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Loose Lips Sink Ships

NACM TELECONFERENCE

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THE SMOKING GUN IN YOUR FILE THAT SINKS ORDINARY COURSE OF BUSINESS PREFERENCE DEFENSE

Preference: Elements Of Claim

- Any Transfer of an Interest of the Debtor in Property;
- To or for the Benefit of a Creditor;
- For or on Account of an Antecedent Debt Owed by the Debtor Before Such Transfer Was Made;
- Made While the Debtor was Insolvent;

Preference: Elements Of Claim (cont'd)

- Made:
 - On or within 90 days before bankruptcy filing; or
 - Between 90 days and one year before bankruptcy filing for transfers to insider creditors; and
- That Enables Such Creditor to Receive More Than Such Creditor Would Receive if:
 - The case were a Chapter 7 case
 - The transfer had not been made
 - Such creditor received payment to the extent provided by other provisions of Title 11

Preference Defenses

- Contemporaneous Exchange for New Value
 - Transfer was intended by debtor and creditor to be contemporaneous exchange for new value; and
 - Transfer was substantially contemporaneous exchange
- New Value
 - Creditor extending credit to debtor after payment, that was not secured and not paid by otherwise unavoidable transfer

Ordinary Course Of Business

- Transfer Was in Payment of a Debt Incurred by the Debtor in the Ordinary Course of Business or Financial Affairs of the Debtor and the Creditor; and
- Subjective Test – Made in the Ordinary Course of Business or Financial Affairs of the Debtor and the Creditor; OR
- Objective Test – Made According to Ordinary Business Terms
- Creditor Can Choose Most Beneficial (Subjective or Objective Test) Prong of Ordinary Course of Business Defense
- Very Fact Based

Ordinary Course Of Business

- Range of Views
 - How long of a payment history?
 - 1 Year?
 - 2 Years? U.S. Bankruptcy Court, Southern District, New York decision: *Quebecor World*
 - Longer?
 - Range of payments
 - All payments? [*American Home Mortgage* Bankruptcy Court decision in Delaware]
 - Modified range? [*Philadelphia Newspapers* Bankruptcy Court decision in Eastern District, Pennsylvania]
 - Payments only when Debtor is healthy? [*Circuit City* Bankruptcy Court decision in Eastern District, Virginia]

Ordinary Course Of Business Preference Defense: Subjective

- Range of Views – cont'd
 - Comparison of average days to pay/days late prior to and during preference period
 - *Archway Cookies* Bankruptcy and District Court decisions in Delaware –
 - Payments subject to subjective ordinary course defense, notwithstanding approximately 5 day difference in average days to payment during historical period (42.3 days) compared to preference period (47.2 days)
 - *Quebecor World* – Payments not subject to the subjective ordinary course defense where average days outstanding of 27.56 days prior to preference period vs. average days outstanding of 57.16 days during preference period
 - Bucket analysis – examining payments by grouping – accepted – *Quebecor World*, U.S. Bankruptcy Court, Southern District of New York

Subjective Ordinary Course Of Business Preference Defense – Smoking Guns

- Change in the form of payment during preference period (regular check to wire)
- Change in method of invoicing (electronic to paper)
- Change in credit terms
- Imposition of credit limit/enforcement of existing credit limit
- Threats to stop shipment
- Change in mode of delivery (regular mail to Federal Express)

Smoking Guns In Vendor's/Debtor's File

- Vendor – “Based on future looking 12 month sales/dcm **we need to move your credit limit down to \$10.5M effective next week.**”
- Vendor – “As a reminder, **we will be enforcing the new LOC \$10.5M starting this week.** Please insure we revise our weekly spreadsheet accordingly.”
- Debtor – “I am also aware that Vendor will be reaching out to Debtor next week to discuss **new restrictions on the credit line heading into the holidays.**”

