

Your Business is Owed Money. **NOW WHAT?**



As any business person knows, securing a sale – that is, convincing an individual or business to buy goods or services – is only half the battle. Getting paid is another challenge altogether. So, if your business is owed money, what are your options?

A creditor is often best served by working directly with a debtor to attempt to collect a debt. A debtor may be dealing with short-term cash flow issues and simply requires some sort of interim relief, such as extended payment terms or temporary price reduction, to work its way through a rough patch. However, before extending any sort of relief, a creditor must do its homework to make sure that a debtor's "temporary" problems are, in fact, temporary. As the old adage goes, when you're in a hole, stop digging.

STATE LAW REMEDIES

In the event that a negotiated resolution is not feasible, remedies are available under state law. Unfortunately, the reality for most creditors is that the only route to payment is through litigation. In some states, creditors are empowered to seek various forms of prejudgment attachment or garnishment of a debtor's assets.

Other types of relief are available under state law. Depending on the state, these include receiverships, assignments for the benefit of creditors and other forms of debt adjustment. Additional remedies include common law compositions and trust mortgages, which are similar to the statutory remedies, but are voluntary in nature and often involve less overhead and administrative cost. To the extent that a debtor has transferred assets to a third party, such assets may be recoverable if the transfer was fraudulent – that is, made for less than reasonably equivalent value by an insolvent debtor. The Uniform Commercial Code also offers unsecured creditors remedies, including the right to reclaim goods sold on credit in certain circumstances.

BANKRUPTCY

Bankruptcy, while intended to provide debtors with a fresh start, offers creditors a number of remedies. The U.S. Bankruptcy Code, which is federal law, allows creditors to force a debtor into bankruptcy (an involuntary bankruptcy) or a debtor may voluntarily seek protection from creditors. A business debtor may file under Chapter 7 of the Bankruptcy Code and liquidate its assets, or under Chapter 11 and reorganize.

Once a debtor files (or is forced into) bankruptcy, an unsecured creditor is entitled to share in the pro rata distribution of the debtor's assets based on the priority of its claim. A creditor can, if appropriate, take certain proactive steps that may increase its chances of recovery, including: the reclamation of goods, seeking "critical" or "essential" supplier status, serving on the creditors' committee, asserting an administrative expense or other priority claim, and/or seeking assumption of its executory contract, to name a few. An experienced bankruptcy lawyer can assess a creditor's best points of leverage and course of action.

SOME PROACTIVE STEPS FOR THE FUTURE

Review Contracts Modify standard terms and conditions to provide your business with additional rights and remedies upon a party's non-payment.

Monitor Customers Monitor the financial health of customers. Be alert to warning signs such as delayed payment or financial reporting, layoffs and other cost-cutting measures.

Strengthen Position If a customer is financially distressed, consider changing to cash in advance terms or requiring a security interest in collateral.

While your business will inevitably be forced to deal with distressed customers, there are a number of steps that can be taken to strengthen your position. Miller Canfield helps creditors across the globe enforce claims in the United States and abroad. Call our office if you'd like some assistance.

THE ORIGINS OF BANKRUPTCY

While the concept of debt forgiveness can be traced back to the Old Testament, the term "bankruptcy" derives from the Latin words "bancus" (bench or table) and "ruptus" (broken) and relates to an Italian tradition of destroying the workbench of a tradesman who could not pay his debts. The English, under Henry VIII, decided to take it a step further and started imprisoning bankrupt individuals. In the U.S., bankruptcy is permitted by the Constitution (Article 1, Section 8, Clause 4) which authorizes Congress to enact "uniform Laws on the subject of Bankruptcies throughout the United States."

TABLE OF CONTENTS

■ The Burdens of E-Discovery	2	■ Non-Profit Fundraising: Registration Required	6
■ Death + Taxes	3	■ An Employer Benefit	7
■ Mexico: Some Risks, Many Rewards	4	■ Gray Market Goods	8
■ Expanding Your Business to Canada?	5		