

# Mayday!

Bankruptcy Is Looming or Filed – Now What?

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# Before a Bankruptcy Filing

For Customers:

- Look for the usual warning signs
- Monitor customers
- Consider obtaining credit support for continued shipment
- Consider changing payment terms
- Deposit payments promptly

# Before a Bankruptcy Filing

For Suppliers:

- Look for the usual warning signs
- Monitor suppliers
- Evaluate status of tooling, patterns and molds
- Evaluate status of work in process
- Consider timing for qualifying other potential suppliers

# Before a Bankruptcy Filing

For Customer and Suppliers:

- Demand adequate assurance of performance - UCC § 2-609
- Maintain accurate and complete records
- Consider terminating any existing supply contracts following default
- Exercise setoff or recoupment rights

# Different Types of Business Cases

- Chapter 7 Case: Liquidation or “straight” bankruptcy
- Chapter 11 Case: Reorganization
- Involuntary Case: Filed by creditors

# After a Bankruptcy Filing

- The automatic stay - Bankruptcy Code § 362
- Goods in transit
- Post-filing supply
  - Executory contracts - Bankruptcy Code § 365
  - “Critical Vendor” doctrine

# After a Bankruptcy Filing

- Reclamation of goods supplied in 45 days before bankruptcy - Bankruptcy Code § 546(c) and UCC § 2-702(2)
- Supply of goods during the 20 days before bankruptcy filing - Bankruptcy Code § 503(b)(9)
- Setoff and recoupment

# After a Bankruptcy Filing

- Debtor in possession (DIP) financing
- Asset sales - Bankruptcy Code § 363
- Proof of claims
  - Link to Official Form B 410  
<http://www.uscourts.gov/forms/bankruptcy-forms/proof-claim-0>

# Preferences

- Payments on existing unsecured debt - Bankruptcy Code § 547(b)
- 90-day pre-bankruptcy “look back” period
- Defenses – Bankruptcy Code § 547(c)
  - Subsequent or contemporaneous new value
  - Ordinary course of business
  - Total payments less than \$6,225
- Preference claims must be filed within two years of bankruptcy filing - Bankruptcy Code § 546(a)

# Fraudulent Transfers

- Pre-bankruptcy transfers and payments that diminish the bankruptcy estate
- Actual fraudulent transfers
- Constructive fraudulent transfers
- Two-year pre-bankruptcy “look back” period under Bankruptcy Code § 548

# Fraudulent Transfers

- Longer “look back” period under state law made applicable under Bankruptcy Code § 544
- Defenses
  - Reasonably equivalent value
  - Insolvency when the transfer was made
- Like preferences, fraudulent transfer claims must be filed within two years of bankruptcy filing - Bankruptcy Code § 546(a)

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