



Future-Proofing Projects in an Uncertain Economy

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Presented by:

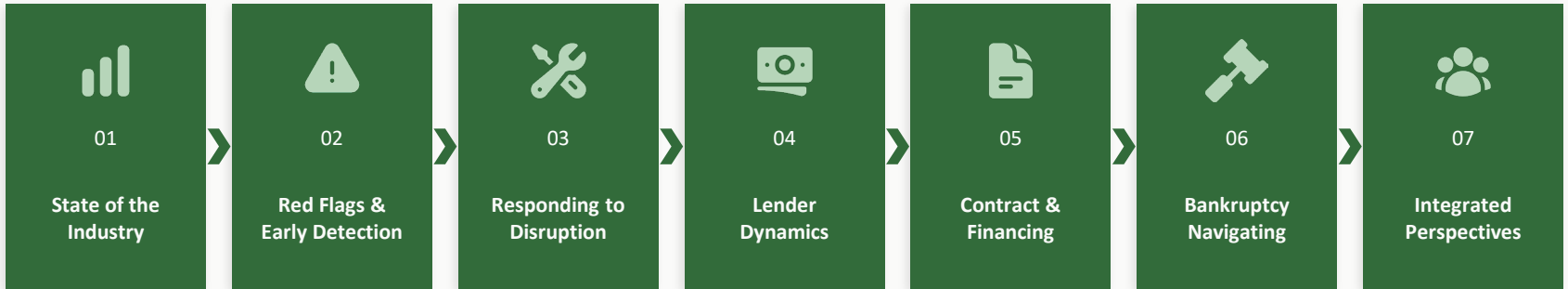
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Program Overview

Three perspectives, one goal: keep your projects viable



Practical, real-world focus from three expert perspectives: a construction litigator, a bankruptcy lawyer, and a financial advisor working together to provide a 360-degree protection plan.

Learning Objectives



01

Respond to Disruption with Confidence

Gain practical strategies to handle cost spikes, supplier defaults, tariffs, and changes in the law so you can keep projects moving even in a down economy.



02

Detect Red Flags Early

Recognize the warning signs of financial stress in subcontractors, suppliers, and partners, and practice steps you can take before their problems become your crisis.



03

Navigate Lender Demands

Understand how covenants, reporting obligations, and lender expectations affect your projects — and how proactive communication can prevent technical defaults.



04

Strengthen Contracts and Financing

Learn how to draft payment terms, guarantees, and financing structures that protect margins and keep projects viable when costs rise or supply chains falter.



05

Integrate Legal and Financial Perspectives

See how a construction litigator, bankruptcy lawyer, and financial advisor together provide a 360-degree plan to protect projects in uncertain times.

Section I

The State of the Industry

Understanding the macroeconomic landscape and why project resilience matters now more than ever.

Macroeconomic Overview

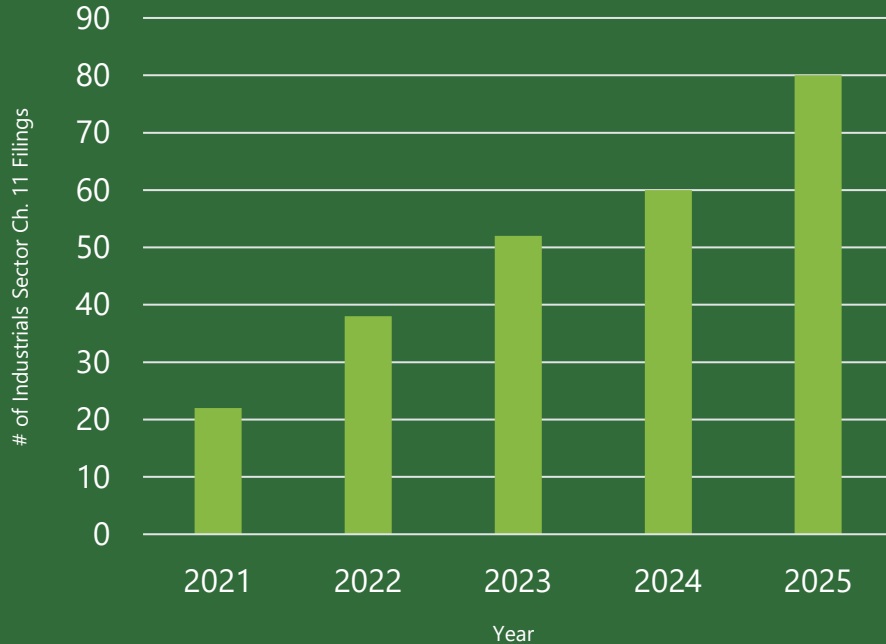
- **Filing Trends:**

- After a modest 1% increase in 2025, overall Chapter 11 filings surged in early 2026. Total overall Chapter 11 commercial bankruptcies increased 37% in the first quarter of 2026 when compared with the first quarter of 2025.

