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