.g. inclusive of commissions, benefits, equity, and all wage equivalents or supplements); and
3. The amount of the payment is no greater than 10 times the average payment to similar non-management employees in the same calendar year or, in the case that

the previous, similar payments do not exist, no greater than 25 percent of any similar payment made to the "insider" during the previous calendar year.

Because of these restrictions, retention programs are no longer utilized for "insiders" with stretch, performance-based incentives under a KEIP utilized for "insiders."

Key Employee Incentive Plan

Unlike a KERP, a KEIP is not a retention plan and does not pay out in the same way as a KERP. This approach is not subject to the limitations imposed by Sect. 503(c)(1) and applies more liberal judgment standards to determine if the plan is appropriate for a debtor company. This determination can generally be made through ordinary business sense, and an evaluation of the facts and circumstances of a given case. Generally, these goals tend to be tied to financial metrics, restructuring goals, or a combination of both. The performance goals must be a stretch or challenge to achieve.

The performance metrics under these plans should coincide with the company's goals and objectives and provide incentive payments to key employees who achieve these goals. In our case, we tied the sale price to the incentive plan.

There was one case that really shined a light on KEIP plans, this was *In re Dana Corp.*, 358 B.R. 567, after the debtor had its initial compensation program rejected by the court because it was essentially a retention plan disguised as an incentive plan and could not pass muster under Section 503(c)(3), the program was modified as a true incentive plan. The court approved the revised plan, noting that the compensation plan was similar to incentive programs offered by the debtor prior to filing for bankruptcy, and therefore they were within Dana's ordinary course of business. In order to evaluate whether the revised plan could survive the strict scrutiny necessitated by Section 503(c), the court applied the following factors:

1. Whether there is a reasonable relationship between the plan proposed and the results to be obtained—i.e., will the key employee stay for as long as it takes for the debtor to reorganize or market its assets, or, in the case of a performance incentive, is the plan calculated to achieve the desired performance?
2. Whether the cost of the plan is reasonable within the context of the debtor's assets, liabilities and earning potential.
3. Whether the scope of the plan is fair and reasonable—does it apply to all employees? Does it discriminate unfairly?
4. Is the plan consistent with industry standards?
5. Is the debtor engaged in due diligence related to the need for the plan, the employees that needed to be incentivized, and the types of plans that are generally applicable in a particular industry?
6. Did the debtor receive independent counsel in performing due diligence and in creating and authorizing the incentive compensation?

The amount of employees and costs of these programs needs to be reviewed. As an employer, we were questioned extensively by the attorneys for the U.S. trustees as well as the uninsured creditors committee. The questioning focused on the individuals selected to be on the plans and why they were critical. It is best to be prepared to have this data and support as to why they were selected as participants.

In addition, the total cost of the programs will need to be defensible. You will see me say this numerous times in the next chapter: make sure your plan is defensible. We analyzed and compared costs as a percentage against a number of metrics including the asset valuation, revenue, and precedent court cases.

It wasn't long before management was contacted by both the attorneys for the creditors committee and the U.S. trustee. Since I was closest to the plan design, I literally had to go over each retention participant's role, why they were included as a participant, the impact if they were to leave, etc. Again, ensure your plan's defensibility.

While the scrutiny is high, it is in the best interest of all parties, especially the uninsured creditors, to approve such plans; otherwise, they run the risk of losing the very individuals at the company who are critical for them to receive top dollar and the best valuation for the organization through a sale or reorganization.

Chapter TakeawaysDevelop a Departure Risk Heat Map ahead of any great change initiative such as bankruptcy, merger, and acquisition to determine which key employees are at risk of departing.

- Two distinct retention plans (1) Key Employee Retention Plan (KERP) and (2) Key Employee Incentive Plan (KEIP).
- A KERP Plan is designed to specifically retain key employees and does not have any performance-based features.
- A KEIP Plan is used to incentivize Named Executive Officers (NEO) and insiders and tend to be tied to financial metrics, restructuring goals, or a combination of both. The performance goals must be a stretch or challenge to achieve.
- In a bankruptcy expect a great deal of scrutiny from the U.S. trustees and creditors committee so save all your data to support your retention plans.

4 A Bankruptcy's Effect on Benefits and the Barrage of Information Requests

The volume of information requests that occur in a bankruptcy and a simultaneous sale cannot be overstated. Not only will you be doing your day job by keeping the company on track, but you can also expect to be bombarded with constant, and somewhat repetitive, requests for information.

Statement of Financial Affairs

In a Chaps. 7, 11 or 13 expect to spend an inordinate amount of time gathering information for a series of forms or schedules. The first and most time consuming, not so much for human resources but the finance teams, is the Schedules of Assets and Liabilities, which as it states, it lists the company's income, expenses, debts, and assets. There is an additional form, the Statement of Financial Affairs (SOFA), that asks questions about the state of the company's finances, recent financial transactions, and items that cannot be listed on other schedules. To give you an idea, Aceto's schedules totaled 239 pages; 84 for the Schedule of Assets and Liabilities and the remaining 155 pages comprising the SOFA.

A large part of the SOFA was the listing of all creditors and claims, and the date the claim was incurred, whether it was a priority claim and other information pertaining to the creditor.

Wages

The major piece that my team prepared for the SOFA was a complete schedule of wages, severance, and benefits, including COBRA amounts. The schedule for wages is critical in a Chap. 11 case because creditor's claims are assigned different levels of importance depending on the nature of the debt. Since most employee wages are

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considered "priority" claims, they must be paid before many other ordinary debts. This priority status applies to wages that were earned within 180 days before the case was filed. As of April 1, 2019, this amount is limited to a total of $13,650 (up from $12,850). "Wages" will include hourly wages, salary, commissions, vacation pay, severance, and sick leave pay.

If the company owes you any wages when it files Chap. 11 bankruptcy, as long as an individual continues to be in the company's employ, their paychecks should not be interrupted. The company will seek permission from the court to continue paying its employees as long as it continues doing business. These requests are usually brought forward in what is referred to as first day motions.

Any wage amounts above the priority limit or that date back further than 180 days can still be claimed, but they will be treated the same as other general unsecured claims. If you are laid off during the case, most likely the bankruptcy court will order that any wages or benefits you're owed be paid promptly. If that does not happen, your unpaid wages and benefits will likely be considered an "administrative" claim, which has a higher status than even "priority claims."

Staff Reductions and the Worker Adjustment and Retraining Notification (WARN) Act

When a company files Chap. 7, it ceases doing business, but a company that files Chap. 11 usually intends to continue in business while it negotiates with its creditors to reorganize its debt. In the need to reorganize, all expenses, including labor, benefits, etc. will all come under scrutiny and HR should expect creditors to demand that management reduce labor costs. If your company was anything like ours, payroll represented the largest expense category. If there are layoffs and job actions, the company still must adhere to federal and state statutes and regulations. The most important of these is the Worker Adjustment and Retraining Notification Act (WARN).

Per the Department of Labor's website, a WARN notice is required when a business with 100 or more full-time workers (not counting workers who have less than 6 months on the job and workers who work fewer than 20 hours per week) is laying off at least 50 people at a single site of employment (see glossary and FAQs), or employs 100 or more workers who work at least a combined 4000 hours per week, and is a private for-profit business, private non-profit organization, or quasi-public entity separately organized from regular government. WARN is triggered when a covered employer:

- Closes a facility or discontinues an operating unit permanently or temporarily, affecting at least 50 employees, not counting part-time workers, at a single site of employment. A plant closing also occurs when an employer closes an operating unit that has fewer than 50 workers but that closing also involves the layoff of enough other workers to make the total number of layoffs 50 or more;
- Lays off 500 or more workers (not counting part-time workers) at a single site of employment during a 30-day period; or lays off 50–499 workers (not counting

part-time workers), and these layoffs constitute 33% of the employer's total active workforce (not counting part-time workers) at the single site of employment;

- Announces a temporary layoff of less than 6 months that meets either of the two criteria above and then decides to extend the layoff for more than 6 months. If the extension occurs for reasons that were not reasonably foreseeable at the time the layoff was originally announced, notice need only be given when the need for the extension becomes known. Any other case is treated as if notice was required for the original layoff; or
- Reduces the hours of work for 50 or more workers by 50% or more for each month in any 6-month period. Thus, a plant closing or mass layoff need not be permanent to trigger WARN.

If your company is subject to the WARN Act, and an employee did not receive 60 days' notice of a layoff or shutdown, they may be entitled to compensation for wages and benefits for those 60 days despite the bankruptcy filing.

If employees are laid off when the bankruptcy case is filed or they lose their jobs prior, they are owed wages or benefits, and become creditors of a Chap. 11 debtor. As creditors, employees join the ranks of vendors, trade creditors, secured creditors and bondholders. It may be some time before the employees are paid what they are owed. There is also no guarantee that the employees will be paid everything they are owed.

The Effect of Bankruptcy on Benefits

Severance Plans

In a bankruptcy, if a company has a standing severance policy that applies to all employees it helps the cause, but there is no guarantee that these plans will be honored. Employers cannot make any payments of benefits to executive officers, directors or senior managers unless they form part of a program that's available to all full-time employees. The amount executives receive cannot be more than 10 times greater than the average amount received by non-management employees. Severance is not protected under legislation, but rather more of an ethical issue.

The matter of severance can be seen in Gymboree's bankruptcy filing in January 2019, the second time the children's retail chain had done so in as many years. On the same day it announced the bankruptcy filing and closed approximately 900 stores, the Board triggered Article VII of the severance plan, a self-destruct button that enables the company to terminate the plan "at any time in any respect" via a majority vote from the board of directors. With this decision, and since this was more of a liquidation, none of the roughly 400 staff members at Gymboree headquarters in San Francisco and the almost 10,000 store clerks would receive severance (Dayen 2019).

When Toys R Us filed for bankruptcy in 2017, the retailer had over $5 billion in liabilities. It also became the example of everything that was wrong with corporate

America. While the company announced that none of its 33,000 store employees would receive severance, the private equity firms that had invested in Toys R Us (such as Bain Capital, KKR, and Vornado) reportedly earned $470 million off the company, and its executives earned substantial bonuses (Lieber 2018).

In late June 2019, Judge Keith L. Philipps of the Eastern District of Virginia approved a severance settlement of two million dollars to be spread across 33,000 former Toys R Us employees who were denied their severance when the company closed its doors. This follows on the heels of KKR and Bain Capital who set up a $20 million hardship fund for the thousands of former Toys R Us workers (D'innocenzio 2018).

As of the writing of this book, the Thomas Cook Group abruptly liquidated, effective the evening of September 22, 2019. While the group had secured funding, the global travel company was told by its funders—including the Royal Bank of Scotland Group and Halifax—that the Group needed to be sufficiently recapitalized to ensure operations were protected through January 2020, when bookings are traditionally quieter and liquidity would be challenging. Unable to raise an additional £200 million for funding, the company was forced into liquidation.

At around midnight on September 23, airports in the United Kingdom began to impound Thomas Cook aircraft upon arrival, due to defaults. Thomas Cook Group employed approximately 21,000 staff worldwide, with 9000 in the United Kingdom. According to the government's official site, employees of Thomas Cook in the U.K. who were affected by a company entering liquidation were legally able to make a claim for any of the following if they are owed it:

- Any wages that have gone unpaid
- Payment in lieu of any notice period
- Holiday pay
- Redundancy pay

The website instructions advised employees that compensation for the above claims (for residents of England, Scotland and Wales) would be handled by the Insolvency Service and that it would be the responsibility of the appointed liquidator to inform employees of their rights and send the appropriate forms, giving advice on what allowances they can claim. There is a cap on redundancy payments, set at £525 a week for each element of the claim (arrears of pay, holiday pay, redundancy etc.) (Welcome to GOV.UK n.d.).

In the case of Aceto's subsidiary, Rising Pharmaceuticals, which was purchased separately from the legacy business, severance was not paid and many employees filed individualized claims. As part of the Asset Purchase Agreements for both Aceto and Rising, the buyers did agree to pay retention to those participants in the plan on September 13, 2019.

401(K) Retirement Plan

One question my team and I were asked consistently was, what would happen to 401(k) plans and the health benefits? A 401(k) is protected by the IRS and cannot be used to pay creditors. However, a company may decide not to make or change its matching contributions. In our case, the 401(k) plan changed for administrators when the new buyer took control. Employees were advised that they had a specific amount of time to transfer these funds to the new plan, open up their own IRA, etc. before the old plan was closed.

Usually in the case of a plan termination, the plan must vest your accrued benefit 100 percent. This means that the plan owes you all the benefits that you have earned so far, even benefits you would have lost if you had voluntarily left your employment. ERISA does not require that retirement benefits be paid out before normal retirement age, usually age 65. It would be a good idea to read through your Summary Plan Descriptions for the plan rules regarding payment of benefits. You would be wise to put this into your FAQs and communicate what your retirement plan permits and reminding employees of the benefits but also the tax consequences of their decision.

Supplemental Executive Retirement Plan (SERP)

Supplemental executive retirement plans (SERP) are designed for executives and provide additional retirement deferral opportunities on a pre-tax basis. They are categorized as non-qualified deferral plans (NQDP). If your plan was like ours, a Rabbi Trust, the tax benefit to the employee may come at a price in a bankruptcy case. A key feature of a Rabbi Trust is that the assets must be subject to the claims of the employer's creditors at all times. If the employer becomes insolvent, all trust assets become available to the employer's creditors, including NQDP participants. In other words, if insolvency or bankruptcy occurs, the plan participants stand in line with other employer creditors.

In our case, the new buyer agreed to assume the SERP plan for any individuals who became transferred employees to the new company. For the others, these monies were part of the estate and as of the writing of this book, will most likely not be paid out to the participants not part of the new company.

Health Benefits

Health benefits, along with wages, were approved by the court during first day motions. The issue for us had more to do with the incoming buyer than the bankruptcy. Since we had one plan covering all our divisions, including our generic pharmaceutical subsidiary which was being sold to another buyer. We had a plan to terminate that subsidiary and then keep the plan in place for the remaining employees, however that was nixed by the consultants and a completely new plan was created. This caused a lot of angst not only amongst the HR team but also the employees. We had literally 1–2 weeks to design the plan, do the cost per participant analytics, and then see if the program was better than what was in place. Our issue is that we became a small employer with less than 100 lives, which impacted our premiums and the types of plans we could join. You would be served well by having a strong benefits broker or partner to walk you through this process and mitigate issues with plans and the employees.

Company Stock

With the news of our company's ongoing issues, it was expected that the stock of the company would be affected and in a precipitous way. Aceto Corporation filed bankruptcy on February 19, 2019. The Nasdaq Stock Market ("Nasdaq") notified the company on February 21, 2019 that, as a result of the Chap. 11 Cases and in accordance with Nasdaq Listing Rules 5101, 5110(b) and IM-5101-1, it would be delisting the Company's common stock.

The Nasdaq rules outlined above basically state that Nasdaq is entrusted with the authority to preserve and strengthen the quality of and public confidence in its market. To ensure this, the Nasdaq may also use its discretionary authority under IM-5101-1, for example:

- When a Company files for protection under any provision of the federal bankruptcy laws or comparable foreign laws,
- When a Company's independent accountants issue a disclaimer opinion on financial statements required to be audited, or
- When financial statements do not contain a required certification ("Market Rules and Regulations—business.nasdaq.com").