Smoking Guns In Vendor's/Debtor's File

- Vendor – “As I mentioned on the call, we already offer a prompt pay discount. **We are willing to offer an additional discount of \$50k on the \$9 million of paydowns required to go from your current credit limit to the \$2m limit.** Administratively we will issue a credit to cover this at the end of December. I think this is cleaner than creating a situation where invoice amounts are altered.
- Vendor – “Thanks again for your time this afternoon. As mentioned, **our plan is to limit our exposure to \$2m by mid-December.** In order to do this, the following paydown calendar must be used:”

<u>Date</u>	<u>Credit Limit</u>	<u>Add'l Paydown</u>
17-Nov	9	2
24-Nov	7	2
1-Dec	5	2
8-Dec	3	2
15-Dec	2	1

Smoking Guns in Vendor's/Debtor's File

- Debtor – “**We can't allow these guys to bully us** – we need to offer our proposal to get them to 6-7 mm by xmas – 2mm by mid Dec is a joke.”
- Debtor – “I just got off the phone with [Vendor], and reiterated our disappointment and surprise at the size of their credit contraction. **I stressed to him that we were not experiencing similar pressures from our other vendors,** and that we were optimistic about our chances of procuring additional financing if our holiday expectations were not met. Therefore – and in light of our \$2M good faith payment made last week – I asked for a reconsideration of this decision.”
- Debtor – “**I just got a call from [Vendor], who is now threatening shipment cut-off if he doesn't see his wire payment this morning.** Let me know if you want to release the wire this morning.”

Smoking Guns in Vendor's/Debtor's File

- Vendor – “Please find attached all invoices that are due for payment from [Customer]. They are all past or nearly past 60 days. I believe you were to make payment a few days ago which we are yet to receive. Please can you tell me the status of the payment and when we shall be receiving it. **Unfortunately until the invoices are paid the [Customer] account will be put on a temporary stop.**”

Smoking Guns in Vendor's/Debtor's File

- Vendor – “We will need to speak to our attorney before negotiating further the terms of the forbearance agreement...**but we must have another \$500K wire transferred by 3PM today to keep the services on.**”
- Debtor – “No problem. I will have the \$500K wired today.”
- Vendor – “Have left you a couple of voicemails. The payment due on Wednesday was not made. Our current exposure to you is over \$10m, even though we have a stated credit limit of \$3m. **We are in a position now where orders will not be shipped if the payment due is not made this morning.**”

Smoking Guns in Vendor's/Debtor's File

- Vendor – “We need to incorporate changes into your weekly processes starting next week: daily balances can't go above the established credit limit (\$3M). I would recommend Mon and Wed wires”
- Debtor – “Please provide confirmation and amount of the required wire this morning as soon as possible. I'll contact you later to discuss how we'll need to revamp our weekly payment process.”

Smoking Guns in Vendor's/Debtor's File

- Vendor CFO – “This shipment cannot go out until we approve as we do not have available credit line to cover this at this time. We are following with Debtor for check in transit information.”
- Vendor – “Right now we have \$1,209K available since we are allowed a 10% override waiting for #'s. If we can confirm the \$1.3M was sent overnight on Friday, we can release another \$1.3M against that as well.”

Smoking Guns in Vendor's/Debtor's File

- Vendor – “Subject: Orders on Credit Hold -- Have you let them know that [Debtor] is essentially on credit hold until they call back? I have this sick feeling that no one above the directors on their side realizes that shipments have stopped...”
- Vendor – “Subject: Credit Line Hold? - Do we still have product on credit hold? If so, what is the current situation with orders on hold and can we release anything?”
- Vendor – “Can we release the balance of the credit hold based on this new check?”

Smoking Guns in Vendor's/Debtor's File

- Vendor – “We need a list of products that are on credit hold... I need to work with the [Customer's] buyers to determine what to release ASAP.”
- Vendor – “Nothing currently in credit hold can be released. We need to prioritize which ones should be released first once we have approval to increase exposure.”

