



News & Types: Litigation Update

Is Your Company Prepared to Maximize Its Recovery in Your Customers' Upcoming Bankruptcies? Afterall Filings Are On the Rise

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By: Reinhold F. Krammer

Practices: Litigation

U.S. bankruptcies are on the rise. In the year ending September 2024, bankruptcies have increased by 16.2% (both individuals and businesses). Business bankruptcies have increased by a staggering 33.5%. This is in an economy that is still expanding. Is it possible to recover more than the paltry 0 – 5% typically distributed to an unsecured creditor by a bankrupt company in response to a creditor's unsecured proof of claim? The answer is yes if your company falls into one of the many applicable bankruptcy exceptions of which most creditor companies are unaware. That means most creditors are not getting paid what they rightfully should get paid from a customer who files for bankruptcy.

This article will briefly cover some of the recovery approaches most companies are not aware of when a customer files for bankruptcy, causing the creditor to needlessly walk away from cash when relying on the outdated misconception that once a company files for bankruptcy, there is little chance of recovering anything or even an amount that would justify preparing and filing a claim.

First, a creditor can issue a reclamation notice or stop goods in transit in certain instances. In the reclamation scenario, if the bankrupt fails to return the goods, the creditor is entitled to be paid in full for the goods. Suppose the goods are actually stopped in transit. In that case, the creditor recovers the goods and will likely be paid in full by the bankrupt to have the goods redelivered.

Also, a creditor is entitled to be paid in full for goods delivered within the 20 days immediately before the bankruptcy filing. What if the goods are delivered after the bankruptcy filing? Again, the creditor is entitled to be paid in full. All the creditor needs to do is file the correct motion or claim in the bankruptcy court. Of course, the bankrupt does not usually volunteer this information to its creditors. Instead, creditors need to be aware of their rights and assert them.

Critical and foreign vendors can also get paid in full if you know how to play your cards. Because the bankrupt needs your goods to reorganize or the U.S. courts do not have jurisdiction over foreign entities, there can be room to be paid in full for even prior deliveries. Also, if you have certain types of contracts with the bankrupt,

called executory contracts by the bankruptcy courts if the bankrupt wants your company to continue to provide them with your goods or services, the bankrupt will need to assume your contract and cure all past defaults under that contract, even for defaults that occurred before the bankruptcy filing including failing to pay old invoices.

Do you have a security interest in your contract with the bankrupt? If you have a security interest, your company is in a better position in bankruptcy and can get paid in full, at least up to the value of the goods, which can be the invoice price.

Delaying shipments or refusing to ship can also increase your chances of getting paid. Of course, you need to consider the bankruptcy stay, which may require you to ship, but it will depend on your unique circumstances.

Finally, a creditor should always, as a last resort, at least file a proof of claim. That will allow you to participate in any distribution made to creditors as part of the bankruptcy proceeding.

If you have any questions about these approaches or developing a plan for your company to minimize credit risk with your customers, please contact Reinhold F. Krammer or your other Masuda Funai relationship attorney.

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