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BANKRUPTCY CHECK LIST

SUGGESTED LIST OF STEPS TO TAKE WHEN YOU RECEIVE A NOTICE THAT ONE OF YOUR CUSTOMERS HAS FILED A PETITION IN BANKRUPTCY.

- ▶ **1. CHECK AGED TRIAL BALANCE TO DETERMINE THE AMOUNT OF ANY BALANCE DUE.**
 - **CHECK UNDER ALL NAMES AND/OR DIVISIONS CUSTOMER (DEBTOR) MAY HAVE USED.**
 - **CHECK BANKRUPTCY PETITION TO DETERMINE IF A DATE HAS BEEN SET FOR SUBMITTING CLAIMS.**
 - **CHECK DATE OF FIRST CREDITOR'S (401) MEETING**
 - **CONSIDER SERVING ON THE UNSECURED CREDITOR'S COMMITTEE, EVEN IF YOU ARE NOT ON THE LIST.**

- ▶ **2. CHECK FOR ANY ORDERS RECEIVED, BUT NOT YET SHIPPED TO THE CUSTOMER (DEBTOR). CONSIDER CANCELING ORDER(S) AND/OR FOLLOW UP WITH CUSTOMER.**

- ▶ **3. CHECK FOR ALL ORDERS SHIPPED TO CUSTOMER 20 DAYS PRIOR TO BANKRUPTCY PETITION DATE. CONSIDER INITIATING RECLAMATION ACTION TO RETRIEVE GOODS OR TO COLLECT VALUE THEREOF.**

- ▶ **4. CHECK FOR PAYMENT(S) RECEIVED WITHIN THE 90 DAYS PRIOR TO AND INCLUDING THE DATE OF THE BANKRUPTCY PETITION.**

- ▶ **5. DETERMINE IF BAD DEBT RESERVE IS SUFFICIENT TO COVER CONTINGENT LIABILITY OF POSSIBLE PREFERENCE CLAIM. THIS IS IMPORTANT DUE TO SARBANES-OXLEY REPORTING REGULATIONS**

- ▶ **6. PULL CUSTOMER'S CREDIT FILE AND GATHER ALL DOCUMENTS RELATING TO THE RELATIONSHIP BETWEEN YOUR COMPANY AND THE DEBTOR FOR THE 90 DAYS PRIOR TO AND INCLUDING THE BANKRUPTCY PETITION DATE, PLUS A MINIMUM OF ONE YEAR PRIOR TO THE 90-DAY PREFERENCE PERIOD. DOCUMENTS SHOULD INCLUDE, BUT NOT BE LIMITED TO:**
 - **ALL INVOICES ISSUED TO DEBTOR**
 - **ALL PURCHASE ORDERS RECEIVED FROM DEBTOR**
 - **ALL RECORD OF PAYMENTS RECEIVED FROM DEBTOR**
 - **CASH APPLICATION RECORD**

- **ALL STATEMENTS AND/OR ACCOUNTS RECEIVABLE TRIAL BALANCE OF DEBTOR'S ACCOUNT**
- **ALL CORRESPONDENCE BETWEEN COMPANY PERSONNEL AND DEBTOR – INCLUDE LETTERS, E-MAILS, FAXES, ETC. FROM/TO SALES PERSONNEL, COLLECTION NOTES, RECORDS OF PHONE CALLS OR PERSONAL MEETINGS**
- **CREDIT APPLICATIONS RECEIVED FROM DEBTOR**
- **CREDIT INQUIRY RESPONSES ON DEBTOR**
- **CREDIT REPORTS OBTAINED ON DEBTOR**
- **CREDIT INDUSTRY GROUP REPORTS/STATISTICS ON DEBTOR**

▶ **7. PLACE ALL DOCUMENTS IN A SAFE AND SECURE FILE – THEY WILL BE INVALUABLE IN DEFENDING ANY FUTURE PREFERENCE ACTION AGAINST YOUR COMPANY AND WILL BE UTILIZED BY THE EXPERT WITNESS YOUR ATTORNEY HIRES.**

▶ **8. CONTACT YOUR IN-HOUSE COUNSEL, IF NONE, CONTACT OUTSIDE COUNSEL WHO SPECIALIZES IN BANKRUPTCY AND CREDITOR'S RIGHTS LITIGATION.**

▶ **9. CONSIDER ANY OFFER TO BUY YOUR CLAIM IN THE BANKRUPTCY THAT MIGHT RECEIVED FROM A "CLAIMS VULTURE." HOWEVER, SELLING**

**YOUR CLAIM MAY NOT PROTECT YOU
FROM ANY FUTURE PREFERENCE ACTION.**

- ▶ **10. CONDUCT A “POST-MORTEM” ON THE ACCOUNT – REVIEW AND DISCUSS ALL ACTIVITIES BETWEEN YOUR COMPANY AND THE DEBTOR DURING THE MONTHS PRIOR TO THE BANKRUPTCY FILING. INCLUDE EVERYONE IN THE DISCUSSION WHO HAD CONTACT WITH THE DEBTOR – SALES, ORDER PROCESSING, CREDIT AND/OR COLLECTIONS, TECHNICAL SUPPORT, ETC. DETERMINE IF THERE WAS ANYTHING THAT COULD HAVE BEEN DONE, THAT WASN’T, TO REDUCE YOUR COMPANY’S CREDIT EXPOSURE WITH THE DEBTOR.**

REMEMBER, THIS IS NOT AN ACTIVITY INTENDED TO PLACE BLAME, BUT TO REVIEW YOUR PROCEDURES TO SEE IF THERE IS ANYTHING THAT CAN BE IMPROVED.

AND, LASTLY, DON’T BEAT YOURSELF UP OVER THE LOSS!

REMEMBER, YOU CAN’T PREVENT A BANKRUPTCY, YOU CAN ONLY MINIMIZE YOUR LOSSES.

- ▶ **11. REMEMBER, A TRUSTEE IN BANKRUPTCY OR AN UNSECURED TRADE CREDITORS COMMITTEE CAN INITIATE A PREFERENCE ACTION DURING A TWO-YEAR**

PERIOD FOLLOWING THE DATE OF THE BANKRUPTCY PETITION. NOTIFICATION OF THE POSSIBILITY OF SUCH ACTION USUALLY COMES IN THE FORM OF A DEMAND LETTER. DEPENDING ON THE AMOUNT OF THE CLAIM, THESE LETTERS USUALLY INCLUDE AN OFFER FOR A DISCOUNT IF THE CLAIM IS PAID WITHIN A SPECIFIED PERIOD TIME. UNLESS THE DISCOUNT OFFER IS SUBSTANTIAL, IT IS SUGGESTED THAT SUCH OFFER LETTERS BE IGNORED.

REMEMBER, PREFERENCE CLAIMS ARE NEGOTIABLE, EVEN AFTER SUIT HAS BEEN FILED.

NOTE: PLEASE FEEL FREE TO CALL US IF YOU HAVE QUESTIONS REGARDING PREFERENCE CLAIMS: 719-641-0169

THIS CHECK LIST AND SUGGESTIONS CONTAINED HEREIN IS NOT INTENDED TO BE LEGAL ADVICE AND IS NOT A SUBSTITUTE FOR COMPETENT LEGAL ADVICE ON THE REFERENCED SUBJECT. ALWAYS CONSULT A COMPETENT BANKRUPTCY AND CREDITORS' RIGHTS ATTORNEY FOR ADVICE.