Under Pressure: What Vendors Need to Know About Payment Pressure and its Potential Impact on Preference Liability

By: Jordana Renert and Keara Waldron, Lowenstein Sandler LLP

As originally published in the Credit Research Foundation's publication, Perspective by CRF (Q2 2022)

Vendors know too well the warning signs of a customer in distress: slower customer payments, delayed shipments, distress in financial reporting, and rumors that the customer is experiencing financial difficulty and may be headed for bankruptcy. Naturally, under these circumstances, a vendor's priorities shift to ensuring payment of outstanding balances and decreasing future financial exposure. However, where the customer's future involves bankruptcy, vendors should be aware of one countervailing concern: the potential for being sued for a "preference" after the bankruptcy case is filed. As it turns out, the efforts a creditor undertakes to mitigate its credit exposure in the days, weeks, and months prior to a bankruptcy filing may actually increase a creditor's eventual preference exposure.

Section 547 of the Bankruptcy Code permits a trustee or debtor-in-possession to avoid and recover from creditors' payments...

This article is only available to members of the Credit Research Foundation (CRF).

*Interested in reading more? Join CRF to gain access to this and hundreds of other resources! **CLICK HERE** for membership information.*

About the Authors

Jordana L. Renert is Partner in Lowenstein Sandler's Bankruptcy & Restructuring Department. Jordana's practice is devoted to helping clients navigate all aspects of financial restructuring by identifying and implementing innovative solutions and strategies aimed at maximizing recovery. She advises clients on all facets of complex Chapter 11 reorganizations, workout proceedings, and corporate trust matters and represents clients ranging from trade creditors, creditors' committees, and lenders to indenture trustees and agents.

Keara Waldron is Senior Counsel in Lowenstein Sandler's Bankruptcy & Restructuring Department. Keara's practice is focused on representing debtors, creditors' committees, and other parties in the context of complex Chapter 11 bankruptcies, as well as litigating adversary proceedings and other contested matters. Central in Keara's practice is the representation of trade creditors in avoidance action proceedings.