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## Insolvency: What Every Technology Company Needs to Know About Claims Against Bankrupt Customers And Business Partners

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Every year, otherwise successful technology companies lose untold sums of money and valuable intellectual property rights because they do not act when a customer or business partner files for bankruptcy protection. Far less effort is usually required to preserve these rights than what may be involved in a major piece of litigation; but, in almost every case, the company must take active and timely steps to ensure that its interests are protected. The following is the first part of a brief, three-part overview of the measures that technology companies can take, and the procedures they should be aware of, to protect their rights in this area of law. This section will focus on claims which creditors can assert against the estate of a bankrupt customer or business partner.

Many people who are not bankruptcy lawyers know that the Bankruptcy Code imposes an “automatic stay,” which prohibits most creditors from attempting to collect their debts from the bankrupt person or company after a bankruptcy petition is filed. This may explain the initial reaction of technology companies faced with an unpaid invoice owed by a customer that has filed for bankruptcy, which is often simply to write off the debt and move on. However, that response leaves money on the table and, depending on the nature of the agreement with the bankrupt customer, may result in the company losing valuable intellectual property rights.

Claims for past-due amounts owed by the bankrupt customer or business partner are asserted by filing a “proof of claim” in the bankruptcy case. The process of preparing and filing a proof of claim is relatively simple, and can be accomplished at minimal cost. Once filed, the proof of claim is entitled to the presumption of accuracy, meaning that,

unless someone objects, the company asserting the claim is entitled to a pro-rata distribution from the assets of the bankruptcy estate earmarked for general claims. In short, preparing a relatively simple proof of claim will generally result in at least some payment to the creditor technology company.

In addition, where a customer or business partner that has filed for bankruptcy protection continues to operate, technology companies that provide products and services *after* the bankruptcy case is filed often are entitled to payment for the value of those services—before most other creditors are paid. It is therefore critical to keep track of the timing of all products and services provided to a customer in bankruptcy. The process for filing such a post-bankruptcy petition (or “administrative”) claim is more complicated than the proof of claim procedure discussed above, but often results in a recovery that far outweighs the cost.

On the other hand, failing to file a claim will frequently result in the right to payment being permanently barred. Similarly, a technology company may be foreclosed from asserting certain rights after the bankruptcy case is closed if it fails to assert them in the bankruptcy case. For example, failing to assert a claim for infringement of intellectual property rights that occurred prior to the bankruptcy filing may bar the later assertion of that claim. The technology company also may be barred from asserting an infringement claim against any successor to the bankrupt company, such as an entity that purchased all or part of the bankrupt company’s assets through the bankruptcy case.



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In other words, by timely filing all relevant claims in the bankruptcy case, the technology company not only preserves its right to payment from the bankruptcy estate, but also takes a crucial step in protecting its intellectual property rights.



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