Overview of U.S. Bankruptcy Law and Procedure: Dealing with Customers in These Troubled Economic Times

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During the past year, the United States has experienced its most severe economic crisis in more than 70 years. The number of corporate bankruptcy filings has risen dramatically during this period. Even blue chip companies with well-known brands have struggled in the face of dramatically shrinking sales and a shortage of available credit. This has been true, in particular, for automobile manufacturers and their direct and indirect suppliers. GM and Chrysler were recently forced to seek bankruptcy protection, and even if, as expected, they are successfully reorganized, they will emerge from bankruptcy significantly down-sized, and their long-term prospects will remain uncertain for some time to come. Japanese companies need to have a clear understanding of what to do if their customers or business partners experience financial distress or even go bankrupt. In this article we summarize the basics of U.S. bankruptcy law and procedure, and at the end of this article, we provide some tips to better protect you if you are a supplier to a troubled or bankrupt company.

1. **Laws Governing Bankruptcy in the United States**

The United States Bankruptcy Code (the "**Bankruptcy Code**"), set forth as Title 11 of the United States Code, governs most insolvency cases in the United States. The Bankruptcy Code applies to all cases commenced by the filing of a bankruptcy petition in a United States Bankruptcy Court (discussed below). Please note that there are special laws, the Federal Deposit Insurance Act and the Securities Investor Protection Act, for cases involving banks and securities brokerage firms. There are also out of court alternatives to filing for bankruptcy under the Bankruptcy Code; for example, a company can consensually restructure its debt with its largest creditors, sell some or all of its assets, or even dissolve the company or partnership according to the procedures outlined in its formation documents and the laws of the state of its incorporation. The focus of this article, however, is on cases filed under the Bankruptcy Code.

2. **Commencement of a Bankruptcy Case Under the Bankruptcy Code**

(a) <u>Filing the Petition</u>

A bankruptcy case is commenced under the Bankruptcy Code by the filing of a basic form petition. The Bankruptcy Courts are special federal courts with jurisdiction over bankruptcies and related cases. The date that the petition is filed is called the "petition date," which is a critical date for determining the value of creditors' claims against the debtor's bankruptcy estate (discussed below). The Bankruptcy Code's primary purpose is to provide an equal distribution for all creditors and interest holders in the same class (Under the Bankruptcy Code, those having claims or interests with similar priority against the debtor's bankruptcy estate shall constitute a class of creditors or interest holders).

There are two types of bankruptcy cases, voluntary and involuntary. A bankruptcy is voluntary when a company places itself into bankruptcy by filing a petition on its own behalf, and thereby becomes a debtor (the "**Debtor**") under the Bankruptcy Code. There is no

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express requirement that a company be insolvent when it files a voluntary bankruptcy petition. A bankruptcy is involuntary when creditors place a company into bankruptcy by filing a petition on the company's behalf. However, there are strict Bankruptcy Code requirements for filing an involuntary petition against a debtor, which creditors must be careful to follow. For example, in order to file an involuntary petition, three or more general unsecured creditors (i.e., creditors whose claims are not secured by a lien or security interest on any of the Debtor's assets) must join in such a filing. Also, if creditors file an involuntary petition, the Bankruptcy Court must find that the Debtor is not paying its debts when they become due.

(b) The Debtor's Bankruptcy Estate

The filing of a petition with the Bankruptcy Court automatically creates the Debtor's bankruptcy estate, which consists of all property, rights and interests, as well as rents and proceeds collected from property, owned by the Debtor as of the petition date, wherever located and by whomever held. The Debtor's bankruptcy estate also includes any property or interests acquired or recovered after the petition date, including recoveries that are the result of preferential or fraudulent transfers (discussed below).

3. Types of Bankruptcy Cases Filed Under the Bankruptcy Code

(a) Chapter 7: Liquidation

The purpose of a bankruptcy case filed under chapter 7 of the Bankruptcy Code is to liquidate the assets of the Debtor and distribute the proceeds to creditors as soon as possible. In a chapter 7 bankruptcy case, a petition is filed, the Debtor's management is removed, a trustee is automatically appointed, the Debtor's assets are collected, the trustee sells the assets, and the proceeds are distributed according to the provisions of the Bankruptcy Code. The trustee will oversee the administration of the bankruptcy case and conduct the sale of the Debtor's assets. A chapter 7 case is structured around specific provisions of the Bankruptcy Code that create strict priority rules for the distribution of proceeds from the sale of the Debtor's assets.