- **Multiple macro headwinds creating risk:**

- Tighter financial conditions and rising subcontractor distress expected to increase restructurings in 2026
- Geopolitical risks disrupting supply chain
- Recession concerns, tariffs, labor shortages, and higher financing costs create compounding risk
- Inflation and interest rates continue to suppress spending and weaken liquidity
- Shrinking profits, less cash on hand, and slow payments increase chances of project delays

Industrials Chapter 11 Filing Trends



33%

Industrials Ch. 11 filings
up YoY (2024 vs. 2025)

24%

Construction share
of Industrials Ch. 11 filings (2025)

Notable Recent Industrials Filings (2025-2026)

Company	Key Metric	Primary Driver
United Site Services	~\$2.8B funded debt	Depressed construction activity, rising costs
CCA Construction Inc.	\$1.6B judgment	Baha Mar resort litigation
57 Concrete LLC	Largest RGV supplier	60% demand drop tied to ICE enforcement
Worldwide Machinery	~\$200M funded debt	COVID pandemic and decline in pipeline industry
Elite Equipment Leasing	Integration issues	Floating-rate loan interest spikes
Carolina's Contracting	Equipment losses	Underutilized equipment at COVID prices

What This Means for Your Projects

→ Higher Partner Risk

Subcontractors, suppliers, and partners on your projects may face financial distress at any time.

→ Project Disruption

Delays, cost overruns, and supply chain disruptions are increasingly likely and harder to predict.

→ Interconnected Risk

The financial health of every party in the project chain directly impacts your project's success.

The Question

How do we spot trouble before it arrives?

The following sections provide a systematic framework for early detection, proactive response, and comprehensive protection.

Section II

Detecting Red Flags Early

Recognize warning signs before they become your crisis.

Warning Signs of Financial Distress

External Warning Signs

- Major litigation or potential judgment
- Increasing litigation or vendor pressure concerning nonpayment
- Loss or modification of key revenue source or product line
- Credit rating downgrades
- Public company or public debt indicia
- Macro economic pressures

Internal Warning Signs

- Cash flow issues
- Significant upcoming debt maturities
- Secured creditor defaults or forbearance
- Slow or irregular payment of fees or other vendors
- Modification of trade vendor terms or revocation of trade credit
- Officer or board level terminations or resignations
- Requests for extended terms
- Sudden changes in behavior
- Liens and asset encumbrances

Financial Metrics to Monitor



Debt-Service Coverage Ratio

Can the vendor service their debt obligations?



Days Cash on Hand

How long can the vendor sustain operations with current liquidity?



Current Ratio

Can the vendor meet short-term obligations?

Proactive Pre-Bankruptcy Risk Management Strategies

- **Coordinate with Finance and Credit Teams**
 - Credit Risk Assessment
 - Use of B2B credit risk tools (Dun & Bradstreet, Creditsafe, CreditRiskMonitor) to monitor vendor financial health
- **Public companies:** Automated scoring template to sift out risky/deteriorating suppliers
- **Private companies:** Use NDAs and contractual provisions requiring periodic financial disclosure to support finance team monitoring

Proactive Pre-Bankruptcy Risk Management Strategies

Establishing Internal Risk Escalation Protocols

- **Low Risk:** Finance monitors; legal maintains standard contract terms and periodic review
- **Moderate Risk:** Finance escalates concerns to legal; legal reviews contract protections, termination rights, and begins identifying alternative vendors
- **High Risk:** Legal leads response; assess contract remedies, negotiate enhanced protections (security deposits, guarantees, shortened payment terms), and prepare for potential bankruptcy scenario

Section III

Responding to Disruption

Practical strategies to keep projects moving in a down economy.