**LOOSE LIPS AND SMOKING
GUNS RE: CREDIT
EXCHANGE: BEWARE OF
ANTITRUST CLAIM RISK**

Trade Credit Groups – Avoiding Antitrust Risks

- Exchange of Information Regarding Credit Worthiness of Customers is Linchpin of Trade Credit Groups
 - Key Point: Exchange cannot violate antitrust statutes
- Sherman Antitrust Act of 1890 –
 - Prohibits contracts, combinations and conspiracies in restraint of trade in interstate or foreign commerce
 - Prohibits monopolies
- Clayton Act of 1914
 - Prohibits specified types of prohibited transactions designed to restrain trade, or lessen competition
- Federal Trade Commission Act of 1914
 - Prohibits unfair competition and unfair deceptive acts
- Antitrust Procedure and Penalties Act of 1976
- State Antitrust Statutes

Activities Prohibited By Antitrust Laws

- Price Fixing
- Bid Rigging
- Exchanges of Price Information
 - U.S. Supreme Court has ruled that price includes credit terms
- Group Boycotts
- Dividing Territories/Customers
- Resale Price Maintenance
- Monopolization
- Price Discrimination

Permissible Trade Credit Group Discussions

- The Courts Have Upheld the Exchange of Credit Information If All Participants in Such Exchange Can Make Independent and Unilateral Credit Decisions
- Permissible Conversations
 - *“Historical, Factual, Unemotional”*
 - List of delinquent accounts
 - Exchange of factual credit information
 - Past transactions, but be careful not to get into future action
 - Placement for collection
 - Initiation of lawsuit
 - Judgment obtained

Non-Permissible Discussions

- Be Careful to Avoid Conduct That May Create Antitrust Risks
- Non-Permissible Conversations
 - Pricing/Credit terms
 - Okay to discuss past and completed credit transactions
 - Future action re account
 - “Let’s put the bum out of business”
 - Risk of boycott claim
 - Side conversations/whispering involving a few members
 - Risk of guilt by association based on improper conduct by other members
 - Avoid taking notes – They are discoverable in a future litigation
 - Discussions about accounts outside of meeting

References

- Antitrust Rules also Apply to:
 - Request for references
 - Giving references
- “Historical, Factual, Unemotional”
 - Date account opened
 - Date of last sale
 - Recent high credit
 - Amount outstanding: \$ current; \$ 30 days past due; \$ 60 days past due
- A No-No
 - Sharing your terms
 - Use of ambiguous terms such as “unsatisfactory”, “prompt”, “slow”

**RISK OF INAPPROPRIATE
INFORMATION REQUESTED
IN CREDIT APPLICATION OR
CONTAINED IN FILE**

Inappropriate Information In File

- Comments about an Individual at Customer's Company Considered as Opinion or Open to Interpretation
- Notes of Credit Group Meeting Discussion about Customer; such as
 - "ABC Co. used to sell to customer on open account, but is now CIA only. Watch them close and put them on CIA if they miss a payment"
 - Creditor's switch to CIA on sales to customer could be construed as not acting independently, but instead following ABC Co's lead

Risk Of Defamation Claims

- Defamation – Oral or Written Statement About a Person That Is
 - Defamatory
 - False
 - Published (communicated to other third parties)
 - E-mail
 - Informal comments at lunch, over drinks or over phone
 - Diminishes person's reputation

Inappropriate Information In File

- Comments About an Individual Customer's Company considered Opinion or open to Interpretation
- Potential Defamatory Statements
 - Customer never pays bills
 - Customer constantly fails to pay bills on time
 - Customer is a financial deadbeat
 - Customer is a poor credit risk
 - Customer is a “thief”/crook

ADVERSE ACTION/“ECOA” “FCRA” SPOUSAL GUARANTY/ “ECOA”

ECOA Notices

- ECOA Prohibits Discriminating with Respect to Credit Extension/Renewal
 - On basis of gender, marital status, race, color, religion, national origin, age, welfare assistance
 - Implemented by Regulation B [12 CFR 202 of Federal Reserve Board]