(b) Chapter 11: Reorganization

The purpose of a bankruptcy case filed under chapter 11 of the Bankruptcy Code is to restructure the company so that it can emerge as a "going concern" pursuant to a plan of reorganization. Generally, the Debtor's management will stay in place and run the company as a "debtor in possession." Nonetheless, the Bankruptcy Court may remove management and appoint a trustee if it is in the best interests of the creditors. One aspect unique to a chapter 11 bankruptcy case is the creation of an official committee of unsecured creditors (the "**Committee**"), which plays a major role in most chapter 11 cases. It is usually made up of seven of the Debtor's largest unsecured creditors and its purpose is to represent the interests of all unsecured creditors. The Committee is authorized to retain counsel and other professionals, whose fees are paid for out of the Debtor's bankruptcy estate. The Debtor usually consults with the Committee regarding its actions during the chapter 11 case, and the Committee participates in the negotiations regarding a plan of reorganization. In large or complex cases, the Bankruptcy Court may also appoint other committees to represent the interests of creditors with similar claims or even equity holders.

In a chapter 11 bankruptcy case, the filing of the petition is usually accompanied by several motions, called the "first day motions." The purpose of these motions is to allow the Debtor to manage its business with as little interruption as possible. For example, the Debtor may ask the Bankruptcy Court to authorize it to pay employee wages, keep utilities in service, and have access to financing so it can continue to do business. The Debtor will file numerous further motions for relief during the case, asking the Bankruptcy Court to authorize it, for example, to employ legal counsel and to reject certain contracts. The Debtor is permitted to enter into ordinary course business transactions during the pendency of the case, but must seek Bankruptcy Court approval to use, sell, or lease assets of its bankruptcy estate that are outside of the ordinary course of its business. During the course of a chapter 11 bankruptcy case, the Debtor must file schedules of its assets and liabilities (including contracts) and monthly operating reports. The final step in a chapter 11 bankruptcy case is the confirmation of a plan of reorganization, which details the amount of money each class of creditors and interest holders will receive and the Debtor's post-bankruptcy business plan. If a plan is not approved, the Debtor may liquidate under chapter 11 or convert the case and liquidate under chapter 7. The benefit to the Debtor of liquidating in chapter 11 is that the Debtor's normal management can conduct the liquidation and the assets will usually get higher prices. This article will focus mainly on bankruptcy cases filed under chapter 11 of the Bankruptcy Code.

4. **Important Aspects of a Chapter 11 Bankruptcy Case**

(a) <u>The Automatic Stay</u>

A very important aspect of a bankruptcy case is the automatic stay. As from the petition date, no individual or entity may commence or continue any action or proceeding against the Debtor to collect money on a claim which arose before the petition date, or take action against any property of the Debtor's bankruptcy estate. This is automatic; no court order is needed. If a creditor wants to take any action against the Debtor or its estate, it must file a motion with the Bankruptcy Court and seek to lift the automatic stay (relief from automatic stay) by showing either that the Debtor has no equity in the property and that the property is not necessary for a successful reorganization, or that other good cause exists to warrant the relief requested. If the automatic stay is violated, the creditor may be subject to damages and even fines.

It is important to note, however, that the automatic stay does not extend to property that is not part of the Debtor's bankruptcy estate. That is why, for example, letters of credit can be highly beneficial in commercial transactions. Letters of credit are independent transactions between non-debtor parties and are not part of the Debtor's bankruptcy estate; therefore, a creditor may draw on a letter of credit if it secures all or part of the Debtor's obligation to it. Similarly, a creditor's right to take action against third party guarantors are not stayed. A cash security deposit, in contrast, would constitute part of the Debtor's bankruptcy estate and could not be applied against an obligation owing to the creditor unless the Bankruptcy Court were to grant a relief from the automatic stay.

(b) <u>DIP Financing and the Debtor's Use of Cash Collateral</u>

In most chapter 11 cases, the Debtor needs money to continue to operate its business. It is often the case that all of the Debtor's assets will be subject to liens in favor of its lenders or other creditors, and such liens attach to the proceeds generated by the disposition of the Debtor's property such as inventory. Such proceeds are called "cash collateral." In order to use cash collateral, the Debtor must have the consent of its secured creditor(s) or authorization from the Bankruptcy Court. The Debtor's right to use the cash collateral will usually be conditioned upon its providing the secured creditor with adequate protection of its secured interest. Adequate protection can consist of periodic cash payments, additional liens, or other relief that will protect the secured creditor against a diminution in the value of its collateral.