Managing Cost Spikes & Tariff Impacts

- Review force majeure and change-in-law provisions in existing contracts
- Evaluate tariff escalation clauses and their applicability
- Consider price adjustment mechanisms and cost-sharing frameworks
- Document impact contemporaneously for potential claims
- Assess whether cost increases constitute material adverse changes
- Negotiate change orders promptly with detailed cost documentation



Handling Supplier Defaults & Supply Chain Disruption

RISK MITIGATION ACTIONS

Diversify Supplier Base

Avoid over-concentration risk by maintaining multiple qualified suppliers

Geographic Differentiation

Differentiate vendors across geographies to reduce single-source disruption

Business Continuity Plans

What happens if a key supplier disappears tomorrow?
Have a plan ready

Assess Replaceability

Determine if the supplier is replaceable — this changes your entire strategy

Protective Contract Language

Build protective language and amendments into existing contracts

Quick Action

Preparation and quick action facilitate successful risk mitigation

Section IV

Navigating Lender Demands

How lender expectations affect your projects and how to manage them proactively.

Understanding Lender Dynamics in Construction

- Lenders turning cautious, cutting credit lines for weaker borrowers
- High borrowing costs remain a key risk with potential for liquidity shortfalls
- Covenants, reporting obligations, and lender expectations can restrict project flexibility

Key Distinction

Technical Defaults vs. Actual Defaults

A technical default (e.g., missed reporting deadline, covenant breach) may not indicate true financial distress — but it triggers lender rights and can cascade into acceleration, cross-defaults, and project shutdown if not addressed promptly.

Proactive Lender Communication Strategies

Financial Advisor

- Maintain transparency with lenders — surprises erode trust and trigger escalation
- Provide regular project updates and financial reporting before lenders have to ask
- Anticipate covenant compliance issues and address them proactively
- Request covenant waivers or amendments early, not after a default
- Prepare realistic cash flow projections that account for construction-specific risks

Bankruptcy Lawyer

- Understand your rights and obligations under loan documents
- Know what triggers cross-defaults and acceleration
- Preserve defenses and negotiating leverage by staying ahead of compliance
- Document all lender communications and commitments
- Engage counsel early when compliance becomes uncertain

Section V

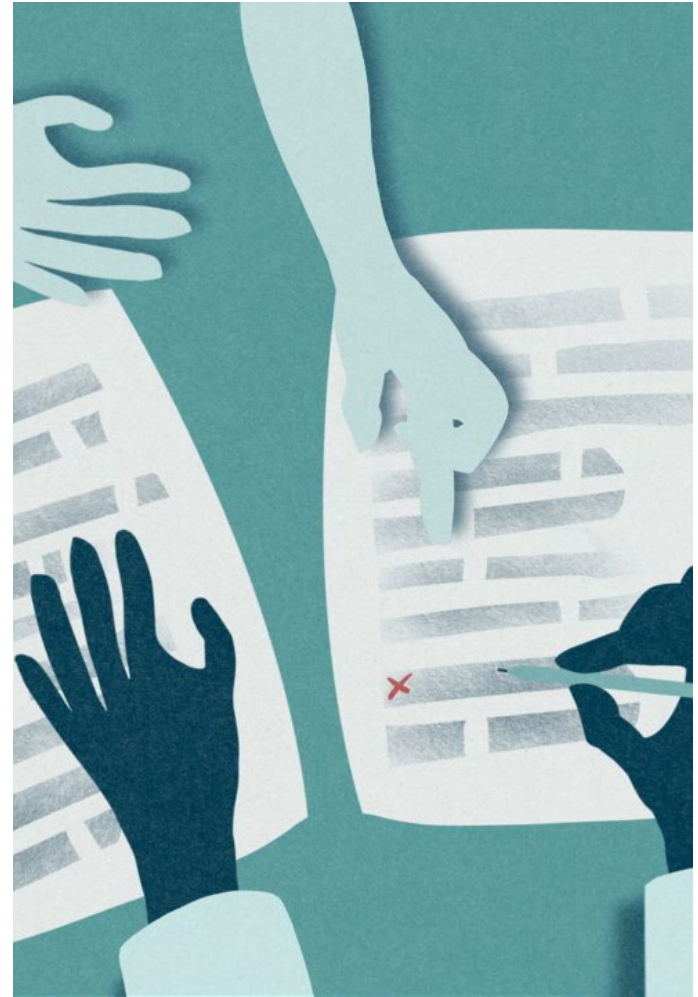
Strengthening Contracts & Financing

Draft terms that protect margins and keep projects viable when conditions deteriorate.