ECOA: Notice To Include In Application

- THE FEDERAL EQUAL CREDIT OPPORTUNITY ACT PROHIBITS CREDITORS FROM DISCRIMINATING AGAINST CREDIT APPLICANTS ON THE BASIS OF RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, MARITAL STATUS, AGE; (PROVIDED THE APPLICANT HAS THE CAPACITY TO ENTER INTO A BINDING CONTRACT); BECAUSE ALL OR PART OF THE APPLICANT'S INCOME DERIVES FROM ANY PUBLIC ASSISTANCE PROGRAM; OR BECAUSE THE APPLICANT HAS IN GOOD FAITH EXERCISED ANY RIGHT UNDER THE CONSUMER CREDIT PROTECTION ACT. THE FEDERAL AGENCY THAT ADMINISTERS COMPLIANCE WITH THIS LAW CONCERNING THIS CREDITOR IS FEDERAL TRADE COMMISSION, EQUAL CREDIT OPPORTUNITY; WASHINGTON, D.C. 20580.

ECOA: Notice To Include In Application

- IF YOUR APPLICATION FOR BUSINESS CREDIT IS DENIED, YOU HAVE THE RIGHT TO A WRITTEN STATEMENT OF THE SPECIFIC REASONS FOR THE DENIAL. TO OBTAIN THE STATEMENT, PLEASE CONTACT (NAME, ADDRESS AND TELEPHONE NUMBER OF THE PERSON OR OFFICE FROM WHICH THE STATEMENT OF REASONS CAN BE OBTAINED) WITHIN 60 DAYS FROM THE DATE YOU ARE NOTIFIED OF OUR DECISION. WE WILL SEND YOU A WRITTEN STATEMENT OF REASONS FOR THE DENIAL WITHIN 30 DAYS OF RECEIVING YOUR REQUEST FOR THE STATEMENT.

ECOA Notices

- Adverse Action
 - Includes
 - Refusal to extend credit
 - Termination of account
 - Denial of increase in credit line
 - Does not include
 - Change in terms agreed to by Applicant
 - Forbearance/action in response to default/delinquency/inactivity

ECOA: Notification Obligations re: Adverse Actions

- Notification Obligations Less Onerous For Trade Credit Applicant
 - Trade Credit – financing arrangement involving a buyer and seller, such as a supplier who finances the sale of equipment, supplies, or inventory
 - Must notify applicant of adverse action orally or in writing within reasonable time
 - Must provide written statement of reasons for adverse action and ECOA notice if applicant makes written request for reasons within 60 days of notification

Examples Of Reasons For Adverse Action

- Incomplete credit application
- Insufficient number of credit references provided
- Unacceptable type of credit references provided
- Limited credit experience
- Unable to verify credit references
- Income insufficient for amount of credit requested
- Excessive obligations in relation to income
- Poor credit performance with seller
- Delinquent past or present credit obligations with others

Examples Of Reasons For Adverse Action

- Garnishment, attachment, foreclosure, collection action or judgment
- Bankruptcy
- Number of recent inquiries on credit bureau report
- Value or type of collateral not sufficient
- Lack of established earnings record
- Slow or past due in trade or loan payments
- Other

Examples Of Improper Reasons For Adverse Action

- Action Taken Based on Creditor's Internal Standards
- Debtor Failed to Obtain Minimum Qualifying Score on Creditor's Scoring System
- Poor Credit Risk
- Financial Deadbeat

Adverse Action Based on Consumer Credit Report

- Per Fair Credit Reporting Act, A Creditor Taking Adverse Action Based on Information In a Consumer Credit Report Must Provide Notice to the Consumer Containing the Following Information:
 - Name, address and phone number of Consumer Reporting Agency that supplied the report
 - Statement that Consumer Reporting Agency did not make the adverse decision and cannot explain why decision was made
 - Notice of consumer's right to free copy of their report if requested within 60 days
 - Notice of consumer's right to dispute the accuracy or completeness of the information in the report
 - The consumer's credit score, if a credit score was used

Adverse Action Based on Credit Score

- As a Result of the Dodd-Frank Act, On July 6, 2011, the Federal Reserve Board and Federal Trade Commission Issued a Final Rule Requiring Creditors To Provide the Following Additional Information in Adverse Action Notices if a Credit Score is Used In Making a Credit Decision:
 - Numerical credit score used;
 - Range of possible scores under the model used;
 - Key factors that adversely affected the credit score;
 - Date on which the score was credited; and
 - Name of the person or entity that provided the score.