The Debtor may also need to obtain additional financing in the form of credit that will finance its operations as the debtor in possession of the company ("**DIP Financing**"). The Debtor may enter into ordinary course arrangements with creditors for unsecured credit without the approval of the Bankruptcy Court. These creditors, usually trade creditors with whom the Debtor has previously worked, in return will hold administrative claims against the Debtor, which will entitle them to payment before any claims that arose prior to the commencement of the chapter 11 case ("prepetition claims") are paid. If the Debtor is unable to obtain unsecured credit in the ordinary course, it may obtain authorization from the Bankruptcy Court to incur new debt. This credit will typically be granted a superpriority administrative claim, and secured by a lien on property that is otherwise not secured or a junior lien on property that is otherwise secured. As a last resort, if none of the above types of DIP Financing are possible, in rare circumstances the Bankruptcy Court may authorize the Debtor to give a creditor a lien on property that is senior or equal to liens held on the same property by other creditors. To obtain this type of DIP Financing, the Debtor must prove that the secured creditor who already has an interest in the property will be adequately protected after the additional lien is granted.

(c) The Debtor's Right to Assume, Assign, or Reject Executory Contracts and Unexpired Leases

The Bankruptcy Code gives the Debtor the ability to review all of its executory contracts (i.e. contracts for which material obligations remain unperformed on both sides) and unexpired leases and decide whether it is in its best interest to continue performance. Clauses in these contracts or leases that prohibit assignment to third parties or that purport to allow the creditor the right to terminate if the Debtor files for bankruptcy are usually invalid under the Bankruptcy Code. From the petition date, the Debtor has until the time for confirmation of its plan of reorganization to decide whether to assume or reject its executory contracts or leases of personal property. Leases of nonresidential real property, however, must be assumed or rejected within 120 days of the petition date. The Bankruptcy Court can extend such time by 90 days, but further extensions past 210 days require the consent of the lessor.

If the Debtor assumes a contract or lease, it must first satisfy all money owed in arrears to the creditor and offer assurance, satisfactory to the Bankruptcy Court, that it will perform all of its obligations under the contract or lease in the future. If the Debtor rejects a contract or lease, it is no longer obligated to perform and the creditor's only recourse is to file a claim for damages, which will be treated as a prepetition general unsecured claim. If the Debtor assigns a contract or lease to a third party, it must provide the creditor with assurance, satisfactory to the Bankruptcy Court, that the third party will perform all obligations under the contract or lease in the future. A creditor must be given notice and an opportunity to be heard regarding a proposed assignment.

(d) Creditors' Claims Against the Debtor's Estate

For claims that accrue after the petition date, the Debtor is required to pay creditors timely the money that they are owed, and such claims have a senior priority against the Debtor's bankruptcy estate above prepetition claims. For prepetition claims, a creditor must follow the procedures set forth in the Bankruptcy Code for the assertion of a claim against the Debtor's bankruptcy estate. The Debtor is required to file a list of prepetition claims and their amounts within the schedules it files early on in the case. The Bankruptcy Court, at the Debtor's request, will then set a deadline, known as the "bar date," by which a creditor must respond by filing a "proof of claim" if it disagrees with the amount of its claim as reported in the Debtor's schedules. All creditors must be notified of this date. If a creditor is notified but fails to respond by the bar date, it is barred from asserting a claim for any additional or different amount against the Debtor's bankruptcy estate and it is bound by the amount of the claim as reported in the Debtor's filing (even if such amount is $0).

Once the claim amounts are settled and a plan of reorganization has been confirmed (see discussion below), the claims will be paid essentially according to the following priorities: (1) secured claims, (2) super-priority administrative expenses of the bankruptcy (i.e., claims for money loaned to the Debtor during the chapter 11 case), (3) general administrative expenses of the bankruptcy (these include accrued postpetition claims and the fees and expenses of counsel for the Debtor and the Committee), (4) priority claims (e.g., tax claims), (5) general unsecured claims, and (6) equity interests. Holders of general unsecured claims usually get very little, if any, satisfaction of their claims, and equity interests in most chapter 11 bankruptcy cases are wiped out.

(e) Creditors' Rights and Remedies – Setoff, Reclamation, and 503(b)(9) Claims

If a creditor has a prepetition claim against the Debtor, but also owes a debt to the Debtor that arose prepetition, the creditor may be entitled to apply the debts against each other, canceling some or all of the creditor's debt. This is called a "setoff." The creditor must have this right under applicable non-bankruptcy law and must then petition the Bankruptcy Court for such relief, because the automatic stay still applies.

