

THE CREDIT TIMES



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A Publication of The Commercial Collection Corp. of NY, Inc.

"The Ten Most Important Things That the Collection Professional Absolutely Needs to Know About Bankruptcy"

The session explores bankruptcy from the collection perspective. The Author outlines the ten things that most help a collection professional deal with the bankruptcy aspects of collecting.

- Automatic Stay and Adequate Protection
- Unexpired Leases and Executory Contracts
- Chapter 11 Plan
- Committee of Unsecured Creditors
- Bankruptcy Discharge
- Claims Process
- Chapter 11 Process
- Preference Actions
- Involuntary Bankruptcy
- Administrative Expense Claims

#1 Automatic Stay and Adequate Protection

Automatic Stay

- Extremely limited.
- Many courts hold that the act of filing a mechanics's lien does not violate the Automatic Stay.

Rights of Secured Creditors and Adequate Protection

- The trustee's obligation to provide and maintain the value of the secured claim is one of its paramount duties.
- If adequate protection cannot be provided, the secured creditor will be entitled to Relief from the Automatic Stay.

#2 Claims Process

- Your debt can be discharged even if you don't know about the case.
- When the debtor files his Petition, he is required to file a list of known creditors.
 - Secured and unsecured
- Once the creditor receives notice of the debtor's bankruptcy filing, the creditor files a Proof of Claim.

#3 Unexpired Leases and Executory Contracts

- A failure of one party to perform its obligations would excuse the performance of the other and the outstanding obligations are not solely for the payment of money.
- If the debtor assumes an executory contract, the debts arising there from are not discharged.

#4 Chapter 11 Process

- Once a Chapter 11 is filed the debtor becomes the debtor in possession (DIP).
- The DIP has the obligations and powers of a trustee.
- Can employ attorneys, accountants, appraisers, auctioneers, etc.

#5 Chapter 11 Plan

- Debtor must file and get court approval of a written disclosure statement before there can be a plan or reorganization vote.
- Disclosure statement must provide 'adequate information'.
- Adequacy of disclosure is measured against the typical debtor.
- Creditors may object to the adequacy of the information in the disclosure statement.

#6 Preference Actions

- Under the Bankruptcy Code, the Trustee can 'avoid and recover' for all payments the debtor made to creditors during 90-days immediately preceding the bankruptcy filing.
- Never send a check when you get that preference letter! Seek professional advice as sometimes settlements for lesser value can be negotiated.

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#7 Committee of Unsecured Creditors

- Only exists in Chapter 11 cases.
- Three to seven creditors appointed per committee.
 - Usually selected from Debtor's 20-largest unsecured creditors.
In some very large cases, a creditor may be appointed that is not among the 20-largest creditors; this gives the smaller creditors a voice.
- Appointed by U.S. Trustee.
- Committees have the right to hire counsel, accountants and in some cases financial advisors.
 - These fees are paid by the debtor as administrative expense claims.
 - Not paid by individual members.
- Committees are more important in small cases than in larger ones.

#8 Involuntary Bankruptcy

- Involuntary bankruptcy filings are your friend.
- Who can commence an involuntary bankruptcy?
 - If the debtor has 12 or more creditors, three or more creditors must hold more than a total of \$13,475 worth of unsecured claims.
 - If the debtor has less than 12 creditors, only one unsecured creditor must hold more than a total of \$13,475 worth of unsecured debt.
- Debts must not be the subject of a bona fide dispute as to liability or amount.

#9 Bankruptcy Discharge

- Purpose of Bankruptcy
 - To 'discharge' all debts.
 - Achieve a 'fresh start'.
- What is a discharge?
 - Release of all liability for certain debts.
 - Debtor is no longer required to pay any debts that have been discharged.

#10 Administrative Expense Claims

- General Administrative Expense Claims.
 - "Actual and Necessary Costs of Preserving the Estate"
- 20-day Claims – a.k.a. 503(b)(9) Claims
 - 503(b)(9) is a double edged sword.

The information in this article is compliments of Robert S. Bernstein, Esq. from Bernstein-Burkley, P.C. To receive a copy of Mr. Bernstein's entire in-depth and very informative Power Point presentation, please e-mail Judy Mattioli at jmattioli@commercialcollection.com



Believe It or Not

The 2014 NACM Credit Congress is coming fast!

This year it will be held in sunny Orlando Florida at the Rosen Shingle Creek June 8-11, 2014. E-mail jmattioli@commercialcollection.com if you plan on attending.

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Q & A

Q: Does CCC of NY offer alternative remittance options so I can receive my money faster?

A: CCC of NY can customize a remittance process to a client's specifications. ACH transfers are becoming an increasingly popular method of remittance transmittal. ACH (Automated Clearing House) is a secure, private, electronic payment transfer system that connects U.S. financial institutions allowing for faster receipt of YOUR money. If you would like to receive ACH remittances from CCC of NY, all we need is completion of one simple form and the process will start immediately.

Submit your credit questions and/or opinions to Judy Mattioli at jmattioli@commercialcollection.com