While we were able to appeal this decision, we were not successful, and the company stock was removed from Nasdaq on March 4, 2019. Despite being delisted, a company's stock will still have value and over-the-counter (OTC) trading may still occur. When a company is listed on the pink sheets or Over-the-Counter Bulletin Board (OTCBB), the letter "Q" is added to the end of the company's ticker symbol to differentiate it from other companies. That was the case for Aceto, which traded under the ACETQ symbol after its delisting.

Chapter Takeaways

- Be prepared for numerous, frequent, and sometimes duplicative requests.
- Wages will be reviewed closely.
- If your company is contemplating staff reductions be aware of the Worker Adjustment and Retraining Notification (WARN) Act and thresholds that may affect reporting.
- Benefits may be affected in a bankruptcy:
  – 401(k) Plans are protected by the IRS and cannot be used to pay creditors.
  – Supplemental Executive Retirement or Top Hat Plans may be affected.
  – Health benefits, like wages, are usually protected in first day motions.
- Any grants of company stock (public company) may be eliminated, and Company stock may be delisted.

5 Embarking on Change

Having been through several, extensive organizational changes, there is not a one size fits all approach. Organizations are each different, the circumstances they are going through may be different, their culture and people are different. Appreciating the differences and understanding how to adapt change models and methodology to your organization will be a key step. But before you get there, determine what type of organizational change you are about to embark on; adaptive or transformational:

- Adaptive changes are small, gradual, iterative changes that an organization undertakes to evolve its products, processes, workflows, and strategies over time.
- Transformational changes are larger in scale and scope and often signify a dramatic and, occasionally sudden, departure from the status quo. Expanding into a new region, mergers and acquisitions, refocus on products can all be examples of transformational changes.

Change, in any form, is daunting for the individual, for their families, for the organization, for the people leading that change. Change leads to an inordinate amount of stress, concern, and emotion. When I was taking classes in HR and change management, it was then I came to know the Kübler-Ross model.

In 1969, Dr. Elisabeth Kübler-Ross published "On Death and Dying" where she elaborated on the "5 Stages of Death" also known as the "5 Stages of Grief." She identified stages which patients and their families experienced as coping mechanisms to change, loss, and/or shock. These stages include Denial, Anger, Bargaining, Depression, Acceptance. Since the publication the stages have been adapted into organizational change management (5 Stages of Grief™).

Think about a sudden and shocking change that you may have experienced. One day you may experience anger and depression. The next day you may find acceptance but then revert. These stages, as Dr. Kübler-Ross stressed, don't follow a

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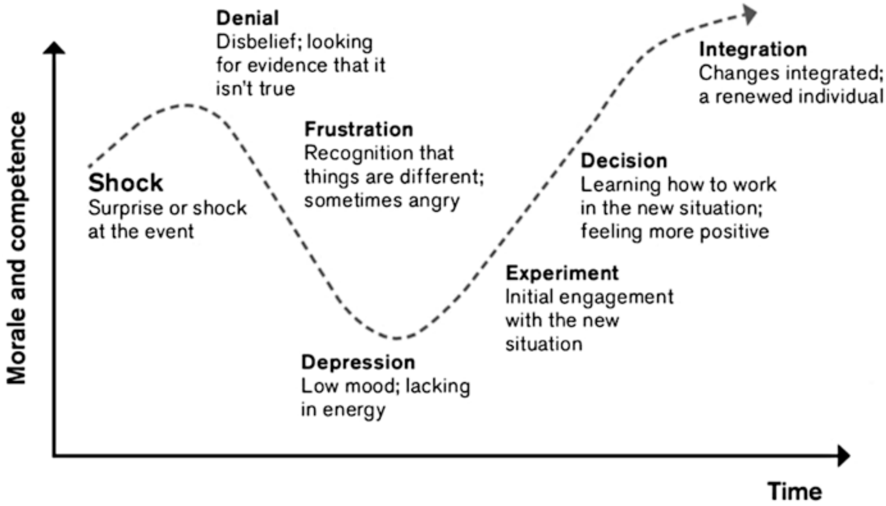

Fig. 5.1 The Kübler-Ross change model

linear progression and each stage may last for varying degrees of time. But as the curve represents, there comes a low point (Depression) and when that stage passes and it may take time, but eventually, we resign ourselves to the change. Once change is accepted, individuals adapt and explore the change and new normal (Fig. 5.1).

There are many models and many change theories which can provide guidance but can also be daunting. I encourage you to embrace the process that works best for you and understand that tweaking will need to be done to customize it to your organizational needs.

Management as an Obstacle

Perhaps the most challenging aspect of any organization change which I've been a part of has been convincing management, and in most cases, senior management as to the need for change. Making matters more difficult, is when you are trying to change a team that have either grown up at the company and/or the organization is the only one they have known. So all the talk you may employ about benchmarks, what other companies are doing in your space, etc. is often lost on this group.

While I could recount numerous discussions of such challenges, there are two that really stick out for me, both occurring at an organization I worked with a number of years ago. I was hired into this new role by the CEO and Chairman of the Board to partner with him and implement his vision for the organization. Among the numerous change initiatives was implementing a 'pay for performance' mindset where employees would be rewarded, through bonus and merit, based on their contributions and achievement of goals. After reviewing a number of key processes to deliver on that, the one which was missing was a formalized and consistent approach to performance management.

Being eager in this new role I delved into researching various vendors with the goal of automating the process, moving the global performance evaluation process to a centralized period (July/August) following the close of our fiscal year each June 30. After selecting the vendor and then working on the evaluation templates that would accomplish the task at hand, the next step was to obtain the approval from my CEO which was probably the easiest part of the whole process in retrospect. The next step, educating our managers on the new process, the reasons why this was being implemented and what we hoped to gain was way worse than I had imagined.

Six months into my tenure, I was feeling pretty good. Our new performance management system was sorted out. To accomplish the pay for performance goal, an employee's rating would correlate to their evaluation rating in a tiered fashion. So, for example an employee receiving a 3.0–3.3 (Meeting Requirements) would be eligible for the average merit increase, or 3%. Employees receiving an evaluation rating of below 3 would not be eligible for a merit increase. Scores 3.4 and up to 5 would be eligible for higher proportionate increases based on the rating and tier. It was all pretty clear to me, all set in writing, now the day came where I delivered training on the new process to our frontline managers and senior management teams. What shocked me was how much they felt this was just a way for the company not to give merit increases. It was shocking, despite all the best practice data I inundated them with, that employees would have to work towards their merit, that this wasn't an entitlement. After several training sessions where this was repeated and taking some time to let it sink in, oh and also telling my CEO I was handing in my resignation, which he quickly laughed off. I circled back with many of those managers one on one. What I found was surprising.

I came to find out that it wasn't the new evaluation process itself that they had an issue with, it turned out they were more concerned about now having to differentiate employees for merit increases. Many of them had never been asked to this before and rather going down the path of least resistance and rather than giving one employee a 5% increase versus another 3%, they would give everyone a 3% across the board. Nobody wanted to deal with the conflict and difficult conversations that would ensue from others finding out that some received higher merit increases. I got it now and so as part of this, I was able to develop and deliver further training on pay for performance, differentiating performance, and having those difficult discussions. It turns out, perhaps not surprisingly, that our employees when surveyed, all wanted greater differentiation. Many of our employees who worked hard and contributed consistently, were resentful of seeing other employees who didn't go above and beyond, receiving the same merit increases as them. Once we had that feedback and shared it with our managers, the acceptance of the new process was evident and validated.

The lesson I walked away from this experience is that sometimes it's not the change initiative itself by the secondary concerns associated with that initiative. In this case it wasn't that the managers opposed the new performance evaluation process, but they needed training on how to have those difficult conversations.

As I stated earlier, don't feel you need to adhere to one change model, and understand that modification to the model, the process, may be needed for your organization. However whether you're using the Kübler-Ross model, or Kurt Lewin's Unfreeze-Change-Refreeze model, there are some basics you need to secure before embarking on change. One model I've used throughout my years in HR management has been Kotter's 8-step model.

Dr. John Kotter, a distinguished author of over 20 management and business books, a graduate of Harvard and MIT, and who started his own consulting agency, Kotter International in 2008, wrote *Leading Change* in which he introduced an 8-step change model which served as a blueprint for how managers could change their organizations. The process incorporates basics which to be frank, most have been using not knowing they were attributable to this model.

Kotter's 8-Step Change Model

Step1: Create a Sense of Urgency

A critical component to any change initiative is setting the tone and momentum from the very beginning. According to Kotter, well over 50% companies fail during this stage. Like the example I used with the change in performance evaluation, it may be difficult to get buy-in, morale may suffer a blow which may be hard to overcome. There may be executives who either don't want to put in the effort or prefer to coast on the efforts of others. Most of the change I've encountered, and I dare say most of us, is usually when profits are down, the company is suffering. When change occurs, it is no surprise. However, change can be more difficult to push when profits are good, the business is humming along, and employees and managers do not see the incentive to change. In fact, this has been my experience; it's much easier to introduce change when things are going south or in crisis mode.

Step 2: Build a Guiding Coalition

Basically, change must not only include senior management and their buy-in, but in when looking at successful transformation efforts, the leadership coalition grows over time. These should include the chairman, president, and another 5 or 15 or 50 people to come together. These are individuals who may be highly influential in your organization and whose opinion people respect. This will be critical to fight against opposition and those clinging to the status quo.

Step 3: Form a Strategic Vision

This is probably the one step which leaders overlook, sometimes confusing this with a mission statement and finding it all to hoaky for their organizations. However, creating guiding vision is incredibly valuable in providing a roadmap and guide for employees and leaders. As with any vision, as the change progresses, this vision can also. It is meant to be fluid, adapting and improving as the issues become clearer. This step is probably the one that causes me the most regret and angst, having failed in my efforts to convince leadership of the need.

In 2012, following the annual CPhI pharmaceutical exhibition in Madrid, I had organized our first ever leadership summit. Since most of our global leaders were all going to be in Madrid, logistically it made sense and they extended their trip by and extra 2 days to partake. At the time, my former organization was going through significant change, an aggressive acquisition plan which was now focusing on building our generic pharmaceutical business over our core chemical and sourcing business. One of the exercises during the summit was to create a mission, vision statement. The discussion that ensued was the highlight of the summit for me. The leaders of the business were concerned and confused. With the focus of growth outside the core business, what was the company hoping to achieve? What was the future of the traditional business? They shared openly and honestly which in itself was extremely rewarding for me.

As part of the exercise, we broke into teams with each team tasked with coming up with their vision for the organization. There were some great ideas and I walked away with three pages of flip chart notes to share with our CEO.

While I was riding a high after the summit and feedback from the leaders were all very positive, I was to be equally disappointed in the reaction from our CEO when I shared some of the action items focused on vision planning. His body language showed he had absolutely no interest. The notes and feedback were strong but not convincing enough to this numbers driven, financial focused individual. No amount of convincing, of rationale that this would provide greater clarity and greater ROI, it was beyond his comfort level and so with a thud this was kicked to the curb.

Only years later, when financial perils were enveloping the firm, did the understanding of creating and communicating a vision and perhaps a road map for our leadership and board to follow became evident. Unfortunately, by that time it was too late.

Step 4: Enlist Volunteers

I refer to this step or phase is gathering your 'evangelists.' These are the people within your organization who have bought into the change and who can get the word out and convince people who may be otherwise unconvinced. Sometimes employees believe their peers and will follow their advice guidance before they do so from leadership. So enlist those people in your firm to get out there and communicate.

Step 5: Enable Action by Removing Barriers

Change, or renewal as Kotter refers to it (Kotter), requires not only consistent and frequent communication but the removal of obstacles. How do coalition members who believe in the change move forward when faced with someone or something blocking that path? Not only can obstacles be individuals, but an obstacle can also be intangibles as well such as a company's culture or structure, it could be policies.

During this step think about how your change agents and leaders will be empowered to remove obstacles. Sometimes educating those individuals is all that is needed to overcome their fears or misconceptions on what the change will mean for them or their team.

Step 6: Generate Short-Term Wins

Change is not easy. It requires a tenacity of spirit and often a great deal of personal sacrifice for those who set the path and models the behavior expected by others. It can be draining, both mentally and physically. This step becomes even more critical to not only buoy spirits and motivate the believers in the change but show the doubters and naysayers that progress and results are happening. Think about it, if the journey is long, having those tangible wins refreshes and rejuvenates the team for the road ahead.

Step 7: Sustain Acceleration

In this step, Kotter explains that after celebrating short-term wins (step 6) it's easy to get lulled into a mindset that all is done. It's at this step where the foot eases up on the gas pedal and rather it should be the time when to push harder, with a greater sense of urgency, and not lose sight of what the end game is. At this step, you may want to enlist more individuals to get involved to expand the network.

Step 8: Institute Change

Kotter recommends not only instituting change, but also institutionalizing that change into the culture for sustained focus. So how can you institutionalize change? A good place to start would be to align your compensation and rewards systems to the behaviors that will reinforce the new paradigm. Having done this a few times, we changed our performance evaluation template to include competencies and behaviors which were important for the sustained organizational change which had just been achieved. These competencies, which we called "core company competencies," included leadership, teamwork and collaboration, decision-making, integrity and ethics, as well as ownership and accountability. In addition, individual goals, which cascaded from the larger organizational strategy and vision, were developed annually. These changes to our evaluation system had a direct impact on merit and bonus payouts. Our employees saw the tangible effect of change and how it impacted them.

Other examples of institutionalizing the change is to hire individuals who themselves are change agents, understand and appreciate what the organization has achieved and committed to following through. This is how, slowly, the culture shifts. Conversely, there may also be situations where the only way to ensure success is to let go of individuals who continue to undermine efforts. This sends a clear message that behavior such as this will not be tolerated. Just going back to the change, I had instituted with our compensation and evaluation system, we did have a handful of individuals who were not happy and were very vocal. After numerous discussions with me, coaching them on the change and what it meant to them, they decided it was best to leave. I remember one conversation in particular, a successful member of our chemical sales team came to talk to me saying that he was use to a certain level of compensation and after showing him how he could still achieve that, his comment to me was "I may just need to leave." He did so with the air of threat to which I responded, "Putting my HR role aside, if that's what you need to do for yourself and family, then do what's best for you." That response, judging from the look in his eyes, shocked him. I viewed it as another form of bargaining that wasn't going to be accepted or tolerated. Word soon got around to what I had told him and sure enough in a few months he was gone, and the company was much better as a result.

Chapter Takeaways

- Embarking on change can be unsettling.
- Change can take the form of smaller, Adaptive change or be large and Transformational.
- There are many change management models which can be employed. Use the one that best fits your organization needs and modify as needed for your organization.
- The Kotter 8-step change model highlights the steps needed for sustained change.

Bold Communication

6

Dramatic organizational changes require bold communication plans to all stakeholders, both internal and external. The one constant and most critical factor in whether change succeeds, or not, boils down to communication.

