

Developments in Canadian and U.S. Insolvency Law

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Process and Environmental Overview

Current Insolvency Environment

- Accommodating Lenders
- Basement Level Interest Rates
- Hedge Funds
- Unpredictable Forums
- Prohibitively Expensive

Types of Insolvency Proceedings

- Canadian Proceedings
 - Reorganizations under CCAA and BIA
 - Receiverships (Federal and Provincial)
 - Bankruptcy

Types of Insolvency Proceedings

- U.S. Proceedings
 - Chapter 11 – Reorganization
 - Chapter 7 – Liquidation
 - Chapter 13 – Individuals

Alternatives to Formal Insolvency Proceedings

- Consensual Workouts
- Corporate Arrangements (CBCA, OBCA)
- Assignments for the Benefit of Creditors (“ABCs”)
- State and Federal Receiverships

Trade Supplier Rights and Remedies in a Distressed Situation

Before Bankruptcy

- Non-Financial Warning Signs
- Self Help
- Stoppage of Goods in Transit (UCC § 2-705)
- Reclamation (UCC § 2-702)

Before Bankruptcy

- Trade Supplier Protection Mechanisms
 - Purchase money security interest (UCC § 9-324 and PPSA s. 33)
 - Field warehouse (UCC § 7-202)
 - Consignment (UCC § 9-114)

Pre-Filing Claims under Insolvency Legislation

- Section 503(b)(9) of the Bankruptcy Code – Administrative Priority Claim for Trade Suppliers (added in 2005)
- Section 546(c) of the Bankruptcy Code - Recognition of Reclamation Claims
- Section 507(a) of the Bankruptcy Code – Priority of Claims

Pre-Filing Claims under Insolvency Legislation

- Section 81.1 of the BIA – Right of Unpaid Supplier to Repossess Goods

Trade Suppliers and the Debtor

Dealing with the Debtor after Filing

- Automatic Stay
- Preference Issues
- Critical Vendor Issues
- Payment for Post-Filing Services
- Secured Lender's Floating Lien

Dealing with the Debtor after Filing

- Interim “DIP” Financing
- Cash Collateral Usage
- Treatment in Restructuring Plan
- U.S. Process Issues:
 - Creditors’ Committee
 - Exclusivity Period
 - Liquidating Trusts

Dealing with the Debtor after Filing

- Who is Watching Out for Unsecured Creditors?

Tips and Pitfalls

- The squeaky and vigilant wheel
- Preference complexities
- Practical leverage, U.S. legal leverage