

# THE CREDIT TIMES



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## RECLAMATION or 503(b)(9) PRIORITY ADMINISTRATION CLAIM: WHICH IS MORE LUCRATIVE? – IS IT STILL WORTH IT?

Co-authored: Bryan Rafferty & Wanda Borges, Esq.

Every credit executive knows the word “reclamation” but many do not fully understand what it means and how it works.

Your goods are sold and shipped and now you expect to get paid. Unfortunately, it does not always work out that way. If your customer files bankruptcy, it is most likely you will be stuck with an unpaid account. To make matters worse, some customers (especially those in financial distress) may even “load up” on inventory and then proceed to file bankruptcy, leaving many creditors without their goods or payment. Regardless of why it happens, no one wants to ship merchandise and not get paid. The Uniform Commercial Code gives you a tool available to creditors. That tool is the right to “reclaim” their goods. In a pre-bankruptcy setting, a creditor is entitled to reclaim all goods received by a customer who is insolvent within the past ten days from the demand for reclamation.

That ten-day period has been expanded under the Bankruptcy Code so that reclamation permits vendors to make written reclamation demand for goods transferred to a debtor within the 45 days immediately preceding the debtor’s bankruptcy filing. The 45-day time frame is an increase from the 10-day time under the UCC. If the 45-day period expires after the bankruptcy filing, the creditor is given an additional 20 days from the filing date to make a demand (thereby potentially giving the creditor up to 65 days to recover the goods).

Once a creditor receives notice of a customer’s bankruptcy filing, any invoices for goods shipped within 45 days prior to that date should be segregated and set aside in preparation for any reclamation action that might be taken. A timely, properly worded reclamation demand is the first step towards enforcing any right to reclamation.

There are drawbacks even to a properly written reclamation demand. Reclamation is only enforceable if the customer maintains possession of the goods. If the customer has sold the merchandise before receipt of the written reclamation demand, then reclamation is no longer an option. In addition, reclamation rights are subject to the rights of a prior secured creditor with a lien on inventory; in most bankruptcy filings there is at least one secured creditor. Unfortunately, reclamation most often does not work. Bankruptcy laws provide creditors whose goods were delivered within the 20-day period immediately prior to the Bankruptcy filing with the option to obtain an Administrative Expense claim which gets paid with all other priority administration expense claims. This is referred to as a Section 503(b)(9) claim.

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Where reclamation is not successful and a creditor pursues a 503(b)(9) claim, that creditor must still file a General Unsecured Proof of claim with the Bankruptcy Court for any goods delivered outside the 20-day time frame.

As reclamation becomes less and less enforceable, the 503(b)(9) claim becomes a powerful tool in a creditor's arsenal should the circumstances justify the action. Because of the nuances surrounding reclamation, it will often make sense to seek the advice and possibly retain bankruptcy counsel to ensure you follow procedures and protocols in accordance with the bankruptcy statutes.

### *Employee of the Quarter*

By co-authors Bridget Newlove & Debra Edwards

The criterion for CCC of New York's Employee of the Quarter is a professional attitude in dealing not only with CCC clients, but with colleagues as well. The employee must show a readiness to participate, and must step up not only with ideas, but must suggest means of implementation. Last, but certainly not least, the CCC Employee of the Quarter must be attuned to premier customer service. Eileen Power embodies all of these standards and more.

We hope you enjoy learning a little more about Eileen through the following Q & A:

***Q. How long have you been an employee of CCC & what is your current role?***

I have worked for CCC for 20 years and I am a Legal Administrative Assistant.

***Q. What is your favorite hobby?***

I like sewing and making clothes, although I have not done this lately. I used to make my whole wardrobe. Someday I will get back to it. Years ago, I tailored a suit for my husband and I made my own wedding dress. I used to make all my own coats, and I sewed dresses and outfits for my girls.

***Q. What is your favorite quote for inspiration?***

"I am determined to be cheerful and happy in whatever situation I may find myself. For I have learned that the greater part of our misery or unhappiness is determined not by our circumstances, but by our disposition. Try to put the best construction on everything."



## Believe It or Not

### The 2020 NACM Credit Congress is around the corner!

This year it will be held in Las Vegas, Nevada at Caesars Palace from June 14th-17th. Our booth number is 210.

Be sure to stop by and visit with us.

If you will be in attendance, please email Chad Haynie at [chaynie@commercialcollection.com](mailto:chaynie@commercialcollection.com) and let us know so we can invite you to our annual breakfast.

### Join our Client Birthday Club!

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