Organizational change, especially when it is a major, transformational one, is not the time for any leader to hide behind a desk in the office. It's a time to be both VISIBLE and ACCESSIBLE! But let me be clear, bold communication does not just mean having the big town halls and the grand communications. While these are part of the process, communication also includes all the individual and tough discussions which happen behind the scenes and often away from the public eye. However, before any major organizational change or announcement is made, there must be a communication plan which addresses many of the items covered in Chap. 5 using Kotter's model. But guess what employees will want to know first and foremost? If you said "What does this change mean for me?" you win! Employees will want to know the answer to that question above all else and unless you are able to convey, again in an open manner. That fear of not knowing how they individually will be impacted may be a problem. You may not have the answer for the employee, and you know what, it is perfectly fine to say let them know that.

The importance of having an internal communication plan before any major change is announced is the first step every HR team and leader must focus on and be clear about. It's not just the communication plan but the message, understanding why the change is needed, what will be the cadence of communications going forward, and how will everyone know when the desired change has been achieved.

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Perils of Miscommunication

On March 27, 1977, a terrorist incident at Gran Canaria Airport had caused many flights to be diverted to the Canary Islands and Tenerife's small airport. Among the many diverted flights were two Boeing 747 passenger jets operating as KLM Flight 4805 and Pan Am Flight 1736. Adding to the chaos on the ground and in the control tower, fog soon rolled in and began enshrouding the airport.

Anxious to depart, the KLM captain asked for all the passengers, who had been deplaned, to reboard the flight. With the passengers onboard, shortly before 5:00 p.m., they were given permission by the tower to start their engines and enter the runway on the northwest end. At roughly the same time, Pan Am was about to start its engines and given the same instructions, following KLM. However, the crews, not familiar with this airport, became quickly confused. Making matters worse, neither the KLM or Pan Am crew understood the ground controller The Pan Am crew were unable to discern as to where they were required to turn off the runway and onto the taxi way.

After several radio calls, the controller advised the KLM crew to continue to the end of the runway, do a 180-degree turn and then it would be facing the direction they would need for takeoff. However, at the same time, the Pan Am crew was turning their 747 onto the opposite end of that same runway. Through the thick fog, they missed the first turn (C-3) to the taxiway and continued up the runway.

There were a series of missed and misunderstood transmissions between the jet crews and the control tower. In one exchange, Pan Am's crew even told the tower it was still on the runway. That transmission should have been audible in KLM's cockpit, but at that exact moment an electronic buzz, known as a heterodyne, interfered with the transmission, and KLM captain van Zanten didn't hear it.

When KLM radioed the tower, the controller responded "Stand by for takeoff. I will call you," the controller said. Hearing only the words takeoff, KLM's captain started his takeoff roll before getting permission from the controller. The first officer on KLM, Klaas Meurs questioned whether they were cleared and the second officer also questioned the captain, "Is Pan Am still on the runway?"

Van Zanten didn't hear him clearly, and precious seconds were lost. "What did you say?" the pilot asked his flight engineer.

> Is he not clear, the Pan American?
>
> Oh, yes! van Zanten responded.

As the gleaming KLM 747 barreled down the runway, the Pan Am jumbo jet suddenly appeared through the fog in front of them. Unfortunately, the die was cast and despite efforts to get airborne, the two planes collided resulting in what is to this day the deadliest aviation disaster resulting in 583 fatalities.

What does this terrible disaster teach us about communication?

There were so many opportunities to clarify what was being said but the KLM crew did not clarify before that takeoff roll started. The fog added to the confusion. The parallels between a poorly hashed change management plan and communication could have disastrous effects. Being an aviation enthusiast and following other disasters, crew resource management was a key takeaway from the Tenerife crash. Van Zanten was the cream of the crop and role model for pilots at KLM, and so it was very common for a senior captain of his caliber not to be questioned. Combine this with other cultural aspects, seniority, and the power they held by virtue of their role, junior cockpit members were often reluctant to question authority. When not challenged, this was an example of the catastrophic results that could ensue. Like most other aviation disasters, the Tenerife crash resulted in several communication improvements both within the cockpit environment and clarifying and standardizing communications between aircraft and control towers.

While this illustrates an extreme case where communication failed, as leaders we have a responsibility to clarify as much as possible before embarking on your messaging and communication strategy.

Sometimes the Truth Hurts

Not being a person who likes spin and having been through more organizational changes than I care to admit, the best policy is to be honest, transparent, and straightforward with the team. But that transparency is not easy and can come at a price. I'm thinking of that famous scene in "A Few Good Men" where Jack Nicholson's character yells those lines "*You can't handle the truth!*" Surprise, your employees can and while the message may be hard for them to hear initially, being truthful about the change builds trust that you're going to be open throughout the process.

Very often HR leaders are the ones out there, front and center, being sought out during change. As we were going through the bankruptcy process, I was often the one traveling to our foreign offices and communicating where we were in the process. I recall one visit with our team in Hamburg. It just so happened that my visit timed nicely with our head of global business development and our vice president of finance for Europe. I had scheduled a meeting which followed on the heels of our CEO's town hall just two weeks prior. After going over my preset presentation, I opened it up for questions.

The rather reserved group had quite a few for me which was great to see. The questions ranged from future of the business in Germany, their individual futures, change, and so on. A few weeks after my European visit, our head of business development came into my office. We discussed a few items before he dropped what I thought was a negative comment, "You really scared a lot of people in the Hamburg office." I was a bit taken back. Quickly running through the discussion in my head, I felt it was done well. My response was centered on being open and transparent as I could be. While our European offices would be shielded from most of the major changes the U.S. would experience, it was important for me to be straightforward. I realized it wasn't my message, but rather a collective group think among some of our business leaders, manifesting in this one senior vice president's message to me. I did these town halls so that our team stayed well-informed. To think that change would not occur was folly. I came to find out later on that he was the mouthpiece for some of our other senior leaders who received information on the Germany town hall from secondhand sources and who, like themselves, had an aversion to speaking honestly with their teams.

Speak Truth to Power

Bold communication comes in many forms. In my various positions, I have always viewed my advisor and counselor role as one of the most vital. Having the tactical skills to manage benefits, recruiting, etc. are important, but what you don't find is enough people being able to speak truth to power. A good leader masters this and does so in a way where it is valued and sought after. During the last 12 months and through this process, the ability to have those honest and candid conversations became even more critical. I was often put in situations where I was one of the few speaking up; but not just speaking up, I was also coming to the table with solutions.

There were several opportunities through the years, but to highlight what I mean I'll share one example. In January 2017, about a month after our acquisition of Citron Pharmaceuticals, the integration was not going as planned. As part of the deal, the owner of Citron joined Rising as part of the executive committee and responsible for managing the day-to-day business. It became apparent soon after the acquisition that this structure was not working out. The owner was a true entrepreneur, less interested in managing daily business and more focused on developing customers and new products. His direct reports at the company, which included the heads of logistics, business development, finance, and sales, all grew frustrated. He was often out of the office, and did not respond to emails, paralyzing members of the team to proceed. Now, granted, they all knew their roles well, but this vacuum of communication created confusion.

After hearing the issues and seeing the effect this was having on the organization, my recommendation was to remove him from the day-to-day so he can focus on his business development strengths, and then place our Corporate Chief Operating Officer into this role, since he came from the generic space and would create a steadier presence.

When I approached my CEO, there was pushback. First, everyone at the company felt this move would upset the former owner. My CEO was blinded, all he saw was a smart and shrewd guy. This clouded his judgment. It was up to me to bring to his attention, almost daily, the fact there was a major trust issue between this manager and the team, and that we ran the risk of losing many talented leaders as a result of this growing frustration; specifically, our daily business was in jeopardy. It wasn't until one of our leaders in Finance handed in his resignation and gave our CFO a verbal shellacking did my CEO finally act.

It would have been easy for me to give up, to not stick my neck out, but it wasn't who I was nor what the company needed. No matter what you do, organizational change or not, be that voice of reason, bring solutions to issues and always speak truth to power. Be courageous. Which leads me to my other cardinal rule; communication should be genuine.

Fast forward to the last two years, and the pandemic, and this is one area I have struggled with, and I am sure I was not alone. No longer were we all in the office and able to have those organic discussions. Communication was now reduced to email, phone calls, and using our messaging tool, which was ok but not very personal. My team and I, from the middle of March 2020, periodically reached out to individuals to make sure they were doing ok and if they needed anything from us. The difficulty was how these messages would come across. I didn't want our employees to feel they were contrived or disingenuous but at the same time it was all we had. We were satisfying the human connection; in some small way letting our team know they were not alone, and someone was thinking of them.

Careful Communication in Public Companies

While you should always adapt transparency in communication, there are limits especially if you work in a public company. Non-public information which you share with employees can have a material impact if employees, or their families, friends, etc. then trade your company's stock on that information in violation of insider trading. Any employees 'under the tent' and in the know of any material company change including a merger and acquisition, bankruptcy, selling part of a business, should all be on a trading blackout ensuring they cannot sell or buy company stock on that information.

The Securities and Exchange Commission regulation which govern such communications basically states that no *person acting on behalf of a company* may make an *intentional disclosure of material, nonpublic information to market professionals or shareholders* unless *public disclosure* of such information is made simultaneously. In a public company, a public press release will be issued which is usually then followed by internal communications around that press release. If there is a situation in which a person acting on behalf of a company makes a non-intentional disclosure of material, nonpublic information to market professionals or shareholders, public disclosure is required promptly (i.e., no later than 24h after the disclosure or, if later, the commencement of the next day's trading on the relevant market) after a senior official of the company learns of the disclosure and knows (or is reckless in not knowing) that the information disclosed was both material and nonpublic ("Selective Disclosure and Insider Trading").

Remember Your Customers

If you recall from Chap. 1, customers may now be part of the Uninsured Creditors Committee and may be owed money prior to the company's filing of bankruptcy. They may have a lot of money owed and will be fully engaged in what the company does with its financing to get through the bankruptcy.

Specific to a bankruptcy, there will be many questions your customers will have. In our case, it was not only customers, but a combination of customers, suppliers, and vendors. What will be extremely helpful is distributing a set of frequently asked questions which we will cover next. These FAQs will standardize responses and ensure all your external partners are hearing the same message.

Develop Frequently Asked Questions

During any organizational change private discussions occur frequently, whether with other managers, leaders, or the Board. These are important, but no less important than the public communication that needs to occur and which is equally impactful. Leaders should prepare communication with the understanding that employees will only be concerned with how the change affects them personally.

Perhaps the most useful document the human resources team can develop, in partnership with leadership, is a frequently asked questions document or FAQs. The FAQs include all questions that may come up in employee discussions, whether in private or public communication settings and should be updated to reflect new questions. This is an important and fluid document because it provides a road map and creates one unified voice in response to various questions on the same topic.

As you think about FAQs for a change your organization may be going through, think about including the following:

General Questions
- What does this change mean for me?
- Why did this change need to happen?
- What caused the company to make this decision?

Pay and Benefits
- Will I continue to be paid? (Especially important in a Chap. 7 or 11 situation)
- Will I be eligible for my annual salary increase?
- What will happen with my benefits?
- Will the company still honor the severance guidelines as stated in the Employee Handbook?
- I had vacation planned, can I still take it?
- If I find a new job and resign, am I eligible for severance?
- If a Public Company
  - What happens to our stock?
  - Will my unvested shares vest upon the acquisition/merger/bankruptcy?
  - Am I able to trade my company stock?

Organizational Change (Merger and Acquisitions)
- Who is acquiring us?
- Will I still have a job with the new company?
- What will happen to my job?
- What will happen to my compensation?
- What will happen to our benefits (health, 401 k, etc.)?
- What will happen to my PTO/Vacation time?
- Will our office move? If yes, will I be required to move?
- What will happen to our current leadership?
- The merger will require more work, will we be permitted to hire?

Timeline
- What is the anticipated timeline of the change?
- How will we know we have succeeded?
- How will management communicate to the team through the process?

Customers
- We have outstanding money owed, when will we be paid?
- Will you still be in business during the Chap. 11?
- How can we be assured of product flow?

While this all can be daunting, getting the message out frequently and being accessible is key. Also, if your company is public, leverage your investor communications department to assist senior leadership in framing the communication plans and messages. As we moved closer to the bankruptcy filing, we wanted to be sure to combine this news with the fact that we received a stalking horse bidder. This had the effect of softening what could have been, in and of itself, a very difficult press release had we just announced the bankruptcy filing. But when done in conjunction with the fact we had a buyer, gave the team hope. Having many eyes and perspectives on the messaging is super critical and this is where someone from the outside who knows your company can bring valued insight.

Communication in the Age of COVID

In 2020, employers now faced a new challenge of communicating during a pandemic with most of their workforce dispersed and in a virtual environment. When we focus on COVID and how well employees felt their employers handled communication, we looked at the Employee Benefit Research Institute's (EBRI) 2020 Workplace Wellness Survey. The EBRI was founded in 1978 for the purpose of contributing to sound employee benefit programs and public policy through independent, objective, fact-based research and education. For their survey, EBRI interviewed 1028 American workers (900 currently employed 128 furloughed workers) ages 21–64. When the currently employed group was asked to rate their employer's communication's only about half of employees rated their employer as doing a very good or excellent job of communicating (2020 Workplace Wellness Survey) (Fig. 6.1).

What companies have hopefully learned from COVID is the importance of being flexible with the medium used to communicate. Zoom anyone? Who knew Zoom, and other like communication platforms like Microsoft Teams, Webex, etc. would become so popular in their use.

Finally, communication should not be reserved solely during times of change. A big reason why organizations are able to succeed in times of tremendous change is that they have developed, over time, a culture of openness and transparency. Over time, employees trust the organization and its leaders to do the right thing and share information with them. Equally important in being open is the quality of the

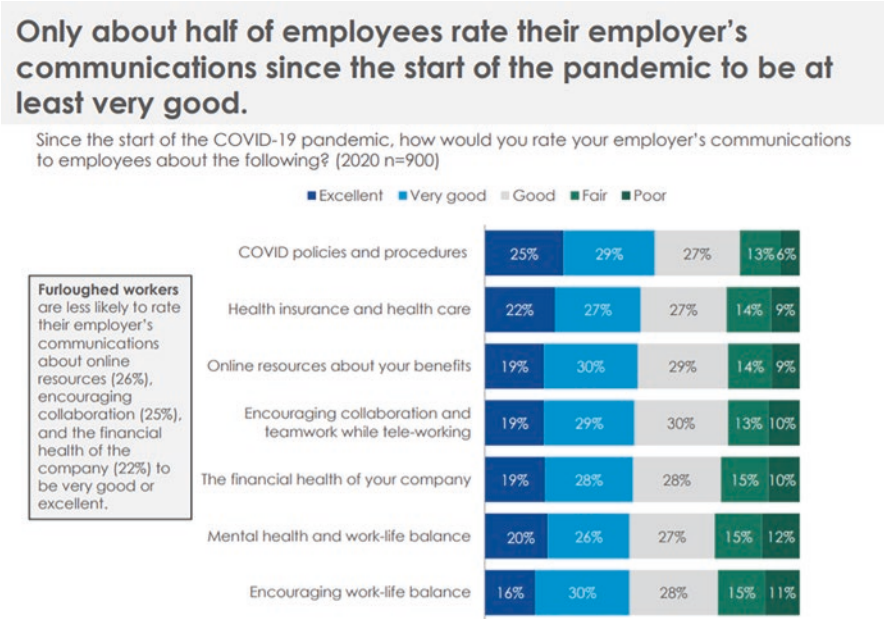

Fig. 6.1 Employee Survey regarding their Employer's Communications during COVID (Reproduced from EBRI 2020 Workplace Wellness Survey)

information. Employers should be honest and realistic in their communication, while avoiding sugar-coating; preferring to only communicate the good stuff without addressing potential negative news.