Credit Score

- “A Numerical Value or Categorization Derived From a Statistical Tool or Modeling System Used By a Person Who Makes or Arranges a Loan to Predict the Likelihood of Certain Credit Behaviors, Including Default”
 - Could be obtained from consumer reporting agency

Proprietary Credit Scores

- Some Creditors Develop Their Own “Proprietary Scores” That May Be Based on Information Other than Information in a Consumer Credit Report
 - If a proprietary credit score is based on one or more factors other than those obtained from a consumer reporting agency, the score is not considered a credit score subject to disclosure
 - However, a creditor must disclose the reasons the consumer scored worse than other applicants
 - If a proprietary credit score is based on information contained in a consumer credit report, it is subject to disclosure per the rules applicable to a credit score

Guaranty – Spousal Guarantees Limits

- Spousal Guarantees – ECOA Regulation B Limits
- General Rule: Cannot Request Spousal Guaranty
- Spousal Guaranty Allowed in Following Circumstances:
 - Spouse can voluntarily offer guaranty
 - Spouse officer/principal
 - Joint principal-spouse ownership of property
 - Community property state
 - Principal/spouse reside there
 - Reliance on jointly owned property located there
 - Instrument must be necessary to make community property available to satisfy debt

Guaranty

- Division among U.S. Courts of Appeal on Validity of Regulation B's limits on spousal guarantees
 - 8th Circuit – No
 - 6th Circuit – Yes
 - U.S. Supreme Court in split 4-4 vote affirmed 8th Circuit decision rejecting Regulation B's limit on spousal guarantees
- This Issue will not be Resolved Until the Supreme Court again takes up issue
 - Lack of majority opinion means affirmance is not nationwide precedent and leaves state of the law in flux

PROPER USE OF SOCIAL MEDIA

Social Media

- WHAT IS IT?
 - Microblogging sites – e.g.,
 - Facebook
 - Google
 - Myspace
 - Twitter
 - Forums, blogs, customer review websites and bulletin boards – e.g.,
 - Yelp
 - Photo and Video sites – e.g.,
 - Flickr
 - YouTube
 - Sites that enable professional networking
 - Linked In
 - Virtual worlds
 - Social games

Recommendations

- Use of Social Media Must Be Carefully Managed
 - Does your company have a social media policy?
 - Has your company implemented appropriate procedures, training and oversight to ensure compliance with its social media policy and applicable laws?



Questions?

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Practice

Bruce S. Nathan, Partner in the firm's Bankruptcy, Financial Reorganization & Creditors' Rights Department, has more than 30 years' experience in the bankruptcy and insolvency field, and is a recognized national expert on trade creditor rights and the representation of trade creditors in bankruptcy and other legal matters. Bruce has represented trade and other unsecured creditors, unsecured creditors' committees, secured creditors, and other interested parties in many of the larger Chapter 11 cases that have been filed, and is currently representing the liquidating trust and previously represented the creditors' committee in the Borders Group Inc. Chapter 11 case. Bruce also negotiates and prepares letters of credit, guarantees, security, consignment, bailment, tolling, and other agreements for the credit departments of institutional clients.

Bruce was co-chair of the Avoiding Powers Committee that worked with the American Bankruptcy Institute's Commission to Study the Reform of Chapter 11 and also participated in ABI's Great Debates at their 2010 Annual Spring Meeting, arguing against repeal of the special BAPCPA protections for goods providers and commercial lessors, and was a panelist for a session sponsored by the American Bankruptcy Institute ("ABI") and co-sponsored by Georgetown University Law Center. Bruce also regularly speaks at conferences held by the National Association of Credit Management, its international affiliate, An Association of Executives in Finance, Credit and International Business ("FCIB"), Credit Research Foundation ("CRF"), and many credit groups on bankruptcy, insolvency, and creditor's rights issues; is a member of NACM's Government Affairs Committee, a regular contributor to NACM's *Business Credit*, a contributing editor of NACM's *Manual of Credit and Commercial Laws*, and co-author of *The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005: An Overhaul of U.S. Bankruptcy Law*, published by NACM; and has contributed to CRF's Journal, *The Credit and Financial Management Review*.

