

## **More Happening at Onset of Bankruptcy Cases**

It used to be commonplace that businesses filing for bankruptcy typically either reorganized or liquidated, while a portion of the businesses were sold as a going-concern. Today, however, it's quite common to see going-concern sales early in the bankruptcy case, as secured creditors view them as a good way to liquidate collateral and get paid quickly without having to finance the debtor's reorganization efforts and professional fees, said Lisa Gretchko, Esq., with Howard & Howard Attorneys PLLC of Royal Oak, MI.

Prior to 2005 amendments to §365 of the U.S. Bankruptcy Code, bankruptcy courts were permitted to extend the time for the debtor to assume or reject non-residential property leases. Now, however, the bankruptcy code limits the time a debtor can take to either assume or reject such leases to 120 days, while only one extension can be granted for 90 extra days unless the landlord agrees to another extension, Gretchko noted. This process places more pressure on businesses and makes it more difficult for them to reorganize.

Also before the 2005 amendments to the code, creditors could make reclamation claims for goods sold on credit and received by the debtor within the 10-day period. Bankruptcy code §546(c) allowed creditors with a rightful reclamation claim to have a secured claim or an administrative priority claim if they were denied their reclamation rights. After the amendments, however, reclamation claims are subject to prior recorded security interests in such goods, according to Gretchko. Creditors now get administrative priority for goods delivered to the debtor within 20 days before bankruptcy. Because claims under §503(b) (9) have administrative priority, they are paid on the effective date of the Ch. 11 Plan of Reorganization.

## **What credit manager should do under such circumstances**

Gretchko suggested the following approaches after a debtor files for Chapter 11 bankruptcy protection:

**Contact Attorney Right Away and Consider Stopping Goods in Transit.** Credit professionals should stopping even potentially with perishable goods. Include any storage or other fees. Such deliveries should remained paused until receiving a wire transfer or cash in advance of delivery. Debtors are usually lacking in cash and will seek to have creditors accept administrative claims as sufficient assurance of future payment. However, if the creditor company is willing to accept such an

administrative claim, don't deliver the goods unless the debtor issues a post-petition purchase order or the Bankruptcy Court enters an order providing that the post-petition deliveries on pre-petition purchase orders will have administrative priority.

**Consider filing a reclamation demand:** Although the 2005 amendments hollowed this remedy, the reclamation demands retained some value. This is especially the case another prior perfected security interest does not exist against the goods the creditor company is trying to reclaim.

**Ferret Out the Case Details:** Use the case information to determine if the debtor has filed a motion to sell its assets as a going-concern. If that has happened, collect all the contracts that exist with the debtor, including any rebate agreements, and figure out the amount the debtor owes under those contracts and whether your company objects to the debtor assuming your contract and assigning it as part of the sale.