Chapter Takeaways

- Communication is one of the most critical elements in organizational change.
- HR leaders have an obligation to speak truth to power.
- Transparency in communication builds trust so when change occurs employees know the organization will do the right thing.
- Be sensitive to communications in public companies and releasing material non-public information which could create insider trading violations.
- Before any change event create a frequently asked questions (FAQ) document and update it as questions arise. FAQs will provide uniform guidance for questions.
- Be flexible to communication mediums and platforms.

7 Bold Leadership

Bold leadership during times of organizational change can be the difference between success and utter failure of any organizational change initiative. For any change situation, HR and leadership must set the tone. This revealed itself in an odd way on a trip to China.

The last weekend of December 2013, I found myself in Beijing. I reserved the weekend in China's capital to visit some sites, including the Great Wall (check it off my bucket list), before heading to my Shanghai office that Monday morning. Accompanying me was my 16-year-old daughter; her first visit to China, my twentieth I think (honestly, I lost count), but my first visit to Beijing.

As road warriors can attest, there is usually little time to take in local sights and culture on business trips. Your day is spent in the office followed by the obligatory staff dinner, and usually capping the evening with checking emails way into the wee hours of the morning (based on the time zone) only to hit repeat; so I was looking forward to this weekend.

I had arranged a private tour for the day and our first stop was the Forbidden City. We passed through Tiananmen Gate, which faced the enormous square with the same name, passing the large oil painting of Chairman Mao; our guide, Jackie, began his commentary. He noted there were no trees in the courtyards.

"Why was that?" I asked.

"Less places for assassins to hide." He went on, "The emperor had 27 beds and slept in a different one each night to confuse any potential killers."

The life of the emperor did not seem all that glamorous and rather a fearful one. I recalled the words of my father who counseled me as I was thinking of my future career, "No matter what you do, make sure you are able to sleep at night."

On this clear blue day, a rarity for this ancient city famous for its air pollution woes, my eyes scanned the vastness of the grounds. The HR in me came out and I began to question how the emperors were able to lead, not only because of the

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insulated city but of the vastness of this great country. How did they trust those around them? Were there any lessons that could be applied and helpful for today's leaders?

There was one emperor who became the standard by which all other emperors were measured; Emperor Taizong of the Tang Dynasty who ruled from 626 to 649. In his book *Li Shi Min, Founding the Tang Dynasty: The Strategies that Made China the Greatest Empire in Asia,* Hing Ming Hung describes how Taizong built a prosperous China. I decided to use Emperor Taizong's leadership traits that enabled him to do so—many of which have a direct application for leaders going through organizational change.

Have a Clear Vision

People need to know what the end goal is. Taizong wanted peace and prosperity for China and all his actions were focused on this vision. We've discussed vision and its importance several times throughout this book.

Effective leaders develop a clear understanding and roadmap of the change; they understand where the organization is now and where they want it, or need it, to be. They clarify what the expectations are for each member and what the change means for them. Leaders must be inspirational, especially during change. McKinsey's Emily Lawson and Colin Price provided a holistic perspective in their article, *The Psychology of Change Management* (2003), where they found that four basic conditions are necessary before employees will change their behavior: (a) *a compelling story*, because employees must see the point of the change and agree with it; (b) *role modeling*, because they must also see the CEO and colleagues they admire behaving in the new way; (c) *reinforcing mechanisms*, because systems, processes, and incentives must be in line with the new behavior; and (d) *capability building*, because employees must have the skills required to make the desired changes (Lawson & Price 2003).

Get Rid of Toxic People

An organization cannot grow and blossom if it allows toxicity. Now you don't have to be as radical as Emperor Taizong who was forced to kill his two brothers who conspired against him and the 'organization,' but leaders must be swift to rid their companies of those who seek to undermine. This is critical in times of change. There were clear instances in my experience where we had individuals who were undermining at every step of the change we were implementing. After allowing them to leave (for those who resigned) or making that decision for them, at the end of the day, the company was in a better position to move forward.

In addition to toxic employees, leaders must focus on engagement. In my years of experience I have found one constant: there will always be individuals within the company who may never be fully engaged, and will never be happy. Again, their perspective is on placing blame on someone - whether it's the company or manager, who is doing something to them. These employees find something, anything, that their company has done and complain about it, often trying to enlist others around them to jump on their bandwagon. I admit that early on I spent a lot of time focusing on those employees but was met with very little positive results. At some point I decided to shift my focus to the majority of people who were satisfied and devoted to their jobs, rather than the small minority who will never be satisfied.

Your perspective will determine your reality. What do I mean by that? In 2002, Timothy A. Judge, at the time a professor from the University of Florida, along with two other professors from the University of Iowa, researched the 5-factor model of personality to overall job satisfaction. The five factors included neuroticism, extraversion, openness to experience, agreeableness, and conscientiousness. Their studies indicated that an individual's rating on neuroticism, extraversion, and conscientiousness has a reasonable correlation with job satisfaction. So while HR and managers develop programs and measure engagement, there will always be that small percentage of employees who will remain unengaged through no fault of the company or your efforts, but just because it's their nature to be that way.

I'll share an experience which highlights the importance of getting rid of toxicity and building off the next lesson of speaking truth to power. When we were going through a change of leadership at TDK, our new President relied heavily on his team. Even though I was relatively new to the organization, about 8 months in, I had built a strong relationship with him while he was VP, Operations and before his promotion to president. Shortly after his promotion, it became evident that there were several peers, also reporting to Jim, that were undermining him. I didn't want to jump to conclusions but monitored the situation. One leader in particular was very vocal about his dislike for the direction Jim was going in and this had been an individual who he had helped develop and had a close working relationship. When I approached Jim about my concerns here and the need to act, I could tell he was disappointed and struggled with the fact that someone who he valued could turn on him. After a week or two, he spoke with the individual. What occurred soon after was that manager left the firm. Short-term is was a brief shock, but ultimately it turned out to be the best thing that could have happened. Once the toxic chatter of this individual was removed from the company, we were able to achieve a great deal with new leadership in place.

Surround yourself with People Who Will Tell You Like It Is

The previous chapter focused on speaking truth to power. Leaders must have a core team to rely on to be honest and convey the hard truth when it must be said. Get rid of 'yes' men and women. Taizong encouraged his team of generals and officials to point out mistakes and criticism, but also to give the rationale as to why. It was also a good way for him to test his team's ethics, understanding, and application of the laws.

The dangers of groupthink could have detrimental effects on an organization's decision making and culture. Groupthink occurs when fear encircles individuals, afraid of being the odd person, not confirming and fitting in, and being ostracized. All emotions which bring many of us back to our high school days. When in an organization if you know something is wrong why conformity can be dangerous. Leaders must cultivate an environment where their team feels protected, and where openness and candor are welcomed and encouraged. Personally, I do my best to surround myself with people who are authentic and do not have hidden agendas. Besides being authentic, your core team should not only be able to tell you like it is by bringing issues to your attention, but they should also offer solutions or recommendations. This was a critical component of the leadership team when I worked within Japanese organizations.

In addition, make sure your leaders' are held accountable. For example, in our performance management process and evaluation template we reinforce manager and employee behaviors in creating and maintaining a safe team environment where others are free to ask questions and express concerns or dissenting opinions.

Trust and Empower Your People

People will do the right thing when leaders provide them freedom and trust. Research has shown that employees who are empowered it leads to stronger job performance, engagement, and satisfaction. But empowerment doesn't come overnight and, in some cases, needs to be managed by the leader. Leaders should ensure they prepare their people are set up for success. When I train our new managers, one model I refer to often is the Situational Leadership Model developed by by Ken Blanchard and Paul Hersey.

This model suggests that there is no one style of leadership, that leadership should be customized to where an individual falls on the chart below; predicated on their experience, knowledge, maturity and other factors. It's a straightforward approach. Junior employees with either little experience or a new employee with experience to an organization, will require a certain amount of direction (the S1 quadrant). The new employee with experience more so to understand the workings and processes of the company (Fig. 7.1).

As individuals gain more knowledge, and thereby confidence, the manager provides more coaching (the S2 quadrant). Like directing, coaching still requires leaders to define roles and tasks clearly, but here the leader may seek suggestions from the individual. This provides more two-way communication, provides employees with involvement in decision-making while still being offered their manager's support and coaching. This creates an environment where the employees gain greater confidence and self-esteem.

As we move to the Supporting quadrant (S3), here the leader steps back further from directing and takes more of a supporting role. The leader may feel the bird is ready to fly from the nest which can be both exciting for the employee but also

Fig. 7.1 Situational leadership model

nerve-wracking. If the employee encounters unexpected issues, the leader is there as the employee formulates their plan of action.

Finally, in the Delegating quadrant (S4) we see a fully developed employee ready to take on the world. In this last phase the employee feels completely empowered. The leader can now delegate tasks to the employee and observe with minimal follow up. The leader knows that the employee will envelope sound and excellent judgement calls and results.

Keep in mind that there may be a significant project, or organizational change event where the employee goes back to the S1 quadrant. Much like what happened to me during the bankruptcy. I had been extremely comfortable with change and would have put myself in the S4 quadrant but having never been through a Chap. 11, I started out going back to S1 and being directed by the team who was brought in to assist us, advising me what needed to be done. Very quickly though I progressed through which is what I had hoped and thanks to my years of change management experience.

In closing the empowerment section there is an anecdote regarding Taizong in this respect. One December the emperor heard the cases of several hundred criminals. He was so moved that he granted over 390 death penalty convicts the ability to go home to be with their families with the caveat that they return the following autumn to face their death sentence. Amazingly, the following year all the convicts returned, only for Taizong to set them all free.

Put People First

There's been much written about the importance of placing people first. Back in the seventh century Taizong exemplified this. He remained grounded and humble, understanding that to be ostentatious and greedy would undermine his governance and bring unrest. Every action was executed with care to place people first. In times of change, make sure leadership answers the question every employee will have, which is, "What does this change mean for me?"

Being an empathic leader of a company has returns. In 2016, the Harvard Business Review conducted their *2016 Empathy Index*, revealing that empathy is more important to a successful business than ever before. An organization's culture of empathy has a direct effect on growth, productivity, and earnings per employee. To be clear, having empathy means understanding the emotional impact on others and making changes as a result.

Human resources professionals can bring this a step further by understanding the pulse and engagement of the team. Rather than guess, ask. Ask your employees through an opinion survey. I've covered how to do this and the questions to ask earlier in the book.

Putting people first doesn't mean saying yes to every employee proposal. It means treating employees with dignity and respect through the employment lifecycle. This means providing them the rationale as to why the organization could not move forward in a certain way or why an idea or proposal wasn't able to be executed. It also means treating employees who are no longer a fit, with that same respect and dignity. When an employee is terminated, other employees are aware of how that individual is treated. Exiting someone from the organization is not something any of us relish, but when we do it with respect, understanding the impact and change this decision will have on that individual's life and the lives of their families, it makes the decision a profound one.

Be Fair and Consistent

Leaders must be mindful that bending the rules or showing favoritism only creates dissention and resentment within the ranks. At one ceremony, the emperor doled out rewards to his officials and generals. His uncle, an official in the government, voiced his displeasure with the size of his award. The emperor retorted that the contributions of the others had been much more significant and for that reason he could not offer him the same level of benefits and awards. With this, Taizong immediately won the loyalty of his team.

So often, the squeaky wheel gets the grease and in organizations those individuals who have a louder voice or platform can often demand whatever they want whether a bigger bonus, a salary increase, etc. As a leader to give in to such demands erodes the confidence of others on the team who may, in some instances, be more valuable but because they are more reserved and/or are focused on others, they do not advance their cause in the same way.

Communicate and Educate

What I find ironic is that most of the companies I have joined I did so right around the time they were looking to embark on major change initiatives. Being a sentimentalist at heart and someone who doesn't like change in my personal life, I am always drawn to assist companies and their teams embarking on change. I approach change initiatives through a combination of communication and education; understanding why the change is important and why we are undergoing this.

Answer the 'why!'

At Aceto, I was hired knowing full well that the CEO (and Chairman) was looking to harmonize the global organization and make drastic changes in a number of areas, from compensation to performance management, and more. In all these changes, I found the majority of my time and effort being spent on educating the team, most often the senior most team, as to why we were changing. Make no mistake, it was difficult. I often sat in contentious meetings, but what I was able to do was diffuse tension with the rationale and speak openly about what the change effort would mean for the company. I was the level-headed person at the Table.

I remember several conversations with a senior vice president as we were changing our bonus program. This had been a very lucrative part of the compensation plan for many at the firm. The way the program worked was that if an employee made a bonus of say $25,000 in 2019, that would be their new floor for 2020. There was still the expectation for results, but technically if they did enough to get by, they were at least guaranteed $25,000. This was not sustainable. As we changed it to a metric driven bonus program tied to results of sales, revenue, net income, and individual business unit sales and gross profit, the program started at zero every year. While this was common practice at most global, public companies, you would have thought that management was out for everyone at the firm.

This same executive came to me one day and asked me "How can I tell my people this is the right thing, when I myself do not buy into it?" It was a legitimate question and rather than telling him to deal with it or some other flippant remark, I spent a lot of time with him. He was an influencer at the company, and it was important that he understood how the program could be as lucrative, even though it was tied to metrics and results. The epiphany didn't happen overnight, but it did happen over the course of several months. In addition, we gave this senior leader the opportunity to take a week-long leadership course at the Center for Creative Leadership. When he came back from that week with other senior leaders from a variety of companies, I remember him telling me, "Now I see what you've meant all this time." He understood the change and why it was important. Take the time to educate, pull in best practices, and provide data on what other companies are doing in the space we are looking to change. Educating your team will make the transition a lot smoother not only for them, but for you in leading the change.

Over 1300 years have passed since Taizong ruled, but his leadership lessons are timeless. During times of great change, leadership, or the lack thereof can become more pronounced.

Chapter Takeaways

- The leadership examples of Emperor Taizong of the Tang Dynasty who ruled from 626 to 649 are timely today as they were during his rule.
- Have a clear vision.
- Get rid of toxic people.
- Surround yourself with people who will tell you like it is.
- Trust and empower people.
- Be fair and consistent.
- Communicate and educate…Answer the "why."
- Using the Situational Leadership Model, leaders can tailor to the needs of their employees based on the four quadrants.

Be Mindful of You

8

How do you do it?

What do you work, like 24 hours a day?

I received the email you sent at 4:30AM.

You look tired.

So often human resource professionals are concerned more about ensuring the health and well-being of the organization and the team, putting themselves second. I'm constantly called on to solve issues, be a diplomat, resolve conflicts, enable the team, and help people see the path through a challenging time, whether personally or professionally. It's been a deeply rewarding career, but one that comes with a price.

The 2020 Stress in America™ survey was conducted online within the United States by The Harris Poll on behalf of the American Psychological Association between Aug. 4 and Aug. 26, 2020, among 3409 adults age 18+ who reside in the U.S. Interviews were conducted in English and Spanish. Not surprisingly COVID took center stage in 2020 and found that nearly 8 in 10 adults (78%) stated the coronavirus pandemic is a significant source of stress in their lives, while 3 in 5 (60%) say the number of issues America faces is overwhelming to them (Apa).

