



Heroes & Horrors: Triumphs & Tragedies Unveiled: (Navigating Credit in and Out of Court)

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A magnifying glass is positioned over a bar chart. The chart has two bars, one blue and one green, with labels 'Q2' and 'Q3' below them. The magnifying glass is focused on the green bar.

ENRON: THE CORPORATE FIASCO

- **Creditors, law firms, accounting firms all got burned**
- **Enron used smoke and mirrors to hide its fraud**
- **Forensic experts revealed that chicanery**
- **But why didn't the lawyers and accountants stop the problem before it began?**

ENRON'S ACCOUNTING TRICKS

- **Hidden debts (example: barges) and fake SPEs**
- **Fake profits reported (that old mark-to-market perversion)**
- **Rapid rise in debt disguised**

A magnifying glass is positioned over a bar chart. The chart has several bars, with one bar in the center highlighted in green. The x-axis is labeled with 'Q2' and 'Q3'. The background is a light blue color.

NO ONE BLEW THE WHISTLE ON ENRON

- **Sherron Watkins didn't "count" as a whistleblower**
- **V&E asked to examine its own work**
- **Accounting firm destroyed documents**



FORENSIC WARNING SIGNALS WERE IGNORED

- **Questions about Enron's finances were not answered (that classic earnings call)**
- **Financial statements were falsified**
- **One lesson: "ASK WHY"**



Diamond
Comic Distributors, Inc.

CONSIGNMENTS GENERALLY

Consignments



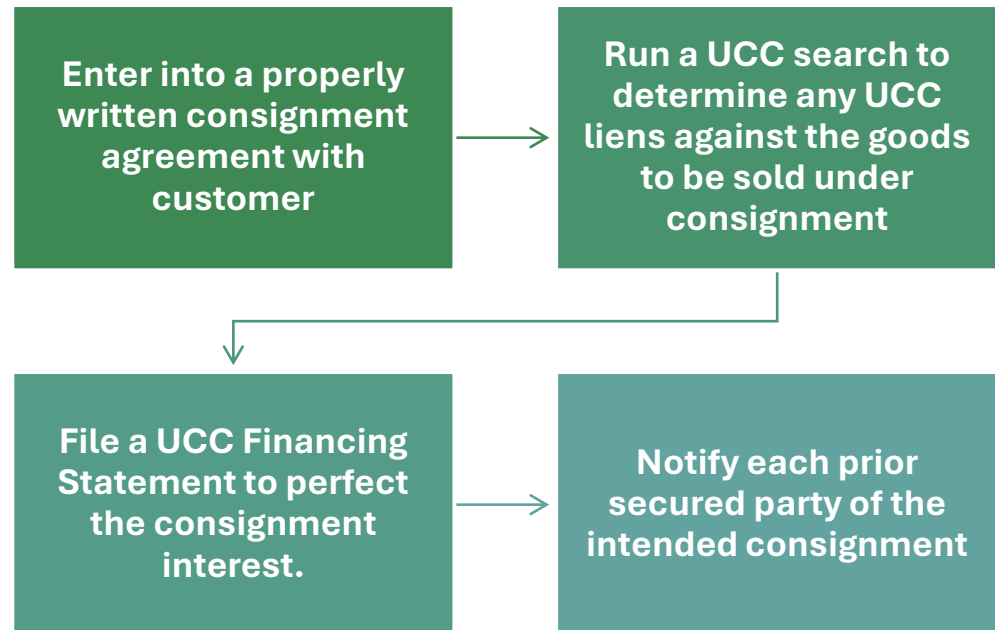
goods delivered to a merchant for sale

Merchant engaged in selling goods of others	Aggregate value of goods \$1000 or more	Transaction does <u>not</u> create a security interest
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CONSIGNMENTS UNDER UCC ARTICLE 2

- **UCC § 2-401(a):** Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to reservation of a security interest.
- **UCC § 2-326:** If goods conforming to contract are subject to return by buyer, the transaction is a “Sale or return” if the goods are delivered primarily for resale and the goods are subject to the claims of buyer’s creditors while in buyer’s possession.