Bruce is recognized in the Bankruptcy & Creditor/Debtor Rights section of *Super Lawyers* (2012-2014) and in the 2014 *Super Lawyers Business Edition*. In March 2011, Bruce received the Top Hat Award, a prestigious annual award honoring extraordinary executives and professionals in the credit industry.

Bruce is also a co-author of "Trade Creditor Remedies Manual: Trade Creditors' Rights under the UCC and the U.S Bankruptcy Code" published by the American Bankruptcy Institute ("ABI") at the end of 2011, has contributed to the *ABI Journal*, and is a former member of ABI's Board of Directors and former Co-Chair of ABI's Unsecured Trade Creditors Committee.

Education

- **University of Pennsylvania Law School** (J.D., 1980)
- **Wharton School of Finance and Business** (M.B.A., 1980)
- **University of Rochester** (B.A., 1976), *Phi Beta Kappa*

Affiliations

- New York State Bar Association
- American Bar Association
 - Commercial Financial Services Committee
 - Business Bankruptcy Committee
- American Bankruptcy Institute
 - Former Member, Board of Directors
 - Former Chair, Unsecured Trade Creditor Committee
 - Regular Contributor to *American Bankruptcy Institute Journal's* "Last in Line" Column
 - Speaker at 2007 Annual Spring Meeting: "Fifty Ways to Leave Your Debtor: Lesser Known Remedies For Jilted Creditors"
 - Panelist at "Chapter 11 At The Crossroads: Does Reorganization Need Reform?" A Symposium on the Past, Present and Future of U.S. Corporate Restructuring," on November 16-17, 2009, sponsored by ABI and co-sponsored by Georgetown University Law Center
 - Participated in the Great Debates at ABI's Annual Spring Meeting held on April 30, 2010 on whether Congress should eliminate the special BAPCPA protections for providers of goods and lessors (arguing against repeal)
 - Task Force on Preferences
 - Chair, Task Force on Reclamations
 - Uniform Commercial Code Committee and Task Force - Revised Article 9 Primer
- American Bankruptcy Institute's Commission to Study the Reform of Chapter 11
 - Co-chair, Avoiding Powers Advisory Committee
- Commercial Law League of America
- Association of Commercial Finance Attorneys
- National Association of Credit Management
 - Contributor to *Business Credit* - National Association of Credit Management Magazine
 - National Bankruptcy and Insolvency Group
 - Lecturer, National Association of Credit Management and Affiliates and Credit Groups on Bankruptcy, UCC Article 9, Consignments, Letter of Credit law and other credit-related issues
- Member of FCIB, an Association of Executives in Finance, Credit and International Business. Presented at **The 4th China International Credit and Risk Management Conference**, Shenzhen, China, September 21, 2007, and **FCIB Teleconference**, December 13, 2007, on key provisions of People's Republic of China's 2006 Law on Enterprise Bankruptcy, similarities to and differences with the U.S. Bankruptcy Code, and upcoming implementation challenges
- Media Financial Management Association
 - Member
 - Frequent Lecturer
 - Contributor to "The Financial Manager" on Creditors' Rights Issues
- Lecturer, Executive Enterprises Inc. the Bank Lending Institute and the Banking Law Institute on Commercial Loan Workouts & UCC Issues
- Past Contributor
 - *Credit Today*
 - *National Credit News*