If a creditor sold goods on credit to an insolvent Debtor in the ordinary course of business within the forty-five days prior to the petition date, the creditor may have a right to reclaim those goods. To reclaim the goods, the creditor must send a written reclamation demand to the Debtor within twenty days of the petition date and prove that the Debtor is still in possession of the goods. Reclamation demands are subject to the interests of creditors that have a security interest in the goods. Therefore, the creditor who demands reclamation must satisfy any lien which a secured creditor has on the goods before the creditor can take possession of those goods. Also, if the Debtor has sold such goods, or if the creditor fails to satisfy certain other requirements, the creditor's reclamation right will fail.

In such event, the creditor may nevertheless be able to assert an administrative claim against the Debtor under section 503(b)(9) of the Bankruptcy Code for the value of the goods that the Debtor received in the ordinary course of business within the twenty days prior to the petition date. For a recovery under section 503(b)(9) of the Bankruptcy Code, the creditor does not need to prove that the Debtor was insolvent when it received the goods.

(f) Avoidance Actions

The Debtor has the power to avoid certain prepetition transfers to creditors and to recover the money or property that was transferred. The money or property that is recovered becomes part of the Debtor's bankruptcy estate.

One type of transfer that the debtor may avoid is referred to as a "preferential" transfer. A transfer of the Debtor's interest in money or property is considered preferential if it is made to or for the benefit of a creditor on account of a pre-existing debt while the debtor was insolvent and during the ninety days prior to the petition date. For the Debtor to avoid the transfer, the Debtor must prove that the transfer enabled the creditor to receive more than the creditor would have received if the case were a chapter 7 liquidation and the creditor received the distribution to which it would have been entitled thereunder. The debtor is presumed insolvent during the ninety day period prior to the petition date. For insiders, such as directors or officers, the Debtor may reach back to transfers that occurred up to one year prior to the petition date. Creditors from whom recovery is sought can successfully defend their right to retain the money or property transferred by establishing that the transfers were made in the ordinary course of business or that "new value" (which can be money or goods or services having the equivalent value to the money, etc.) was subsequently given to the Debtor.

Another type of transfer that the Debtor may avoid is a "fraudulent" transfer. There are two types of fraudulent transfers, actual and constructive. A transfer of the Debtor's interest is considered actual fraud if the Debtor made the transfer with the intent to hinder, delay, or defraud creditors. In contrast, a transfer of the Debtor's interest is considered constructive fraud if the interest that the Debtor received was not reasonably equivalent in value to the asset that it transferred and the Debtor was insolvent at the time (or made insolvent by the transfer). The Debtor may avoid such transfers if they occurred up to two years prior to the petition date. In addition, the Bankruptcy Code allows the Debtor to avoid transfers where an applicable state law allows such avoidance. Debtors often prefer the state law actions because they typically allow for the recovery of money or property for longer periods – in some cases up to six years - prior to the petition date.

(g) Sale of the Debtor's Assets

Section 363 of the Bankruptcy Code allows the Debtor, or the trustee if one is appointed, to sell the Debtor's assets if it is in the best interests of the Debtor and its creditors. While once uncommon, it is no longer unusual for substantially all of a chapter 11 Debtor's assets to be sold as a going concern under Section 363. The assets can be sold free and clear of any liens or encumbrances if the Debtor can meet certain broad Bankruptcy Code requirements. A sale of the Debtor's assets is usually undertaken pursuant to an auction process, so that the Bankruptcy Court can be satisfied that the "highest and best" offer for such assets is realized for the benefit of the Debtor's bankruptcy estate. An entity holding a claim secured by property may "credit bid" on that property by offering to cancel the claim that it has to such property instead of offering cash.

(h) The Chapter 11 Plan of Reorganization

To accomplish a reorganization under chapter 11 of the Bankruptcy Code, a plan of reorganization for the Debtor must be confirmed. During the first 120 days of the bankruptcy case, the Debtor has the exclusive right to file a plan of reorganization, which gives it effective control over the chapter 11 case. This time period may be extended by the Bankruptcy Court for up to 18 months.

The party who proposed and submitted a plan of reorganization must file a disclosure statement before interest holders may vote on a plan of reorganization. A disclosure statement must describe the history of the company, the events leading up to the bankruptcy filing, details about the Debtor's post-bankruptcy business plans, and the treatment of outstanding claims against the Debtor's bankruptcy estate. The purpose of the disclosure statement is to enable creditors to understand the risks of the plan of reorganization and how their claims will be treated.

