

Selling to and Collecting From a Chapter 11 Debtor

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Addressing a Distressed Customer Before Bankruptcy

- Financial Reporting and Monitoring
- Review Contracts and Consider Termination Rights Versus Extending Credit
- Credit Enhancements
 - Guarantees
 - Security
 - Letters of Credit
- Payments in Advance or COD
- UCC 2-609 Demands

Bankruptcy Filing and The Automatic Stay

- With limited exceptions, the automatic stay prohibits post-petition action against the debtor, including:
 - Demands to recover pre-petition claims
 - Foreclosures
 - Efforts to obtain a receiver
 - Acts to obtain possession of debtor's property
 - Litigation against the debtor
- Automatic stay does not stop, among other things:
 - Suits against non-debtors, including guarantors
 - Draws on a letter of credit
 - Commencement or continuation of a criminal proceeding
 - Acts to maintain or continue perfection of security interest

Seller Rights in Customer's Bankruptcy Case

- Critical Vendor Status and Agreements
- Reclamation – 11 U.S.C. § 546(c)
- Prepetition Claims
 - Entitled to Priority Status Under 11 U.S.C. § 503(b)(9)?
- Administrative Claims
- Purchase Orders
- Assumption or Rejection of Executory Contracts
- Indemnity

Preference Actions

- Prevents changes in the status quo “immediately” prior to bankruptcy
- Elements of an avoidable preference:
 - A transfer ...
 - To or for the benefit of a creditor;
 - For an antecedent debt;
 - While the debtor was insolvent;
 - Made during the lookback period; and
 - That enabled the creditor to receive more than it would have in a Chapter 7 liquidation
 - Claim Disallowance - 11 U.S.C. § 502(d)

Questions?



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