Looking back to 2017 and prior to the effects of the pandemic, the American Psychological Association released their *2017 Work and Well-Being Survey*. The survey covered a myriad of topics, but specific to organizational change and wellness, it noted that workers experiencing recent or current change were more than twice as likely to report chronic work stress, compared with employees who reported no recent, current or anticipated change (55% vs. 22%), and more than four times as likely to report experiencing physical health symptoms at work (34% vs. 8%).

C. J. Alaimo, *HR Leadership During Bankruptcy and Organizational Change*, Management for Professionals, https://doi.org/10.1007/978-3-030-95048-4_8

Working Americans who reported recent or current change were more likely to say they experienced work-life conflict (39% vs. 12% for job interfering with non-work responsibilities and 32% vs. 7% for home and family responsibilities interfering with work), felt cynical and negative toward others during the workday (35% vs. 11%) and ate or smoked more during the workday than they did outside of work (29% vs. 8%) ("apaexcellence.org").

I recall in the days following 9/11 and while I was working down on Wall Street, I invited a psychologist to assist and be available to our employees who were all returning to the office for the first time 3 weeks after many witnessed the horrific events unfold that day. We were all under stress and I was worried about the team. I recall her comments to me. "You are like a bank; people are coming to you, asking for your help and 'withdrawing' from you. A bank cannot survive if there are only withdrawals and likewise you need to recharge yourself, get 'deposits' back into your bank." That was the first time in my career that someone had used this analogy. But it was so true.

I've been through many changes, mostly because of my career, as I'm sure many of my readers have; from office moves, M&A and post-acquisition integration, new CEO and leadership, and more recently financial setbacks, bankruptcy, and in the last year, prepping the company for a sale—all while trying to ensure that our people were okay. It's been incredibly busy, and powerfully rewarding. My concern through the last 12 months was sustainability; having the ongoing energy day in and day out to project an image of control and seeing these initiatives through.

2019 was a roller coaster of change; leaving a job I loved after it filed for bankruptcy and was purchased by a private equity firm, starting a new role at a company I worked with 15 years ago, a milestone year with the graduations of my children from college and high school respectively, along with the sudden loss of loved ones. It was also the year to really test the principles I have tried to follow, and which have kept me sane through change.

I reached out to Jaymie Meyer, Founder of *Resilience for Life®*, an ICF PCC & Board-Certified Health & Wellness Coach. Jaymie provides private coaching to individuals seeking lifestyle change. In addition to coaching work/life balance, she focuses on stress reduction, weight control and self-care. Through the years and at various organizations, I have invited Jaymie several times to speak to our employees as we were going through times of change. The feedback was always so positive. We reconnected recently to discuss how individuals can take care of themselves during organizational change but also how the past almost 2 years with the pandemic, have impacted employees and individuals.

Starting out, I asked Jaymie what has she seen change since the start of pandemic that has caused people to reach out to her? (burnout, fear) Jaymie responded, "I think because of my particular wheelhouse, the reasons people reach out to me haven't changed radically since COVID because I've always been in the business of lifestyle, work/life harmony, resilience, and stress reduction. If anything has changed, it's that people see the value of integrating the myriad aspects of their lives. During COVID, for those working at home, the distinction between work- life and home-life became blurred. Setting healthy boundaries became a major challenge. How can we fulfill our responsibilities as an employee, partner, parent and still be true to ourselves?" Jaymie went on to say, "People began to understand that the less they compartmentalize the various parts of themselves, the more energized, healthy and successful they feel."

For me it was good to hear that the reasons haven't necessarily changed pre-and-post-pandemic. I went on to ask Jaymie if there were any tips in her toolbox that she has found which have had the greatest possible impact on the individuals that she's coaching and working with.

Jaymie spoke of the age-old contemplative practices of meditation, breathing, and mindfulness. "There are many different approaches. I never apply my idea of what might work for somebody." Jaymie first explores to see if her clients have any experience with contemplative practices, and many do. "Interestingly, many people enjoyed meditation in the past, but then their mind got busy and they thought they weren't doing it *right*, and when I explain that that's what the mind is designed to do, it's a great relief. In the West we erroneously think the mind is going to flip off like a light switch during practice, but it doesn't work that way. Mindfulness and meditation come in many flavors. Some people may have been given a Sanskrit mantra by a teacher, some people may have a strong Judeo-Christian background and prefer to repeat a Psalm or a prayer that has meaning for them. Others prefer to work with the breath. It's all good. It's important to find out what works for the individual."

In my own experience, the following tips have helped me a great deal. They are all geared to self-care during times of stress and organizational change. As Jaymie so eloquently stated, "For the person experiencing constant change, I can't emphasize enough the importance of self-care, because one of the first things that goes out the window with uncertainty and anxiety is self-care. It can show up in myriad ways: insufficient rest, too much alcohol, poor diet, or lack of exercise. These are just some of the behaviors that can lead to diminishing performance and poor health."

Recharge

Give yourself time to recharge and reenergize. Being constantly connected drains our ability to rest and clear our minds. Countless times I've made the mistake of checking emails on the weekend and receiving that one that just ruins the rest of the weekend for me. One simple tip that I started doing on the weekends is leaving my phone at home so that I am not tempted or distracted. After all, I'm usually with my family and these are the most important people in my life. Also, take your time. Americans not only receive less vacation days as compared to Europe, but a 2017 U.S. Travel Association's Project Time Off study showed 52% who left vacation on the table accumulated 705 million unused days last year, up from 662 million days the year before.

Be Present

Train yourself to be in the moment and turn your mind off to the things you need to do at work tomorrow, or on Monday. Live in the moment. There has been increased awareness of 'mindfulness' which now seems to be the new buzzword, but it is true. Learn to appreciate the here and now. Time is fleeting and those we love will not be around forever, don't miss those moments. I train myself to remember the smells, the weather, and the feelings of the here and now.

Re-Energize

Find an outlet to harness energy, creativity, and health. For me, it's hitting the gym at 4 AM, yes that's right, 4 AM. I find the early morning workout is not only physically beneficial but more importantly, it gives me the mental clarity to tackle the day ahead. It could be the endorphins, how I feel after the workout, or the pain I'm in afterwards, but it works for me. Writing also helps me; putting pen to paper can be very cathartic and rewarding.

Reflect

The workday can be a crazy chaotic mess. If you are like me, you can often be enveloped by that one thing you did wrong rather than all the great things that happened during the day. Take a balanced approach on how you are able to contribute to others and give yourself a well-deserved pat on the back.

Get Out of Your Comfort Zone

While we all gravitate towards the familiar, there is no better feeling than achieving something that you would not have ordinarily done had you been in your comfort zone. 2019 provided me an opportunity to reinvent myself. Yes, it was scary (thinking about leaving my job) but I learned so much about myself and my capabilities in the process. And it gave me the time to focus on writing this book!

Reconnect

Our lives are hectic and often we are so tired from the week we have little time to meet friends or even family. Reconnecting and keeping key relationships alive takes work but it pays off immensely. Reconnect with people who are supportive, who are insightful, who give you peace of mind and whose advice you value. Accept that invite and go grab that cup of coffee! Reconnecting can mean different things for different people.

Jaymie and I spoke about isolation which has been exacerbated since the start of the pandemic in March 2020. Specifically, I asked what individuals can do when they have no support network, to break the cycle of isolation. Jaymie stressed that connection has different meanings for different people. She suggested starting small, reconnecting in a small way: perhaps there's a friend they've lost touch with, or perhaps there is a former colleague with whom they enjoyed speaking. To understand what may work best for an individual, Jaymie utilizes a coaching technique called Appreciative Inquiry.

Appreciative Inquiry (AI for short) was pioneered in the 1980s by David Cooperrider and Suresh Srivastva at the Weatherhead School of Management at Case Western Reserve University. The premise of AI is simple: Every human system has aspects of their life that contribute to their feeling vital, effective, and successful. AI begins by identifying these positive aspects and integrating them in ways that heighten energy, sharpen vision, and inspire action for change.

Appreciative Inquiry can be utilized in one-on-one settings, or with several hundred people in their organization. Regardless of the setting the AI process will follow five distinct phases, called the 5-D Cycle ("5-D Cycle of Appreciative Inquiry—The Appreciative Inquiry Commons"):

- **Define—What is the topic of inquiry?**—It is important to define the overall focus of the inquiry. Definition is used to clarify the area of work to be considered. Definition defines the project's purpose, content, and what needs to be achieved. Asks the question "what do we want to focus on?"
- **Discover – Appreciating the best of 'what is'**—Discovery is based on a dialogue, as a way of finding 'what works'. It rediscovers and remembers the organization or community's successes, strengths and periods of excellence.
- **Dream—Imagining 'what could be'**—participants envision a future they really want—a future where the organization is fully engaged and successful around its core purpose and strategic objectives.
- **Design—Determining 'what should be'**—Design brings together the stories from discovery with the imagination and creativity from dream. We call it bringing the 'best of what is' together with 'what might be', to create 'what should be—the ideal'.
- **Deliver/Destiny—Creating 'what will be'**—participants put the strategies into action, revising as necessary.

We went on to discuss one positive from the pandemic and that is the connection with our four-legged friends.

In an August 3, 2020 *U.S. News and World Report* article, fostering pets saw a sizable increase. According to Christa Chadwick, vice president, shelter services at the American Society for the Prevention of Cruelty to Animals, headquartered in New York City, "In the first few weeks of stay-at-home orders, the ASPCA saw a nearly 70% increase in animals going into foster care through our NYC and Los Angeles foster programs, compared to the same period in 2019 (Howley)." The same article cited that the ASPCA saw a 400% increase in the first 2 months of the pandemic for foster applications when compared to 2019.

The benefits of having and taking care of a pet provide not only companionship but purpose. You need to take care of them, make sure they are fed and so on. The health benefits of having a pet are also well documented; lower blood pressure and stress levels to name just a few. Speaking personally, as the ‘dad’ of an active black pug, Washington, I can attest that his companionship helped me through some extremely stressful situations at work and now with the pandemic, he forced me to get out, go on walks and, as an added benefit, meet neighbors who also happened to be early risers and walked their dogs at 6:30 AM. Greeting each other in the morning and chatting as our respective dogs sniffed and got to know one another, was and continues to be, uplifting.

Volunteer

> To ease another’s heartache is to forget one’s own.
> **—Abraham Lincoln**

When Jaymie and I were speaking about isolation exacerbated by the pandemic and what individuals can do to feel connected, to have the human interaction, she recommended volunteerism. “It may seem counterintuitive when you feel lonely but it’s extraordinary how the act of extending yourself to somebody in need can lift your spirits. There are many ways to make yourself of service. Whether joining an organization that asks you to make a birthday call to a senior once a month; dropping off food to a homebound individual (like the Meals on Wheels program); helping maintain a public garden; or volunteering at a local animal shelter, the list is endless. I recommend people search online to find volunteer opportunities in their community.”

Display Gratitude

Taking the time to recognize and be grateful for where you are is tough. It’s easier to compare ourselves against others who we may think are more successful. Appreciating how far you have come is so important. I am grateful every day for my family, my health, and having a role where I can contribute to my company’s growth and helping others achieve success. Showing gratitude is just as important. A simple ‘thank you’ has more power than some realize and it’s amazing just how infrequently we say those two words. Take the time to recognize those who are important in your life. It’s amazing what you will learn about yourself in the process.

Be Self-Compassionate

This was a tip that came out of my discussion with Jaymie. I always thought it would be a bit selfish or self-indulgent to take the time for you. However, Jaymie changed my mind. She shared the following, “One thing that I think is applicable for everybody is the practice of self-compassion. Often the people I work with are high-achievers and in spite of being at the top of their game, it’s surprisingly common to see a lack of self-compassion. People often feel it’s indulgent. Whether stemming from cultural beliefs, or a by-product of a strong work ethic, it’s essential to remember that self-compassion is not self-indulgent. In fact, it can help you be more empathetic, successful and healthy.”

When I went through the change in 2019, while all well-intentioned, my dad was pushing me to look for jobs and get to work even after a week of being out of work, and my wife was sending me job ads every day. It was really hard for me to tell them both that I appreciated their effort and concern, but I didn’t want that to be the main thing they worried about. During that time (the last year at Aceto), I did everything Jaymie had just mentioned: my diet went to pot, I didn’t have enough hours in the day to go the gym or rest properly, etc. My go to outlet was and is OrangeTheory, which has helped me prepare physically and mentally for the day ahead. I am able to do that without feeling guilty, like “oh that’s an hour of the day that you could’ve been looking for a job”.

So I asked Jaymie “How do you teach people to be self-compassionate when they’re often so hard on themselves?”

“One of the coaching techniques known as Motivational Interviewing can make a difference. During a session, we’ll explore what “fills their tank”: whether it’s OrangeTheory, walking, yoga, hiking, etc. We start small and set expectations for a *process*, not a quick fix. For someone like you, if you were just starting Orange Theory, I would use motivational interviewing to ask you how it makes you feel. What does it do for you? How will it make a difference for you at work? How does it help you be a better husband and father? When you recognize and celebrate the positive results from behavior change, the more likely you are to keep it going.

Jaymie went on to say, “Let’s say you committed to working out 4 days a week, but it turns out you only managed to work out 2 days. Rather than focus on the missed days of practice, or thinking you failed, we might focus on what felt positive on the days that you *did* work out. After that, we might reexamine your original commitment and explore whether it’s realistic for you to work out 4 days a week. It’s ultimately up to you. Coaching helps people to connect the dots from vision, to plan, to behavior.”

Before our discussion ended, I asked Jaymie if there was anything I didn’t ask that she felt was important. The pandemic, while incredibly stressful and scary, has had some silver linings. “Perhaps when we look back on this time, we’ll remember how the boundaries between home and work became blurred. It wasn’t always easy to prevent kids and pets from crashing Zoom calls, and while that was often challenging, it was also funny and heartwarming. More importantly, it gave us an inside peek of each other's lives - and our shared humanity. Those were some of the bright spots during a very dark time."

Understand What Change Means for You

While the management team met several times with the stalking horse bidder, New Mountain Capital, who eventually purchased Aceto, there were still several questions they had. Among these was, *How will our individual compensation be affected?* As part of the Asset Purchase Agreement (APA), New Mountain indicated that all benefits and salary would be comparable. For the staff, that alleviated many fears. As management conducted our town halls, it was easy to refer to the APA. Privately, senior management had concerns, myself included.

What did 'comparable' mean? How would our compensation be handled without the presence of equity, which represented a large part of our compensation package? As we got closer to the deal, I personally grew more concerned, and this is where I would urge anyone going through a similar situation to understand—and in this case be a bit selfish—as to how you will be affected.

About 3 weeks prior to the closing, things at work grew increasingly toxic and at the same time, questions about my role and future went unanswered. During one meeting in March 2019, the presentation we were working off of had a note by the CHRO salary which stated a rather large reduction. At the time, the managing director said, "Isn't that you? Well that's awkward." But for me I regrouped the discussion and told him we could discuss this at a later point. We never did. Now that closing was imminent, I grew worried about this notation by my comp, I grew tired of the workplace politics and toxicity, and I questioned whether I had the mental energy to break in what would be my fourth CEO and the multitude of work that would no doubt grow increasingly burdensome.