A plan of reorganization must identify each class of interest holders (see Part 2(a) of this article) and the treatment that each class will receive under the plan. Similarly situated claimants must receive similar treatment under a plan of reorganization. The plan must also account for the distribution of claims according to the priorities laid out in the Bankruptcy Code (and discussed above). If these standards are not met, the plan must include a detailed explanation of the reason.

The Bankruptcy Court must approve both the disclosure statement and a plan of reorganization before they are sent to the interest holders. All creditors and interest holders receiving less than full satisfaction of their claims (i.e., the “impaired” creditors and interest holders) are entitled to vote on a plan of reorganization. For a class of creditors to accept a plan of reorganization, it must be approved by at least two-thirds in amount and one-half in number of the creditors who have voted on such plan. For a class of equity interest holders to accept a plan of reorganization, it must be approved by at least two-thirds in amount of the equity interest holders who have voted on such plan.

Even if a plan of reorganization is not approved by every class of creditors and interest holders, the Bankruptcy Court may still approve it if the plan does not discriminate unfairly, is fair and equitable, and meets the other requirements for the confirmation of a plan (discussed below). This is called a “cramdown.”

For a Bankruptcy Court to confirm a plan of reorganization, it must find that the plan satisfies the requirements of the Bankruptcy Code. For example, the plan of reorganization must be feasible (i.e., the debtor must not be likely to liquidate or enter bankruptcy again), creditors and interest holders within each class must be treated similarly, and those creditors and interest holders who did not vote to approve the plan must receive property of a value that is not less than they would receive if the Debtor filed a chapter 7 liquidation case.

Once a plan of reorganization has been confirmed, it binds the Debtor, all creditors, and all equity interest holders. Therefore, all rights of prepetition interest holders are determined by the plan of reorganization, which becomes a contract of the post-bankruptcy company. The Debtor is also discharged from most prepetition debts as long as it does not liquidate and it continues to engage in its business. After confirmation, the Debtor is free to operate its business without the need for the approval or intervention of the Bankruptcy Court (although the Bankruptcy Court retains jurisdiction to enforce any aspect of the plan of reorganization).

5. **Action Plans for General Creditors**

(a) <u>Prior to the Bankruptcy of a Customer</u>

As the overview above makes clear, the Bankruptcy Code provides strong protections for the Debtor’s interests during a chapter 11 case. Because the filing of a bankruptcy petition by a customer will temporarily or permanently suspend many contractual and legal rights that exist outside of bankruptcy, a general unsecured creditor, such as a supplier of goods or services, should be vigilant and proactive well before a case is commenced in order to protect its interests. Suppliers must be attentive regarding the financial condition of their customers and take appropriate steps at signs of trouble.

For any supplier, the first key to protecting its interests is to properly structure its relationship with its customers. The best protection always is to have an interest in the customer’s property or other collateral as security for the customer’s obligations. This can be a letter of credit, a cash deposit, or a lien. Upon suspecting a potential default, a supplier should also tighten credit terms to net-thirty days or less. If there is a contract that governs the customer relationship, it should be amended to include non-bankruptcy or non-insolvency triggers for clauses allowing termination, modification, or pre-payment, limiting the credit terms, or requiring adequate assurance. Any automatic renewal clauses in a contract should be reconsidered. All future contracts should require positive notice for a renewal to become effective. Finally, express language in all contracts should allow setoff upon the default of a customer, not just upon the termination of the contract, although as stated above, the automatic stay would prevent taking a setoff after the filing of a bankruptcy petition.

Second, suppliers must stay informed about the financial stability of their customers. Very few troubled companies receive the type of publicity that recently has been focused on GM and Chrysler, for example. A supplier needs to understand both the financial health of its customers' industries, and the financial health of its individual customers. For publicly-held companies, information is readily available, and a supplier should regularly obtain all publicly filed financial disclosures. A supplier of privately-held companies should require the regular reporting of financial information as part of the contractual relationship, and should require that customers provide notice when they fails to timely make payments to other parties with whom they have contracts. Sales and credit personnel should speak with in–house and outside counsel regarding all relevant concerns about a customer before a bankruptcy petition is filed.

Third, a supplier needs to understand fully all steps that it can take against a financially troubled customer up to the point of the commencement of a bankruptcy case. Under the Uniform Commercial Code, which is the law in most of the United States, if a supplier reasonably believes that a customer will fail to perform under an agreement, the supplier may suspend performance and demand adequate assurance of future performance. If the customer does not supply adequate assurance within a reasonable time period, a supplier may be able to treat the contract as if it were terminated. Moreover, if it can be determined that the customer is insolvent, a supplier may refuse to deliver goods unless the customer pays for those goods in cash, and goods that were recently sold on credit may be reclaimed.