Articles/Interviews Featuring Bruce S. Nathan

- **Bruce S. Nathan is quoted in Business Credit, attributing the increase of prepackaged Chapter 11 cases.** *Business Credit*, June 2016
- **Bruce Nathan comments in NACM eNews regarding the U.S. Supreme Court's affirmance of the elimination of limits on creditors' ability to garner a spousal guarantee.** *NACM eNews*, March 24, 2016
- **Bruce S. Nathan is quoted in NACM eNews regarding the tenuous financial condition of certain large retailers, and the risks facing credit professionals in 2016 when making their credit decisions in sales to such retailers.** *NACM eNews*, January 21, 2016
- **Bruce S. Nathan is quoted in NACM eNews, predicting that the recent rate hike and future hikes by the Federal Reserve should increase the number of bankruptcy filings.** *NACM eNews*, December 17, 2015
- **Bruce S. Nathan is quoted in NACM eNews regarding the new official forms, including the new proof of claim form, used in bankruptcy cases, which became effective December 1.** *NACM eNews*, December 10, 2015
- **Bruce S. Nathan is quoted in NACM eNews concerning the increasing number of unsuccessful retail bankruptcy reorganizations.** *NACM eNews*, November 19, 2015
- **Bruce S. Nathan is quoted in NACM eNews regarding the risk of a future bankruptcy filing when a company buys a financially distressed company and in the process overleverages itself.** *NACM eNews*, November 12, 2015
- **Bruce S. Nathan is quoted in NACM eNews regarding the growing competition for retailers such as A&P and other independent retailers from big box retailers, including Walmart and Target.** *NACM eNews*, August 27, 2015
- **Bruce S. Nathan is quoted in NACM eNews concerning the potentially deleterious effects of navigating in and out of bankruptcy court too quickly.** *NACM eNews*, June 25, 2015
- **Bruce S. Nathan comments in NACM eNews regarding the Supreme Court's ruling that bankruptcy courts may not award attorneys' fees for work performed in defending their fee application in court.** *NACM eNews*, June 18, 2015
- **Lowenstein Sandler LLP Selected to Represent Official Committee of Unsecured Creditors of Gourmet Express** March 31, 2015
- **Bruce S. Nathan comments in the May 2014 Financier Worldwide Magazine on identifying early warning signs concerning a financially distressed customer and suggested steps vendors should take to mitigate their losses.** *Financier Worldwide Magazine*, May 2014
- **Lowenstein Sandler Retained as Unsecured Creditors' Counsel in Coldwater Creek Chapter 11 Case** April 25, 2014
- **Bruce S. Nathan is mentioned in Law360 in connection with his representation of the Official Committee of Unsecured Creditors of Coldwater Creek Inc.** *Law360*, April 25, 2014
- **Bruce S. Nathan was quoted in the National Association of Credit Management's eNews regarding claims against General Motors.** *NACM's eNews*, April 24, 2014
- **In NACM's eNews for December 12, 2013, Bruce Nathan comments on how the recent Supreme Court ruling regarding forum-selection clauses continues to allow opportunities for subcontractors in contract negotiations.** *NACM's eNews*, December 12, 2013