I came to the conclusion that it would not be in my best interest to continue. As an executive officer, I was fortunate to have had a double-trigger change in control agreement in place, as did all our senior vice presidents. The double-trigger meant that there would need to be a change of ownership (first trigger) followed by a termination of my role within a two-year period (second trigger). Upon Aceto being sold, I would be terminated, and had the opportunity to collect my change-in-control package. This gave me the rare opportunity to be present for my family that summer before figuring out my next move.

Bottom line. Don't lose yourself in whatever change your organization is undertaking. Understand how you will be affected by the change, who will be there to have your back, and sometimes coming to the realization that walking away can be liberating. We are each different, and the way we choose to deal with daily stress can also vary. While sometimes these tips are easier said than done, like everything else, it's a mindset and a discipline. To borrow the underlying theme in much of my discussion with Jaymie, just find what works for you and go for it.

Chapter Takeaways

- As HR leaders we often focus so much on others we forget ourselves.
- Find ways to recharge and fill your tank.
- Practice self-care, this doesn't mean you are being selfish or self-indulgent. Quite the opposite, you are taking care of you so you can help others.
- Keep in mind when you are going through change:
  - Recharge
  - Be present
  - Re-energize
  - Reflect
  - Get out of your comfort zone
  - Reconnect
  - Volunteer
  - Display gratitude
  - Be self-compassionate
- Whatever the situation, obtain clarity for your peace of mind of what change means to you.
- Jaymie Meyer can be contacted through www.reslienceforlife.com.

9 Lessons Learned

Many who know me know one of my favorite sayings is, “There are no bad experiences, every experience is an opportunity to learn!” This has been the guiding principle throughout my career and one which I wholeheartedly embrace and believe in, without question. It may be hard to see the benefits while you’re going through a tough reorganization, but that wisdom avails itself often after the event.

For this chapter, I deliberated on the experience and wanted to capture the lessons I learned. But for added perspective, I reached out to several former colleagues to get their perspective on what we did right, and what we could have done better. The input from my colleagues can be found at the end of this chapter, points 1 through 7 summarize the lessons I learned and believe are helpful for fellow human resources leaders.

Understand That Everything May Become Transparent

At the time we were setting up our retention plans, I did not know that in a bankruptcy filing all of this information becomes public. If there was one critical lesson I learned, it was this. Our key employee retention and incentive plans were designed to be defensible, which was not the issue. But it became evident that after the Chapter 11 filing, all plans were posted to the Prime Clerk site and our employees actively looked at the information being posted. During various stages of the filing, all employees received periodic mail from Prime Clerk, so expect a continuing barrage of questions during the process as new information becomes public.

While names were not included in the filings on the website, it did include departments. As a result, those who were curious could make out who was who and who was getting what with relatively little effort. This created the most tension following our filing in February 2019. Many senior managers were part of the retention

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plan and they were upset that others received more than they did. Feelings got in the way of business.

Be prepared ahead of time should this information be released and updated. Have your talking points and rationales. Prepare for damage control and having difficult discussions with those who will question why they received what they did. Now, these plans were developed about a year prior, so while a number of months had passed, the rationale and details, thanks to the supporting materials I kept, were clear.

Maintain Clear Files Describing Rationale and Supporting Documents for Retention Plans

Uncertain times require even more diligence and detail when it comes to developing new plans. This is critical, as all supporting documentation had to be explained to the external attorneys for the uninsured creditors and U.S. Trustee. These details also helped explain to our internal team reasons why some individuals on retention plans received what they did.

Don't Focus on the 1%

What do I mean by this? Simple. No matter the organization, there will always be detractors and saboteurs who would like nothing better than to throw a wrench into the plans, projects, or – hell even daily work. Don't waste your energy trying to appease this group. Your focus is better spent on the majority who want to understand the change and what they need to do. The 1% are the employees who will always be dissatisfied, no matter what the organization does. These individuals are usually toxic, and if they cannot be convinced of the change, it is best if they are addressed and removed.

In a Harvard Business Review article entitled, *Isolate Toxic Employees to Reduce Their Negative Effects* (2017), the author and her colleagues conducted a study focused on energizing effects (positive) versus effects which are de-energizing (negative). What they found was that a de-energizing effect is four to seven times greater than the effect of a positive or energizing tie. In other words, bad is stronger than good (Porath et al. 2017). As you can imagine, these types of de-energizing or negative interactions have ripple effects on all aspects of work; from engagement to teamwork.

Early in my career, I worried so much about this group, to my detriment. Trying to make the 1% happy in anything is a useless and tiring exercise that will pull you in different directions and play with your mind. Don't fall for it. I am convinced that these individuals are unhappy about everything, not only at work, but also in their personal lives. An individual's perspective determines their reality.

In 2002, Timothy A. Judge at the time a professor from the University of Florida along with two other professors from the University of Iowa researched the 5-factor model of personality to overall job satisfaction. The five factors include openness to experience, conscientiousness, extraversion, agreeableness, and neuroticism. Sometimes they go by the acronym OCEAN. Their studies indicated that an individual's rating on neuroticism, extraversion, and conscientiousness have a reasonable correlation with job satisfaction.

It was in 1936 when psychologists Gordon Allport and Henry Odbert extracted approximately 4500 terms which described types of behavior or personality traits. Their work provided the foundation for other psychologists to begin determining the basic dimensions of personality.

The 2002 research included data which was obtained from a set of three studies that followed participants from early childhood to retirement. The most general findings were that conscientiousness positively predicted intrinsic and extrinsic career success, neuroticism negatively predicted extrinsic success, and general mental ability positively predicted extrinsic career success. Personality was related to career success controlling for general mental ability and, though adulthood measures of the Big Five traits were more strongly related to career success than were childhood measures, both contributed unique variance in explaining career success (Judge et al. 1999).

Communicate, Communicate, Communicate!

Communication, in any form, cannot be over-emphasized. An important lesson learned is to ensure there is frequent communication among managers and leaders. We utilized our weekly management meetings to make sure our teams were provided updates from the CEO. Hearing one message and allowing them to ask questions was vital. While we may have had internal disagreements, when that door opened, the management team had one unified message. In so doing, we were all prepared for the questions that were predictably asked by our employees.

The other key lesson is to squash rumors before they get out of control. Since HR had a very-open-door policy, many people came to me during this period. I made sure their concerns were addressed and more importantly, I took notes as they spoke. My team and I then created a list of those questions and concerns and addressed them at our CEO's town hall. We also updated our Frequently Asked Questions (FAQ) document. We were mindful of our employees' need to know. They had families to think about.

If you work in a public company, be aware that your communications should not include information which is material and not public. Understanding what mode of communication to use, and to which audience, is especially important in times of great change.

For the last several years, I have been part of the executive team, working closely with the senior most leadership to help set direction. I am lucky to have had great working relationships with the C-level executives, but I have never taken it for granted. As the head of HR, I constantly strive to be involved and understand the business, especially how the 'people aspect' can affect an organization's overall business plan.

At one of my organizations, I introduced key performance indicators (KPI) and a more structured approach to measuring business results. I was then asked to lead the business planning process for the firm. Now this is usually not an HR function, but since I was already very involved in the business, it came naturally.

Whether a reorganization or strategic initiative, in order for these to work, it involves people with the commitment to get things done. From an HR perspective, I must look at the skill sets required. If the company decides to move into an area where we may not have the competencies, then we need to react quickly.

I go back to the old adage, "know your audience," and this could not be more true to a human resources executive. Different situations will require different communication methodologies and approaches.

Communication requires a lot of common sense. It is important to know when a face-to-face meeting or telephone call would be more productive than a rush of emails. When you're working in a culturally diverse and dispersed company, an e-mail can easily be taken out of context or misconstrued.

Executives are always busy, so seeing a full inbox is not ideal. With my CEO, I usually drop by his office a few times a day, but for me the most important communication is my visit in the morning to touch base on any hot issues and then again at the end of the day to offer a recap of the more critical day's events. Of utmost important is knowing what and when to communicate. In many ways, I view myself as a filter: I am there to make sure only the more critical issues are escalated to my boss or the executive team.

As a professional, I always follow the principle that nothing should be a surprise to your boss. You never want your superiors to be in a position where they are not aware of an issue that requires their attention. Most times this requires delivering bad news, but it is also an opportunity to suggest solutions, which inevitably opens up the dialogue.

Since I report to the most senior executive, I've also become a trusted confidante and impartial sounding board, which is a role I take seriously. I don't play the "yes-man" game. I am there to make sure my boss understands the environment and what's going on with the people that may affect his decisions on certain issues. That requires communicating bad news and offering my honest opinions.

As a final note on executive communication strategies, while working in a Japanese company I learned that for executive meetings, you need to come prepared. If you're garnering support for an initiative, you must have your facts and research at your fingertips. You will be expected to explain the rationale, so be prepared for any and every type of question.

Finally, as I've stated earlier, be courageous and always speak truth to power.

Be Visible and Accessible

During any transition, the amount of work will almost make it impossible, but it is super critical that you get out of the office and walk the halls. If you have overseas locations, be sure to visit them regularly during the change process.

Having had the opportunity to work with so many different leaders, the ones which were really good were visible. They walked the hallways and got to know people, they built trust and respect in good times which paid back dividends when times were difficult. Ironically, during the bankruptcy, a time when senior leadership needed to be even more visible, we were often sequestered in our offices buried under mounds of information requests which came with tight deadlines.

My advice is to find the time to take balance both the information demands and visibility. In my case, I arrived early each morning to knock off the requests so that a good part of my day was spent speaking to employees and managers. You may have to put it in your calendar to do it before it becomes a daily habit, because it really must be done. Truly, your presence around the building reminds everyone that you are right there with them.

Have a Plan B…and C

In any organizational change, you will always have a main strategy, but be ready with a Plan B, and even C, if things run awry. Organizational changes are fluid at best; you may plan things to go one way, but be prepared for plans taking a different turn. For example, at the onset of our strategic initiative we thought we would initially sell our generic division, but after a few months and continued financial difficulties, it became clear that plan was no longer viable and we would most likely have to sell the entire company. That required a different set of communication plans and strategy than what was initially planned. The whole point…be flexible.

Have a Confidante, Someone You Can Trust

The hardest part for me being in human resources and in a leadership position is that the further you go up the food chain, the harder it is to find people willing to be honest and straight-forward with you, while earning your trust so you are able to vent. I have been lucky in that I've had some great CEO's, which made all of that easier for me, but I was also careful not to vent too much for fear of being labeled a complainer. For me, I found my most valuable confidantes were individuals outside the organization, but who understood me, the company, and what I was experiencing. A lot of these changes were stressful beyond the ordinary. Having someone you can trust will be key in maintaining your mental and emotional stability. One caveat... be careful not to share any material that is non-public information.

Doing a forensic analysis of what worked and what did not is an important aspect in any project or change management initiative and something you and your teams should do. Professionally, going through a corporate bankruptcy in parallel with a sale of the company was perhaps the most impactful change I have been through. Many of my colleagues felt the same way. So it is no surprise that I would want feedback from many stakeholders: at various levels, in various departments and geographical locations, about exactly that.

To start, my learning curve was incredibly steep, having never been through anything of this magnitude before. While I thought we did an admirable job, I wanted feedback from different perspectives to understand if we did as good a job as I had hoped. To this end, I reached out to former colleagues, as well as the consultants that assisted us through the process.

There were four questions I asked my now former colleagues:

1. What did you learn from the experience?
2. What specifically did our leaders do well? What specifically did the HR team do well?
3. What could leadership and HR have done differently?
4. What was the impact of the Chapter 11 on your organization? (This question was geared toward the international subsidiaries)

I have broken out these questions below and the responses received. Without naming names, I have indicated the level and geographic location (U.S. or international subsidiary) of the response so you can see the variety of perspectives. Below are the responses I received sorted by responder:

Response from a Managing Director at One of Our Foreign Subsidiaries

This experience was expected, and there have been no lessons for me to learn. However, Aceto should have learned the following: the deal was not reviewed with the executives of the organization in advance. Had I been part of the decision-making process, I would have steered away from this deal; an asset deal is only as good as the organization taking such assets is prepared to absorb. Here, a business was acquired which started in India, the seller was appointed as a member of the board, and the business volume seemed to be too big for the actual organization.

It was obvious that the supply chain was not stable... If this was not known to the deciders, it does not show acceptable market knowledge. In acquiring such a big piece of business, one must review carefully the situation in the actual organization and define pathways forward on how to absorb and digest. If there is no clear migration path, one should as well carefully plan or decline. Appointing the seller to the board may be seen as a clever move, but it may also be seen as installing a spy. How can a person become a board member, then get the right granted later to compete against the organization he was serving?

The final steps during bankruptcy indicates that we may have been victim to a crime; namely, buying this company at a very high price, then having the seller working to let supply chains collapse and destroy value, only to purchase back the entire generic division at a nominal fee of $15 M. I would not be surprised if – after buying back the business – overnight the supply chains got stable again, and the business starts doing well. In a decade, when nobody remembers this story, they may pull this off again. We were naïve!

In my opinion, the senior management of Aceto failed in all aspects. If I was in the right position, I would sue the former presidents and the board. I believe the former management violated the standards of business management.

In the whole context, HR did perform the best. HR tried to keep communication open, and be available to inform employees. All other management disappeared, and especially the business unit management, which was not visible at all. The presidents have been silent, and the only communication channel open was HR.

The only aspect I would have liked different by HR was channeling the information: I tried several times to send messages through HR directly to the presidents and chairman, but never got the impression they reached the right people.

The presence of HR in some of the meetings was supportive. This may have been the reason why during this time we had the best fiscal year, with revenues up by 23%.

Response from a Former Logistics Manager from Our France Office

I always thought Aceto Corporation was an international company without corporate thought; meaning no strategy - and if there was, it was not communicated, nor visible. Each structure was working and only concerned about its own results. Who ranked first, second…Working on unified corporate goals would have promoted the sharing of ideas. I'm not sure it would have saved the plane from crashing, but a team spirit built in times of intense periods helps not to give up during rainy days. During the times of chaos, how many people connected during conference calls? If they did, I did not see it, nor was our General Manager a part of such discussions. The communication became poor.

From where I sat, it was unclear who knew about the severity of the company's situation. Maybe our General Manager. Maybe not. Who was able to explain, to motivate, to avoid gossip? It wasn't Management, which made it worse. It is so sad to think that all other elements were trivialized or ignored.

In a small entity or subsidiary such as our office, the General Manager was seen as the captain; ours was and is probably an extremely good salesman, but certainly not a leader.

I still wonder if there were signs that could have been an alert to the team - to anticipate some changes before they became drastic. Unfortunately, the diagnosis was probably done too late, due to a lack of coordination and quite possibly being overly confident.

The group I was most eager to hear from was the team at Alix Partners. They were the professionals; they had assisted so many other companies through turnarounds, reorganizations, and bankruptcies and I was curious to see how we stacked up. Below are the consolidated responses for the five questions I asked them:

1. What specifically did our leaders do well? What specifically did the HR team do well?
2. What could leadership and HR have done differently?
3. How did Aceto's Chapter 11 process compare to other companies you have assisted?
4. What factors made it more (or less) challenging/difficult?