Finally, every supplier to a company that it suspects of being in financial distress should have a plan firmly in place of steps that it needs to take upon learning of its customer's bankruptcy. The person in charge of the customer relationship should have a full list of all parties within the supplier's organization who need to be notified along with outside counsel, and responsibilities must be clearly understood. This person should also maintain and share an updated file containing the names of the contact people at the customer and the terms of all contracts, so that there will be an easy frame of reference.

(b) <u>During the Bankruptcy of a Customer</u>

Once a customer files a bankruptcy petition, a supplier should take steps to ensure that it does not violate the automatic stay by demanding payment from the Debtor, terminating the Debtor's rights under a contract, or taking action against the Debtor to collect money. In addition, no setoff rights may be exercised without a grant of relief from the stay by the Bankruptcy Court.

It is crucial for a supplier to communicate with outside counsel as soon as a customer commences a chapter 11 bankruptcy case. The Debtor will be filing the "first day motions" described in Part 3(b) of this article, some of which will affect its suppliers' interests. In addition to having outside counsel appear as early as possible in the chapter 11 case in order to try and mitigate the impact of any orders entered immediately following the outset of the case, suppliers should take other basic steps, such as (i) putting the Debtor on pre-pay terms and/or (ii) creating new accounts for all postpetition transactions with the Debtor. Demands for potential reclamation claims (discussed in Part 4(e) of this article) should be sent out immediately.

In addition, suppliers should reaching out to contacts at the Debtor's company to obtain as much information as possible regarding the Debtor's status and steps that it has taken or expects to take in the bankruptcy case. In some cases, suppliers that are willing to provide credit to the Debtor are given preferential treatment for their prepetition claims, pursuant to what is usually referred to as a "critical vendor" order. In addition, a supplier should be aware of whether the Debtor has obtained DIP Financing (discussed in Part 4(b) of this article). Such new financing, combined with the liquidity boost that the Debtor receives because it is stayed from paying prepetition claims, and the senior priority given to postpetition claims (discussed in Part 4(d) of this article), sometimes creates the somewhat strange situation where the Debtor can actually be a good credit risk. A supplier that is well informed about key events in the Debtor's case can therefore have a significant edge over competitors.

As described in Part 4(c) of this article, the Debtor has the right to review its executory contracts and unexpired leases, and decide which contracts it wishes to assume and carry forward, and which ones it deems burdensome and wishes to reject. This can place a substantial burden on a supplier that does not know what the fate of its agreement with the Debtor will be. Such a supplier should discuss with outside counsel the possibility of filing a motion with the Bankruptcy Court to compel the Debtor to make its decision regarding assumption or rejection within a specified period of time.

An issue that will come up very early in the case for suppliers that have substantial claims will be whether to seek a position on the Committee (discussed in Part 3(b) of this article). There is often strong competition to be on the Committee because its members have access to confidential information of the Debtor, can build strong relationships with the Debtor's executives, and can participate in the crucial decisions regarding the Debtor's plan of reorganization. However, serving on the Committee also involves a great deal of responsibility. It usually requires a large time commitment, including possible weekly meetings or conference calls. Even though most expenses may be reimbursed, members are not compensated for their time. Moreover, since Committee members owe a fiduciary duty to all unsecured creditors, they cannot hold their own interests over those of the creditors as a whole.

Finally, as mentioned in Parts 4(d) of this article, a claims bar date will be set by the Bankruptcy Court during the bankruptcy case. Any creditor that fails to file a proof of claim by the claims bar date will be forever barred from recovering any money in excess of the amount reported by the Debtor in its schedules. In addition, suppliers should also file a claim under section 503(b)(9) of the Bankruptcy Code for any goods received by the Debtor within twenty days before the petition date. The Bankruptcy Code does not set a time restriction on when such a claim must be filed, but the Bankruptcy Court will likely set such a date.

6. **Conclusion**

When dealing with customers in the current global economy, a supplier must be vigilant to protect its interests. However, once a customer has filed for bankruptcy, the supplier's vigilance must turn to caution so as to avoid liability for violating the strict protections afforded to the Debtor under the Bankruptcy Code. A supplier must know its rights and work with legal counsel to devise the safest and most effective plan of action for its company.