- In NACM's eNews for September 19, Bruce Nathan comments on how increased environmental regulations are putting financial strain on coal mines and causing many to shut down. *NACM's eNews*, September 19, 2013
- In NACM's eNews for August 29, Bruce Nathan comments on problems in the retail industry that are of growing concern to creditors including retailers that are overleveraged, have inadequately responded to e-commerce and made poor management decisions. *NACM's eNews*, August 29, 2013
- In NACM's eNews for August 22, Bruce Nathan comments on how the constitutionality of the Detroit bankruptcy... *NACM's eNews*, August 22, 2013
- Bruce Nathan comments on reasons for the decline of commercial Chapter 11 filings over the past year and prior years in NACM eNews, August 8, 2013. *NACM eNews*, August 8, 2013
- In NACM's e-News for July 25, Bruce Nathan comments on the complexity of Detroit's Chapter 9 bankruptcy filing, its effect on other cities facing the same problems as Detroit and its impact on trade creditors. *NACM's e-News*, July 25, 2013
- In The Deal Pipeline, Sharon L. Levin, Jeffrey Prol and Bruce Nathan are highlighted for representing the official committee of unsecured creditors in the Handy Hardware Wholesale, Inc. bankruptcy. *The Deal Pipeline*, June 21, 2013
- Bruce Nathan comments on how an MF Global Holdings Ltd. trustee's suit against Jon Corzine and other former MF Global Holdings officials for high-risk actions leading to the company's bankruptcy may lead to an additional recovery for creditors. *NACM's eNews*, April 25, 2013
- Bruce Nathan comments in NACM's eNews for April 18, 2013 on how interest rate hikes and high debts plaguing "big box" retailers may foreshadow bankruptcies in the industry and how anticipating bankruptcy helps mitigate creditors' risks. *NACM's eNews*, April 18, 2013
- In NACM's eNews, for April 4, 2013, Bruce Nathan comments on U.S. Bankruptcy Judge Christopher Klein's ruling that Stockton, California meets the threshold for eligibility on its Chapter 9 municipal bankruptcy petition. *NACM's eNews*, April 4, 2013
- Lowenstein Retained as Creditors' Counsel in Zacky Farms Chapter 11 Case October 19, 2012
- In an article on the National Association of Credit Management web site, Bruce Nathan comments on the Alabama Supreme Court's ruling to uphold Jefferson County's right to declare municipal bankruptcy in the largest Chapter 9 filing in U.S. history. *NACM ENews*, April 26, 2012
- On NACM.org, Bruce Nathan and Scott Cargill discuss the Lehman Brothers bankruptcy case. *NACM ENews*, December 8, 2011
- Bruce Buechler, Bruce Nathan and Paul Kizel are highlighted for representing the Official Unsecured Creditors Committee of Borders Group Inc *The Daily Deal*, August 11, 2011
- Bruce Nathan comments on how the debtor's right to choose the venue for Chapter 11 proceedings is part of the Bankruptcy Code's system of checks and balances between debtors' rights and creditors' rights. *Standard & Poor's LCD Distressed Weekly*, March 25, 2011
- Bruce Nathan, Bruce Buechler and Paul Kizel are highlighted for representing the Official Committee of Unsecured Creditors of Borders Group Inc *Westlaw News & Insight*, March 14, 2011
- Bruce S. Nathan discusses litigation surrounding creditors committee selection in light of recent changes to the U.S. Bankruptcy Code. *Dow Jones*, August 9, 2006

Publications

- **"A Preference Split Decision on the New Value and Ordinary Course of Business Defenses: Win Some, Lose Some!,"** Bruce S. Nathan, Eric Chafetz, *Business Credit*, July/August 2016
- **"Second Circuit Overturns Visa/MasterCard Antitrust Settlement,"** Bruce S. Nathan, Andrew David Behlmann, *NACM eNews*, July 7, 2016
- **"U.S. Supreme Court's Split Decision on Enforceability of Spousal Guarantee Limits,"** Bruce S. Nathan, *Business Credit*, June 2016
- **"The Benefits of Properly Documenting a Consignment Transaction and the Potential For Recovery By Creditors that Don't!,"** Bruce S. Nathan, David M. Banker, Barry Z. Bazian, *CRF News*, 2nd Quarter 2016
- **"Petitioning Creditor Eligibility to Join an Involuntary Bankruptcy Petition,"** Bruce S. Nathan, Eric Chafetz, *Business Credit*, May 2016
- **"The Timing of Receipt of Goods in International Transactions Could Be Hazardous to Section 503(b)(9) Priority Status,"** Bruce S. Nathan, Eric Chafetz, *Business Credit*, April 2016
- **"Social Media: The New Reality for Credit Professionals,"** Mary J. Hildebrand, CIPP/US/E, Bruce S. Nathan, Cassandra M. Porter, CIPP/US, *CRF News*, 1st Quarter 2016
- **"Spotting the Sinking Ships,"** Bruce S. Nathan, Kenneth A. Rosen, Scott Cargill, *The Financial Manager*, March/April 2016
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