5. When going through a transition (Chapter 11, reorganization, etc.) what are critical aspects that you have found in your experience that HR and Leadership often fail to consider?

Question 1: What Specifically Did Our Leaders Do Well? What Specifically Did the HR Team Do Well?

I was very impressed with how the leaders of the organization viewed the restructuring as not only impactful to the company financially, but also impacting the people. Clearly, a company is only as good as the people in the organization. The leaders recognized that staying strong in the face of adversity was vital to the successful reorganization. Attributes include staying calm, speaking openly and transparent, and willing to answer questions to the best of their knowledge.

There were many difficult questions and a lot of uncertainty. Responding to a difficult question with "I don't know," while not always satisfying, was the truth. Speaking the truth earns respect and trust. Without the trust that management is doing the best they can, there is no support from the employees.

Question 2: What Could Leadership and HR Have Done Differently?

I think having two disparate companies made it a difficult situation and it did not promote teamwork. There was a lot of 'us vs. them' between the two companies and finger pointing. I don't know what leadership could have done differently from a culture standpoint. Maybe there could have been more social gatherings to meet each other.

Question 3: How Did Aceto's Chapter 11 Process Compare to Other Companies You Have Assisted?

I had never worked in the pharmaceutical space, which was very unique (and fascinating) to me. The only other industry I compare it to is financial services, where everyone comes from the same industry and stays in that industry. The industry has its own unique culture, its own lingo, and way of doing business. Small space where everyone knows each other.

Also, while Aceto was over $600 M of revenue, it was a small company for a number of people. Everyone was on the same floor, which forced management to work in a fish bowl. When I work at large companies, there is often a separate executive floor. Management is running around (often in a panic), but the majority of the company is shielded from this. In fact, most people overestimate how much impact bankruptcy actually has on the day-to-day lives of the employees outside of HR, Legal, Finance, and Accounting. However, at Rising everyone witnessed banker meetings taking place, CFOs running around, and other telltale signs like a lot of closed-door discussions. That said, management did an excellent job at staying calm, given the circumstances.

Question 4: What Factors Made It More (Or Less) Challenging/Difficult?
Aceto was an interesting situation because you had a tale of two cities, so to speak. On one side of the Hudson River in Port Washington, you had a long running company. Employee tenure was typically well over 15–20 years. Family atmosphere, everyone knew each other well. Then in Saddle Brook, you had a fresh new company in the pharmaceutical space, which had a much younger team and fast-paced dynamic vibe. Very different cultures which never merged.

Question 5: When Going Through a Transition (Ch 11, Reorganization, etc.), What Are Critical Aspects That You Have Found in Your Experience That HR and Leadership Often Fail to Consider?
I think a lot of time there isn't the focus on what the organization will look like coming out of bankruptcy. I know everyone is focused on the present, but bankruptcy can mean a fresh start. It's an opportunity to reset any mistakes and change the culture for the future.

Chapter Takeaways

- There are no bad experiences, every experience is an opportunity to learn!
- When going through a Chapter 11, understand that everything may become transparent including retention plan information.
- Some other tips include:
  - Maintain clear files describing rationale and supporting documents for retention plan decisions
  - Don't focus on the 1%, that portion of employees who no matter what the organization does will never be satisfied
  - Communicate!
  - Be visible and accessible
  - Have a plan B…and C
  - Have a confidante, someone you trust to discuss and vent
- With any organizational change, do a retrospective analysis; what worked and what could have been done better.

Some Final Thoughts

10

Change is a certainty, for companies to survive, thrive, and remain competitive and agile, change is a constant. What is not a constant is leadership. I recall at a board meeting being asked a question by one member about two of our organization's leaders. His question to me was direct "Who would you want fighting alongside you in the trenches?" Asked that way, the answer was clear and resounding. Our leaders, like us, need guidance and my imperative to fellow HR professionals and organizational leaders is to be that guide, learn and embrace the change, understand the why, and then act.

How organizations come out of that change is a testament to the leaders of that organization and their empathy, courage, vision, and servant minded attitude. As you plan for change, whether a bankruptcy or equally transformational event, here is a checklist of things to keep in mind. At the beginning there will probably be more questions than answers but dive into it and learn! I've divided the tasks and items to consider according to the various phases which I refer to as follows:

Onset This is the ideation or beginning phase of the change being proposed. Here is where you will have more questions than answers and will serve as a springboard for what you need to get up to speed on.

Action Items:

- Be a part of every discussion. If you're not invited, ask to be invited to those key discussions. Often you will be welcomed.
- Understand the basics of why and how your organization arrived at the current state whether it be bankruptcy or another form of organizational change.
- If bankruptcy, what type of bankruptcy is being considered (Chapter 11, Chapter 7).
- Does leadership have a vision of what success will look like? How will the organization know you have achieved the desired change?
- Identify all stakeholders both internal and external.

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Pre-communication Identify the stakeholders affected by the change. This may include customers, vendors, shareholders, and employees. Obtain the answers to the questions the various stakeholders may have, determine milestones and the medium by which the organization will communicate ongoing updates.

Action Items:
- Identify key talent and risk of departures.
- Develop key talent retention plans (Key Employee Incentive Plan versus Key Employee Retention Plans).
- If a public company, obtain buy in on retention plans from Compensation Committee consultants.
- Obtain approval for retention programs. If you are a public company this will involve approval by the Compensation Committee and Board of Directors.
- Develop retention agreements and have those ready to go following the announcement of key change events.
- Develop the message to employees and communication plan including cadence of communications.
- Develop FAQs and update those as questions arise in the communication phase.
- Obtain buy in and support from senior management on communication strategies.

The Change No turning back now, this is day one, the day the change will be announced. Ensure that your day one is clear.

Action Items:
- Prepare for day one activities upon press release or news hitting the wires.
- Plan for a Town Hall meeting to communicate and expand on the press release. Determine who will speak.
- Meet with retention plan participants, present their retention program.

Ongoing Evolution Don't lose sight of the change, keeping the momentum and engagement is critical.

Action Items:
- Communicate frequently and in various modes: Town Halls, Emails, One on ones.
- Be visible.
- Frequently take the pulse of the employees; surveys, one on ones.
- Update FAQs as more questions arise, make it a living document.

Appendix: Sample Retention Agreement

Important Notice: Unless this Agreement has already been publicly disclosed pursuant to applicable law, rule or regulation, you are required to keep the provisions of this Agreement confidential and may not discuss it with anyone unless you receive prior written consent from the Company, other than (i) discussion with your legal counsel, financial advisor, spouse or spousal equivalent, provided such person(s) abides by the confidentiality provisions herein, or (ii) as may be required by law or any court order. If you (or your legal counsel, financial advisor, spouse or spousal equivalent) violates in any respect this confidentiality requirement, you will not receive any portion of any Retention Bonus (as defined in this Agreement) otherwise payable to you under this Agreement and you shall be required to return any portion of the Retention Bonus which has previously been paid to you within thirty (30) days of written demand from the Company.

Retention Bonus Agreement

1. **Purpose**. This Retention Bonus Agreement (the "Agreement") is entered into as of (***input date***) by (***input Company name***) (the "Company") for the purpose of setting forth the requirements for (***input name of employee***) (the "Employee") to receive additional compensation as an incentive to continue employment with the Company.
2. **Amount and Time of Payment of Retention Bonus**. Employee shall be eligible for a Retention Bonus (the "Retention Bonus") equal to $(***input total amount of retention bonus***). Subject to the terms and conditions of this Agreement, each Retention Bonus payment, less all applicable withholding taxes, will be made on the earlier of (i) the first regularly scheduled payroll date

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following the applicable Retention Date specified in paragraph 4(a) below, or (ii) in the event any portion of the Retention Bonus is payable as a result of Employee's termination without Cause or Employee's resignation for Good Reason (each as defined below), in each case on or after (***input date***), on the first regularly scheduled payroll date following expiration of any revocation period with respect to the Release (as defined below), but in no event later than (***input date when you anticipate deal being completed***). Notwithstanding the foregoing, in the event that a Retention Bonus payment is due in connection with consummation of a Transaction (as defined below) prior to the Final Retention Date (as defined below), fifty percent (50%) of the Final Installment (as defined below) shall be payable upon consummation of the Transaction and fifty percent (50%) of the Final Installment shall be payable on the earliest of (i) the 90th day following the date of consummation of the Transaction, (ii) (***input date when you anticipate deal being completed***) or (iii) such date by which payment would be required to be made in order to constitute a "short term deferral" for purposes of Code Section 409A (as defined below).

3. **Deadline for Acceptance of this Offer**. In order to accept this offer, Employee must sign and return this Agreement to the undersigned not later than (***input date when you expect Agreement to be signed and returned)***.
4. **Requirements for Receiving Retention Bonus**.
   (a) Employee will be entitled to receive ten percent (10%) of the Retention Bonus on (***input date of first payment***) (the" First Retention Date"), fifteen percent(15%) of the Retention Bonus on (***input date***) (the "Second Retention Date"), and the remaining seventy-five percent (75%) of the Retention Bonus (the " Final Installment") on the earlier of (i) the consummation of a Transaction or (ii) (***input date when you anticipate deal being completed***) ("Final Retention Date"), subject to (i) (A) Employee's continued employment with the Company through the applicable Retention Date, or (B) with respect to any amount payable on the Second Retention Date or payment of the Final Installment, an involuntary termination of Employee's employment by the Company without Cause or by Employee with Good Reason on or after (***input date***), (ii) the terms and conditions of this Agreement, and (iii) Employee's compliance with the terms and conditions hereof, including, without limitation, Employee's compliance with the terms and conditions of paragraph 6 below. For the avoidance of doubt, if Employee's continued employment with the Company is terminated for any reason (including, without limitation, by the Company without Cause or by Employee for Good Reason) prior to (***input date stated in above section (i)***), then all rights with respect to any portion of the Retention Bonus under this Agreement not already paid shall automatically be forfeited, without payment of consideration therefor. Notwithstanding anything in this Agreement to the contrary, a transfer of Employee's employment to any affiliate of the Company, including, without limitation, (***input name of Affiliate Company***) ("***Company Name***") shall not be deemed a termination of employment with the Company for purposes of this Agreement, and

after any such transfer, references to termination of employment with the Company in this Agreement shall be deemed to refer to the affiliate of the Company that employs Employee.

(b) Notwithstanding anything in this Agreement to the contrary, if Employee's employment is terminated by the Company without Cause or by the Employee for Good Reason on or following (***input date used in 4(a)(i)***) but prior to payment of the Final Installment, then Employee will be eligible to receive only a pro-rated portion of the Final Installment, in an amount equal to: (i) the amount that would have been payable with respect to the Final Installment, absent such termination, multiplied by (ii) a fraction, (x) the numerator of which is the number of days of Employee's employment between the date of this Agreement and the date of termination of Employee's continued employment, and (y) the denominator of which is the number of days between the date of this Agreement and the earlier of (A) Final Retention Date, and (B) the date of consummation of a Transaction.

(c) Notwithstanding the foregoing Sections 4(a) and 4(b), in the event the Retention Bonus is payable as a result of a termination of Employee by the Company without Cause or by the Employee for Good Reason, payment of the Retention Bonus shall be subject to Employee's execution, delivery, and non-revocation of a general release of claims in form and substance satisfactory to the Company on or prior to the sixtieth (60th) day following such termination (a "Release").

(d) For purposes of this Agreement, (i) "Retention Date" means each of the First Retention Date, Second Retention Date, and Final Retention Date, and (ii) "Transaction" means, in one or a series of transactions: (A) any "person" (as defined in Section 3(a)(9) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and as modified in Section 13(d) and 14(d) of the Exchange Act) other than (1) the Company or any of its subsidiaries or (2) any employee benefit plan of the Company or any of its subsidiaries, becomes the "beneficial owner" (as defined in Rule l 3d-3 of the Exchange Act), directly or indirectly, of securities of the Company representing more than 50% of the combined voting securities of the Company then outstanding; (B) the consummation of a merger or consolidation of the Company with any other corporation or entity, other than a merger or consolidation which would result in the holders of the voting securities of the Company outstanding immediately prior thereto continuing to hold (either by remaining outstanding or by being converted into voting shares of the surviving entity) more than 50% of the combined voting power of the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation; (C) the consummation of the sale, transfer or disposition of all or substantially all of the Company' s assets on a consolidated basis or (D) the approval by the Company's shareholders of a plan of complete dissolution of the Company pursuant to Section 1001 of the N.Y. Business Corporation Law (or any successor statute).

5. Forfeiture or Repayment of Retention Bonus. Notwithstanding the foregoing, if Employee's employment is terminated by the Company for Cause after payment of any portion of the Retention Bonus and prior to the Final Retention Date, Employee shall repay to the Company, within 30 days of such termination, the amount of the Retention Bonus previously paid to Employee.
   (a) For purposes of this Agreement, "Cause" shall mean and be limited to: (i) the conviction of the Employee for committing an act of fraud, embezzlement, theft or other act constituting a felony, or the guilty or nolo contendere plea of the Employee to such a felony; (ii) fraud, embezzlement, theft or other misappropriation by the Employee of funds or property of the Company or any of its subsidiaries; (iii) material neglect, or refusal by the Employee to discharge, perform or observe the Employee's job duties and responsibilities, provided the Employee has been given written notice of such neglect or refusal, and has not cured such neglect or refusal within thirty (30) business days thereafter; or (iv) a material breach of the Employee's obligations under this Agreement or any other written agreement with the Company, including (without limitation) any of the covenants set forth in this Agreement.
   (b) For purposes of this Agreement, "Good Reason" shall mean the occurrence of any of the following events without Employee's written consent: (i) the material diminution of Employee' s duties, responsibilities and authorities, or any other action by the Company which results in a material diminution in such authority, duties or responsibilities (excluding for this purpose an isolated and insubstantial action not taken in bad faith); (ii) the Company reduces Employee's base salary below the level of the base salary for the period immediately preceding such change; (iii) the Company requires Employee to relocate to a location that is more than fifty (50) miles from the Company's current headquarters; or (iv) a material breach of the Company's obligations under this Agreement or any other written agreement with Employee. Notwithstanding the foregoing, (i) Employee is required to provide notice of any such condition to the Company within forty-five (45) days after Employee becomes aware of, or should reasonably be aware of, a condition that gives Employee the right to terminate his employment with the Company for Good Reason, and the Company will then have ten (10) business days to cure and/or remedy such condition, prior to the existence of such condition being deemed to be "Good Reason," and (ii) Employee' s termination for Good Reason must occur within one hundred eighty (180) days after Employee becomes aware of a condition that give the Employee the right to terminate their employment with the Company for Good Reason.

   Notwithstanding the foregoing, to the extent Employee is a party to an employment agreement, offer letter, or similar agreement regarding the provision of services to the Company or any of its subsidiaries and such agreement also defines "cause", "good reason" or a similar term then the meaning set forth in that agreement shall also be considered "Cause" or "Good Reason" for purposes of this Agreement.