Drafting Contracts That Withstand Distress

Negotiate Strong Contract Terms

- Include security interests, personal guarantees, or letters of credit
- Use retention of title clauses to retain ownership of goods until paid
- Drive contract negotiations for at-risk vendors to proactively build protective language into contracts



Payment Terms & Preference Prevention

When bankruptcy is on the horizon, move to protected positions:

1	Cash in Advance	Gold standard — highest protection
2	Security Deposits	With perfected security interest; prevents preference claims
3	Cash on Delivery (COD)	Payment contemporaneous with delivery
4	Standard Contract Terms	Payment within agreed terms
5	Letters of Credit	Independent third-party promise; no preference exposure
6	Parent/Principal Guarantees	Additional credit support from related entities

Shorten credit terms at least 90 days before potential filing to avoid the preference window

Additional Contract Protections

- Establish credit limits (restrictive vs. non-restrictive) based on risk assessment
- Include payments in arrears provisions to reduce exposure
- Right to demand adequate assurance of performance (UCC/common law)
- Step-in rights to take over subcontractor's work if they default
- Milestone-based payment structures tied to verified completion
- Joint check agreements for payment to sub-subcontractors
- Monitor and enforce lien rights as additional security



Financing Structures That Protect Projects

- Structure project financing with adequate reserves and contingencies
- Evaluate bonding requirements and surety capacity for all key subcontractors
- Consider alternative financing sources (mezzanine, joint ventures) when traditional lending tightens
- Stress-test project budgets against rising costs (+15-25%) and extended timelines (+3-6 months)
- Maintain adequate liquidity buffers to absorb unexpected disruptions
- Review insurance coverage for project-specific risks and gaps

Section VI

When a Partner Files Bankruptcy

Immediate actions, claims protection, and navigating the bankruptcy process.

When a Vendor Files Bankruptcy: Immediate Actions

Actions to Take Upon Filing

- As soon as notified of the filing, place accounts on credit hold / stop shipping

Automatic Stay is Now in Place — you cannot:

- Seek payment on pre-bankruptcy open items outside of the bankruptcy claims process
- Terminate any contracts or agreements with the vendor (even if the agreements provide for termination in the event of bankruptcy)
- Remove equipment from operating locations without consent of debtor and/or bankruptcy court



When a Vendor Files Bankruptcy: Immediate Actions

- Halt any funding / rebate payments due to vendor pending further coordination with legal counsel
- Reach out to vendor to align on post-bankruptcy delivery arrangement
- Compile any contracts or agreements

Securing Post-Bankruptcy Deliveries

- Always fully secure post-bankruptcy deliveries:
 - Deliver on cash in advance terms
 - Secure a deposit to secure expected post-bankruptcy receivables
- Once fully secured, review account daily for missed payments and invalid deductions
- Immediately stop shipping if exposure approaches post-bankruptcy deposit level or payment is missed

Protecting Your Claims in Bankruptcy

File a Timely Proof of Claim

- Work with counsel to file proof of claim by General Bar Date
- Monitor claim bar dates and court procedures

Assert 503(b)(9) Claims (20-Day Goods)

- Goods delivered during the 20 days before a bankruptcy are administrative claims — significantly higher likelihood of recovery
- To qualify, creditor must prove: sale of goods, receipt within 20 days, ordinary course of business
- **Tips:**
 - Review invoices promptly to identify goods delivered within 20 days before the filing
 - Document receipt with clear records showing when goods were received by the debtor
 - Work with bankruptcy counsel to ensure proper filing and maximize recovery
 - Separate goods from services: if invoices include both, allocate values to isolate qualifying goods

Protecting Your Claims in Bankruptcy

Seek Critical Vendor Status

- **Criteria:** Indispensability, irreplaceability, disproportionate harm, no viable alternatives
- **Benefits:** Payment of prepetition claims, administrative expense priority, continued business relationship
- **Risks:** Contractual obligations, waiver of rights, clawback risks, breach consequences
- **Tips:** Demonstrate your value, maintain strong relationships, negotiate terms carefully, avoid violating the automatic stay, consult legal counsel, act quickly

Monitor Treatment of Executory Contracts

- **Assumption process:** Motion to assume, court approval, cure requirement
- **Cure claims:** Amount the debtor must pay to bring the contract current before assumption; treated as administrative expenses
- **Rejection:** If rejected, treated as a prepetition breach; rejection can relieve the debtor of future obligations
- Monitor assumption notices, assert cure claims properly, demand adequate assurance, negotiate terms

