PROTECTIONS FOR VENDORS IN TRYING ECONOMIC TIMES

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Vendors are an integral part of the framework of the American business model. From vendors who supply businesses with tangible goods such as furniture, electronics, garments, and candy, to those who supply businesses with intangibles such as software, without vendors, businesses across the country would not have goods to sell to consumers. Vendors often supply goods to businesses on credit, without requiring payment up-front, with the understanding that the vendor will get paid when the proprietor sells the goods in question. During good economic times, this creates a great working relationship: the vendor creates greater exposure for its goods by providing the goods to businesses with the expectation of getting paid when the goods sell; in turn, a business is able to market the vendor's goods without having to first purchase the goods from the vendor. However, during difficult economic times, vendors are often the first to suffer a loss. When economic times get tough, it is important for vendors to know how to protect themselves.

One simple way a vendor can protect itself when providing goods to a business is by requiring the business to pay the vendor upon delivery of the goods. This cash on delivery ("C.O.D.") system completely diminishes the risk of non-payment to the vendor. In some situations, the California Commercial Code even allows a vendor to demand C.O.D. where the vendor is under

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contract to provide goods on credit. For example, if the vendor discovers that the buyer is insolvent, a vendor can refuse delivery of goods to the vendor unless payment is provided upon delivery. *See* Cal. Comm. Code § 2702(1). Additionally, if a vendor discovers a buyer is insolvent after having delivered goods on credit, the vendor may reclaim the goods delivered if it demands return of the goods within 10 days after delivery. *See* Cal. Comm. Code § 2702(2). It is important to note that the 10-day rule does not apply if the buyer misrepresented its solvency to the vendor in writing within three months of delivery. *See id.* Thus, the California Commercial Code provides vendors with protections at the first sight of a business's insolvency.

Vendors are also afforded protections under federal bankruptcy law after an insolvent business files for bankruptcy protection. Under federal bankruptcy laws, certain claims against a debtor receive priority payment. *See* 11 U.S.C. § 507. A category of claims, those classified as administrative expenses, receive second level priority, after a debtor's domestic support obligations. *See* 11 U.S.C. § 507(a)(2). Administrative expense claims have priority over claims for taxes, unpaid wages, and other unsecured claims. Federal bankruptcy law extends this administrative level priority to vendors who have provided a debtor with goods within 20 days before the debtor declares bankruptcy. *See* 11 U.S.C. § 503(b)(9). Thus, a vendor who has provided a business with goods on credit is not automatically out-of-luck when the business files for bankruptcy. Instead, the vendor can take solace in knowing that it is automatically granted priority over most other creditors, if there is sufficient cash in the case to pay all or a portion of such claims.