6. **Cooperation**. Notwithstanding anything in this Agreement to the contrary, if any transaction is proposed by the Company's Board of Directors (the "Board") that could result in a Transaction for purposes of this Agreement, Employee shall support the Transaction and take all such action as may be reasonably requested by the Board to cause the Transaction to be consummated at the time and on the terms proposed by the Board, including, without limitation, to the extent requested: (i) reviewing and commenting on confidential offering memoranda or similar documents; (ii) preparing projections; (iii) meeting with representatives of prospective purchasers; (iv) participating in management meetings; (v) assisting in connection with the negotiation, documentation and consummation of the proposed transaction; (vi) executing and delivering such agreements and documents as are customary for similar transactions; (vii) assisting with any formal or informal inquiry, investigation, disciplinary or other proceeding initiated by any government, regulatory or law enforcement agency in connection with the proposed transaction or any threatened or initiated litigation against the Company whether relating to the Transaction or otherwise; and (viii) any other transitional matter reasonably requested by the Company.
7. **Effect of Retention Bonus on Other Benefits**. Neither the entrance into this Agreement nor the payment of any amount hereunder wil1 affect Employee's benefits under any benefit plan, policy, or arrangement of the Company, except to the extent expressly provided in any such benefit plan, policy, or arrangement. Without limiting the preceding sentence, the Retention Bonus:
   (a) shall not be considered in the computation of Employee's bonus for purposes of Section 3 of Employee's Change in Control Agreement;
   (b) shall not be considered in the computation of Employee's base salary and;
   (c) shall not be considered in the determination of the payments, if any, that Employee may be entitled to pursuant to any severance plan, policy, or arrangement or Employee's Change in Control Agreement.
8. **Restrictive Covenants**. Any payment or payments under this Agreement to Employee shall be conditioned upon the Participant's compliance with any restrictive covenant (including, without limitation, any non-competition, non-solicitation, non-disparagement, or protection of confidential information covenant) that directly or indirectly benefits the Company (collectively, the " Restrictive Covenants"). If the Participant breaches any such Restrictive Covenant in any material respect, the Participant shall forfeit, without further action, notice or deed, the Retention Bonus, and upon demand by the Company, the Participant shall promptly repay to the Company any amounts already received under this Agreement.
9. **Offset of Amounts Owed; Withholding**. The Company shall be entitled to deduct or withhold from any Retention Bonus payment made to Employee any amounts Employee owes the Company or any of its affiliates, and any federal, state, local or foreign taxes imposed with respect to Employee's compensation or other payments from the Company or any of its affiliates.
10. **No Change in Legal Employment Status**. This Agreement and the Retention Bonus are not a contract or guarantee of employment with the Company and

they are not intended to change in any way Employee's status as an at-will employee subject to all applicable terms and conditions of Employee's employment.

11. **No Right to Assign**. Employee may not sell or assign Employee's right to receive payments hereunder or pledge such payments as security for a loan or otherwise, and any such sale or assignment shall be null and void ab initio.
12. **Successors**. This Agreement is binding on the Company and any direct corporate successor to the Company or its business, and on Employee's estate, personal representative, guardian or any other person acting in Employee's interest.
13. **Governing Law**. This Agreement will be governed by and interpreted under (***input State where you are incorporated or based***) law, without regard to the choice of law provisions thereof. Any and all actions arising out of this Agreement shall be brought and heard in the state and federal courts located in (***input County and State***) and the parties hereto hereby irrevocably submit to the exclusive jurisdiction of any such courts. THE COMPANY AND THE EMPLOYEE HEREBY WAIVE THEIR RESPECTIVE RIGHT TO TRIAL BY JURY IN ANY ACTION CONCERNING THJS AGREEMENT OR ANY AND ALL MATTERS ARISING DIRECTLY OR INDIRECTLY HEREFROM AND REPRESENT THAT THEY HAVE CONSULTED WITH COUNSEL OF THEIR CHOICE OR HAVE CHOSEN VOLUNTARILY NOT TO DO SO SPECIFICALLY WITH RESPECT TO THIS WAIVER.
14. **Unfunded and Unsecured Status**. To the extent that Employee becomes entitled to receive any payments from the Company hereunder, such right shall be unfunded and unsecured and payable out of the general assets of the Company as and when such amounts are payable hereunder.
15. **Advice of Counsel**. Both parties hereto acknowledge that they have had the advice of counsel before entering into this Agreement, have fully read the Agreement and understand the meaning and import of all the terms hereof.
16. **No Rights as a Shareholder**. Employee shall not be entitled to any of the rights or privileges of a shareholder of the Company with respect to the Retention Bonus. Without limitation of the foregoing, the Retention Bonus shall not entitle Employee to any dividend or voting rights or any other rights of a shareholder of the Company.
17. **Compliance with Code Section 409A**. The intent of the parties is that payments and benefits under this Agreement comply with or are exempt from Section 409A of the Internal Revenue Code of 1986, as amended (the "Code") and this Agreement shall be interpreted and construed in a manner that establishes an exemption from (or compliance with) the requirements of Code Section 409A. Any terms of this Agreement that are undefined or ambiguous shall be interpreted in a manner that complies with Code Section 409A to the extent necessary to comply with Code Section 409A. Notwithstanding anything herein to the contrary, (i) if, on the date of termination, Employee is a "specified employee" as defined in Section 409A of the Code, and the deferral of the commencement of any payments or benefits otherwise payable hereunder as a result of such termination of employment is necessary in order to prevent any acceler-

ated or additional tax under Code Section 409A, then the Company will defer the commencement of the payment of any such payments or benefits hereunder (without any reduction in such payments or benefits ultimately paid or provided to Employee) until the date that is the first business day of the seventh month following the date of termination (or the earliest date as is permitted under Code Section 409A), and (ii) if any other payments of money or other benefits due to Employee hereunder could cause the application of an accelerated or additional tax under Code Section 409A, such payments or other benefits shall be deferred if deferral will make such payment or other benefits compliant under Code Section 409A. In the event that payments under this Agreement are deferred pursuant to this Section in order to prevent any accelerated tax or additional tax under Code Section 409A, then such payments shall be paid at the time specified under this Section without any interest theron. Notwithstanding anything to the contrary herein, to the extent required by Code Section 409A, a termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of amounts or benefits upon or following a termination of employment unless such termination is also a "separation from service" within the meaning of Section 409A of the Code and, for purposes of any such provision of this Agreement, references to a "termination," "termination of employment" or like terms shall mean separation from service. Each payment made under this Agreement shall be treated as a separate payment and the right to a series of installment payments under this Agreement is to be treated as a right to a series of separate payments.

18. **Severability**. If any one or more of the terms, provisions, covenants and restrictions of this Agreement shall be determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated and the parties will attempt to agree upon a valid and enforceable provision which shall be a reasonable substitute for such invalid and unenforceable provision in light of the tenor of this Agreement, and, upon so agreeing, shall incorporate such substitute provision in this Agreement. In addition, if any one or more of the provisions contained in this Agreement shall for any reason be determined by a court of competent jurisdiction to be excessively broad as to duration, geographical scope, activity or subject, it shall be construed, by limiting or reducing it, so as to be enforceable to the extent compatible with then applicable law.
19. **Protected Activities**. Nothing in this Agreement shall be construed as a waiver by Employee of Employee 's protected rights under federal, state or local law to, without notice to the Company: (i) communicate or file a charge with a government regulator; (ii) participate in an investigation or proceeding conducted by a government regulator; or (iii) receive an award paid by a government regulator for providing information.
20. **Entire Agreement**. Except as otherwise specifically referenced herein, this Agreement is the entire agreement between Employee and the Company con-

cerning the terms of the Retention Bonus, and it supersedes any other oral or written agreement or statement with respect to the subject matter hereof.

21. **Notices**. Any notice or other communication required or permitted hereunder shall be in writing and shall be delivered personally, faxed, or sent by nationally recognized overnight courier service (with next business day delivery requested). Any such notice or communication shall be the case of faxed notice, upon transmission of the fax, in the case of a courier service, upon the next business day, after dispatch of the notice or communication. Any such notice or communication shall be addressed as follows:

    If to the Company to:
    (input Company Name)
    (input Address)
    (input Telephone)
    (input Facsimile)
    (input to who's Attention)

With a copy to:
    (input Legal Firm to Company)
    (input Address)
    (input Telephone)
    (input Facsimile)
    (input to who's Attention)

If to Employee, to them at the offices of the Company with a copy to them at their home address, set forth in the records of the Company.

Any person named above may designate another address or fax number by giving notice in accordance with this paragraph to the other persons named above.

22. **Counterparts**. This Agreement may be executed in any number of counterparts and each such duplicate counterpart shall constitute an original, any one of which may be introduced in evidence or used for any other purpose without the production of its duplicate counterpart. Moreover, notwithstanding that any of the parties did not execute the same counterpart, each counterpart shall be deemed for all purposes to be an original, and all such counterparts shall constitute one and the same instrument, binding on all of the parties hereto.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

(***Input Name of Company***)

By: ______________________________ __________________

Name: (input Officer or representative of Company) Date

EMPLOYEE

______________________________ __________________

Employee Name (Print) Date

____

Signature

Glossary

Asset Purchase Agreement An asset purchase agreement (APA) is a definitive agreement that finalizes all terms and conditions related to the purchase and sale of a company's assets. It is different from a stock purchase agreement (SPA) where company shares, including title to the assets and liabilities, are being bought/sold.

Bankruptcy is a legal process through which people or other entities who cannot repay debts to creditors may seek relief from some or all of their debts. In most jurisdictions, bankruptcy is imposed by a court order, often initiated by the debtor.

Change in Control The change of control, or acquisition, of an entity is defined as any change in the entity ownership occurring when any person or company, directly or indirectly, becomes the beneficial owner of voting equity shares of the entity (to the extent of more than 50% of the voting shares) or the rights to acquire such shares; Any direct or indirect sale or transfer of substantially all of the assets of the entity; A plan of entity liquidation or an agreement for the sale on liquidation is legally approved and completed; and the board or empowered managing committee determines and declares that a change of control has occurred.

Change in Control Agreement A change in control agreement provides incentives to an executive to continue his or her employment through significant change ownership. Such an agreement recognizes the distraction that an acquisition by another company or other change in control poses to an executive, and works to motivate the executive not to seek alternative employment opportunities.

Chapter 7 Bankruptcy One of the most common types of bankruptcy in the U.S., Chapter 7 occurs when a troubled business is unable to pay its creditors. The company files, or may be forced to file by its creditors, for bankruptcy in a federal court under Chapter 7. A Chapter 7 filing means that the business ceases

C. J. Alaimo, *HR Leadership During Bankruptcy and Organizational Change*, Management for Professionals, https://doi.org/10.1007/978-3-030-95048-4

operations unless those operations are continued by the Chapter 7 Trustee. A Chapter 7 trustee is appointed almost immediately, with broad powers to examine the business's financial affairs. The Trustee generally liquidates the assets and distributes the proceeds to the creditors.

Chapter 11 Bankruptcy In a Chapter 11 bankruptcy, the debtor (company filing bankruptcy) retains ownership and control of assets and is re-termed a debtor in possession (DIP). The debtor in possession runs the day-to-day operations of the business while creditors and the debtor work with the Bankruptcy Court in order to negotiate and complete a plan. Upon meeting certain requirements (e.g., fairness among creditors, priority of certain creditors), creditors are permitted to vote on the proposed plan. If a plan is confirmed, the debtor continues to operate and pay debts under the terms of the confirmed plan. If a specified majority of creditors do not vote to confirm a plan, additional requirements may be imposed by the court in order to confirm the plan. This can also be referred to as a Chapter 11 reorganization bankruptcy.

Debtor in Possession Under United States bankruptcy law, a debtor in possession is a person or corporation who has filed a bankruptcy petition, but remains in possession of property upon which a creditor has a lien or similar security interest. A corporation that continues to operate its business under Chapter 11 bankruptcy proceedings is a debtor in possession.

Debtor-in-Possession Financing Also known as DIP financing is a special form of financing provided for companies in financial distress, typically during restructuring under corporate bankruptcy law (such as Chapter 11 bankruptcy in the US). Usually, this debt is considered senior to all other debt, equity, and any other securities issued by a company — violating any *absolute priority rule* by placing the new financing ahead of a company's existing debts for payment.

Key Employee Retention Plan A key employee retention plan or KERP refers to a benefit plan employed by a debtor company in bankruptcy cases as incentives to upper management to continue working for the company throughout the bankruptcy. The purpose of this KERP is to aid in the retention of certain key qualified and competent executives of the company and its subsidiaries, by providing a retention bonus for such employees in consideration of their continued employment, pending the restructuring of the company in bankruptcy.

Key Employee Incentive Plan A key employee incentive plan (KEIP) are programs designed to incentivize certain performances from a select group of employees and typically incorporate performance targets that the employees must meet before a payout is earned. Such performance targets can include the completion of certain tasks, like the consummation of the sale of substantially all the assets of a company, or more commonly, the satisfaction of certain financial metrics.

Material Non-Public Information Information that would affect the market value or trading of a security and has not been disseminated to the general public; also referred to as insider information. Information is considered to be "material" if its dissemination to the public would likely affect the market value or trading price of an issuer's securities (i.e. stock), or if it is information which, if disclosed, would likely influence a reasonable investor's decision to purchase or sell an issuer's securities.

Pre-petition Pre-petition debt is all debt incurred prior to a bankruptcy case being filed. Pre-petition debt is the debt expected to be discharged as part of your company's bankruptcy case.

Post-petition Post-petition is the time after the bankruptcy filing. Post-petition debt is incurred after the bankruptcy case is filed. These debts will not be part of your company's bankruptcy case and cannot be discharged.

Section 363 Sale A 363 Sale refers to the sale of an organization's assets under Section 363 of the U.S. Bankruptcy Code. The sale allows debtors to fulfill their obligations to creditors by selling their assets and using the funds collected to settle their debts. The purchasers of the assets also benefit from the opportunity to acquire these assets that are free of liens, claims, or other liabilities.

Statement of Financial Affairs (SOFA) SOFA is a comprehensive document that asks questions about the state of a company's or individual's finances, recent financial transactions, and items that can't go on other schedules. A SOFA is required in a Chapter 7, Chapter 11, or Chapter 13 case.

Stalking Horse A stalking horse is an initial bid on the assets of a bankrupt company, setting the low-end bidding bar so that other bidders can't underbid the purchase price. Other buyers can submit competing offers following the stalking-horse bid. A stalking-horse bidder is afforded various incentives, such as expense reimbursements and breakup fees.

Stock Purchase Agreement The Stock Purchase Agreement (SPA) is the definitive agreement that finalizes all terms and conditions related to the purchase and sale of the shares of a company. It is different from an Asset Purchase Agreement (APA) where the assets (not the shares) of a company are being bought/sold.

U.S. Trustee The U.S. trustee plays a major role in monitoring the progress of a Chapter 11 case and supervising its administration. In addition, it oversees the debtor in possession's operation of the business and the submission of operating reports and fees. The U.S. trustee also monitors applications for compensation and reimbursement by professionals, and oversees creditors' committee plans, along with overseeing disclosure statements filed with the court.

Virtual Data Room Also referred to as a VDR, it is an online repository of information that is used for the storing and distribution of documents. In many cases, a virtual data room is used to facilitate the due diligence process during an M&A transaction. The VDR provides access to secure documents for authorized users through a dedicated website, or through secure agent applications.

Worker Adjustment and Retraining Notification (WARN) Act The WARN Act helps ensure advance notice in cases of qualified plant closings and mass layoffs. It establishes the thresholds by which qualified employers must provide notification to their workforce.

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