Best Practices in the Shadow of Bankruptcy

Understanding Preference Exposure

- Debtors may try to recover all payments that cleared during the 90 days before the bankruptcy filing
- Key elements of preference:
 - Made to or for the benefit of a creditor
 - Because of a debt which was owed by the debtor before the transfer was made
 - Made while the debtor was insolvent
 - Within 90 days prior to the date the bankruptcy case was filed, or within 1 year for "insiders"
 - Creditor received more than if payment had not been made and debtor's estate was liquidated

The Preference Defense Trade-Off

- Creditors should understand the risk and potential trade-off when tightening credit terms or applying pressure on financially troubled vendors
- Credit pressure tactics may disqualify the creditor from using the ordinary course of business defense (In re Fred's Inc., 2025)
- Courts may adopt the "healthy debtor standard" for ordinary business terms

Best Practices in the Shadow of Bankruptcy

Defenses to Preference Claims (Section 547(c))

- Contemporaneous Exchange for New Value (§547(c)(1))
- Ordinary Course of Business (§547(c)(2))
- Subsequent New Value (§547(c)(4))
- Enabling Loan (§547(c)(3))
- Floating Lien Defense (§547(c)(5))
- Statutory Liens (§547(c)(6))
- Small Transfer Exception (§547(c)(9))

Ordinary Course of Business Defense

- **Subjective test:** Focuses on the history of transactions between the parties; must show payment was made in a manner consistent with the prior course of dealing
- **Objective test:** Focuses on industry standards; must show payment was made according to terms in the relevant industry
- Creditors only need to satisfy one of the two tests
- Using expert testimony and industry data (e.g., RMA reports) to show consistency with general business terms may strengthen the defense

Participating in the Bankruptcy Case

Consider Serving on the Creditors' Committee

- Gives you a voice in the case and access to information
- Opportunity to influence the reorganization plan and protect creditors interest

Primary Creditors' Committee Functions:

- Advise debtor on reorganization and / or liquidation efforts
- Provide a check on motives of the debtors to maximize recoveries
- Investigate and pursue actions against the debtor's interests

Unsecured Creditors' Committee (UCC) has two main goals:

- Maximize value for all unsecured creditors
- Assess the creditworthiness / viability of the go-forward business



Importance of Unsecured Creditors' Committees

- Members of the UCC have an opportunity to help unsecured creditors achieve the goals of maximizing value and assessing the creditworthiness of the go-forward business
- As a fiduciary for all unsecured creditors, the UCC acts as watchdog, consultant, and negotiator to determine the Debtor's future
 - Access to Debtor's financial and operational information
 - Consult with the Debtor concerning administration of the case
 - Provide input on the bankruptcy process, litigation, exit strategy, and distributions
 - Negotiate DIP financing / use of cash collateral
 - Assess fulsomeness of sale process of business / assets
 - Assess viability / creditworthiness of go-forward business
 - Formulate / negotiate chapter 11 plan

Section VII

Integrating All Perspectives

The 360-degree protection plan that combines legal and financial expertise.

The 360-Degree Protection Plan



Construction Litigator

Contract rights, claims, litigation strategy, change order disputes, lien rights



Bankruptcy Lawyer

Navigating bankruptcy process, protecting claims, preference defense, executory contract strategy



Financial Advisor

Cash flow analysis, lender negotiations, project viability assessment, restructuring alternatives

Together: A comprehensive approach to project protection in uncertain times

Project Protection Checklist

PRE-DISTRESS

Monitor red flags; conduct credit risk assessments; diversify supplier base; negotiate strong contract terms; maintain lender relationships



DISTRESS IDENTIFIED

Shorten credit terms (90+ days before filing); shift to COD/CIA; obtain security deposits or guarantees; engage financial advisor for stress-testing; communicate proactively with lenders



UPON FILING

Stop deliveries; halt payments; do not violate automatic stay; secure post-bankruptcy arrangements; assess project continuity; evaluate surety bond claims



DURING CASE

File proof of claim; assert 503(b)(9) claims; seek critical vendor status; monitor executory contract treatment; consider creditors' committee participation

Key Takeaways

01 The time to prepare is NOW — not when you get the bankruptcy notice

02 Build resilience into contracts before distress emerges

03 Cross-functional coordination between legal, finance, and operations is essential

04 Proactive lender communication prevents technical defaults

05 The three-perspective approach (litigator + bankruptcy lawyer + financial advisor) provides the most complete protection

Thank You



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