

Bankruptcy: A Creditor's Perspective, from In-House and Outside Counsel

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Bankruptcy

A View From the Creditor Client's Desk

Preliminary Matters

- Education
 - One of the single most important assets a creditor has at its disposal is a well trained officer, who not only understands the basic rules of bankruptcy, but is also trained to watch for preference actions and exercises appropriate due diligence when handling a potentially insolvent debtor.
- Notice Distribution
 - A common complaint: the creditor did not know the debtor filed bankruptcy.
 - National Creditor Registration Service – <https://ncrs.uscourts.gov/>
 - Electronic Bankruptcy Noticing – <http://ebn.uscourts.gov/index.adp>
 - Distribution Within Organization

Creditor Considerations

- Contact with a Debtor: When, Where, Why & How
- Reaffirmation Agreements
- Relief from the Stay & Collection Issues
 - Foreclosure Considerations
 - Article 9 Collateral
- Payments

- Revolving Credit – Pre-petition vs. post-petition debt
- Proofs of Claim – Accurate and timely filing
- Chapter 11 – DIP Accounts to Executory Contracts
- Preference Claims/Fraudulent Transfers

Bankruptcy Litigation

Considerations in advising your client

Preliminary Matters

- Does your client have a litigation policy?
- Does your client understand potential insurance coverage issues associated with the litigation?
 - Is your client providing notice in a timely fashion?
 - What are your clients providing to their carrier?
- What happens from an organizational perspective once litigation has been filed?
 - Special considerations for those representing financial institutions.

Discovery

- Does your client have an email retention policy and/or a well-defined process for e-discovery?
 - Who, What, When & How (electronic data preservation)
 - What are the potentials for human intervention in this process?
- How is data collected & produced?
- Outside of e-discovery, are physical documents properly maintained? Has the janitor been notified not to shred those boxes?
- Are there other policies that may interfere with your client's production? For example, does your client have a BYOD policy?

Client Observations

- The Legal Process – Client Communication
- Public Relations/Staff Communication
- Alternative Dispute Resolution/Settlement
- The Value of a Case
- The Importance of Recognizing and Preserving Privilege
- The Closing of a Litigation File

Thank you!

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