SURVIVAL

Strategies for Uncertain Times:

HOW TO MAKE SURE YOUR CUSTOMERS PAY

QUICK TAKE

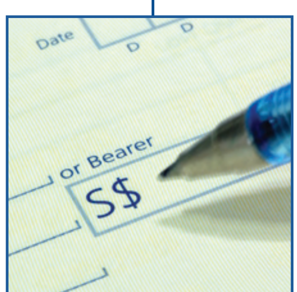
- Will you get paid if your customer goes bankrupt? These strategies can protect you if the cash stops flowing.

In the wake of this economic downturn, a number of our clients are seeking advice on how to lessen their exposure to unpaid receivables.

Unsecured suppliers doing business with financially troubled customers can have difficulty collecting—particularly if those customers seem headed for bankruptcy. Once bankruptcy is declared, suppliers must stop further efforts to collect money owed them until the court permits. Unfortunately, in most cases, unsecured creditors recover only a fraction of their claim—and then, only after a significant delay. Here's what you can do now to protect your interests.

1. DEMAND WRITTEN ASSURANCE

Under the Uniform Commercial Code (UCC), once a supplier has reasonable grounds to doubt a customer's ability to meet its contractual obligations, that supplier can demand written assurances from the buyer. A supplier may reasonably suspend its obligations until receiving a written assurance. Suppliers may also choose to execute a new contract containing different terms (Cash in Advance, Cash before Delivery, or Cash on Delivery, for example) until a written assurance is in place.



2. STOP DELIVERY

The UCC also allows a supplier to withhold delivery of goods if it's discovered the buyer is insolvent. In fact, subject to certain exceptions, a supplier may halt the delivery of goods in transit, and order the carrier to hold those goods until further instruction. The UCC defines an insolvent buyer as one who has stopped paying debts in the ordinary course of business, one who is unable to pay debts as they become due, or one who meets the definition of insolvency contained in the U.S. bankruptcy code.

3. RECLAIM GOODS

Suppliers are permitted to demand the return of goods delivered on credit to an insolvent buyer. The right extends to situations in which the materials were sold and delivered CIA, CBD, or COD and the buyer's check bounced. A supplier is given 10 days after delivery to make a claim—although that limitation does not apply if the buyer has made a written misrepresentation of solvency within three months before the delivery.

4. APPLY SETOFF OR RECOUPMENT

Two strategies can help balance debit and credit. If the supplier owes a debt to the buyer, that supplier may use a setoff to compensate for a debt owed to it by the buyer. Similarly, the equitable doctrine of recoupment allows a supplier to avoid paying a buyer if that buyer is monetarily indebted to the supplier. One caveat: In applying a recoupment, the supplier's claim and debt must arise from the same contract.

If you would like additional information about protecting your interests and maintaining healthy receivables during the economic slowdown, call the author—or Lisa Pick at 248.267.3232, or Richard Walawender, 313.496.7628.

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