REQUIREMENTS FOR PERFECTING AND OBTAINING PRIORITY IN CONSIGNMENT GOODS



CONSIGNMENT ISSUES IN BANKRUPTCY

Diamond's business model included substantial inventory held on consignment



Disputes arose during Chapter 11 Regarding who actually owned the "consignment" Inventory



Dozens of Adversary Proceedings Commenced against Trade Creditors

**DIAMOND
COMICS LEGAL
ISSUES**

JP Morgan Chase claimed a secured claim against all assets of the Debtor

**Consignment
Vendors wanted
to be paid**

**Secured Lender
unwilling to
permit payments**



**Interpretation of Distribution
Agreements, UCC Article 9
Compliance, treatment of specific
inventory**

AD HOC COMMITTEE OF CONSIGNORS

Formed by more than 100 creditors to
Represent Consignment interests collectively
and contest debtor's positions

Various stipulations entered into staying
adversary proceedings to enable a sale of
assets to proceed

Initial Sale of Assets failed

- Subsequent sale for \$57 million compared to anticipated \$85.37 million

CHAPTER 11 EFFORTS

Motion to Sell Consigned Inventory and Establish Distribution Protocol

\$300,000 escrow was established for consignment claims BUT NO RESOLUTION

Escrow distributed to Ad Hoc Committee and Members of the Consignment Group
SUBJECT to potential disgorgement back to JP

Republic Metals Refining Corp.

Republic Metals: An Uphill Battle From Day One

- **Language Discrepancies in Contract**
 - **Outrights**
 - **Leases**
 - **Consignments**

Republic Metals: Secured Lender Held the Power

- **Senior Lender Pulled the Plug Resulting in the Demise of the Debtor**

Republic Metals: Numerous Creditors Claiming Rights to Property

- **Creditors were Classified into Separate “Buckets” by the Court to Determine their Rights**

Republic Metals: Numerous Some Creditors Claimed Security Interests

- **Deficiency in Paperwork
Defeated the Claims of Secured
Interests**

Republic Metals: Numerous Consignment & Bailment Issues

- **Court's View on Bailment Issues**
- **Court's View on Consignment Issues**

MUKEUNJI II, Inc.

[A Twist on Shakespeare's "Comedy of Errors"]

Sub-Chapter V

**Personal
Guaranty by
Debtor's
principal**

**Personal
Guaranty MAY
save the day**

Proof of Claim - Erroneous

**Claim should
have been filed
for \$1.1 million**

**Missing decimal
point – Claim
Filed for \$100K**

Plan Process in Sub-Chapter V

- **Plan was filed offering 100 cents to unsecured trade creditors**
 - **Debtor took advantage of erroneously filed proof of claim**
- **Trade creditor neither accepted nor rejected Plan**
- **Plan was Confirmed**
- **Counsel for Creditor received distribution AND NEVER NOTICED THE ERROR IN THE AMOUNT**
- **Debtor was discharged upon completion of Plan payments**
 - **Debtor claims discharge Extinguishes Guaranty by Principal**

Law on Effect of Corporate Discharge on Personal Guaranties

- **Discharge of a corporate debt in a chapter 11 proceeding does NOT extinguish the debt still owed by the Personal Guarantor**
- **In the Past Chapter 11 Plans have tried to exonerate 3rd parties**
 - **SCOTUS has ruled this to be IMPERMISSIBLE**
- **Cases have ruled on the question of extinguishment of debts by virtue of corporate Plan Confirmation**
- **5th Circuit Court of Appeals says ‘NO’**
 - **Dynamic Offshore Resources (June 11, 2025) ruled that the reorganization plan did not extinguish the debtor related to third parties.**



State Court Proceedings

- **Personal Guarantor pursued in State Court**
- **Litigation Ongoing for 2 years**
- **Summary Judgment filed March 2025**

Reopening of SubChapter V Proceeding and Attempt to Move State Court Litigation to Bankruptcy Court

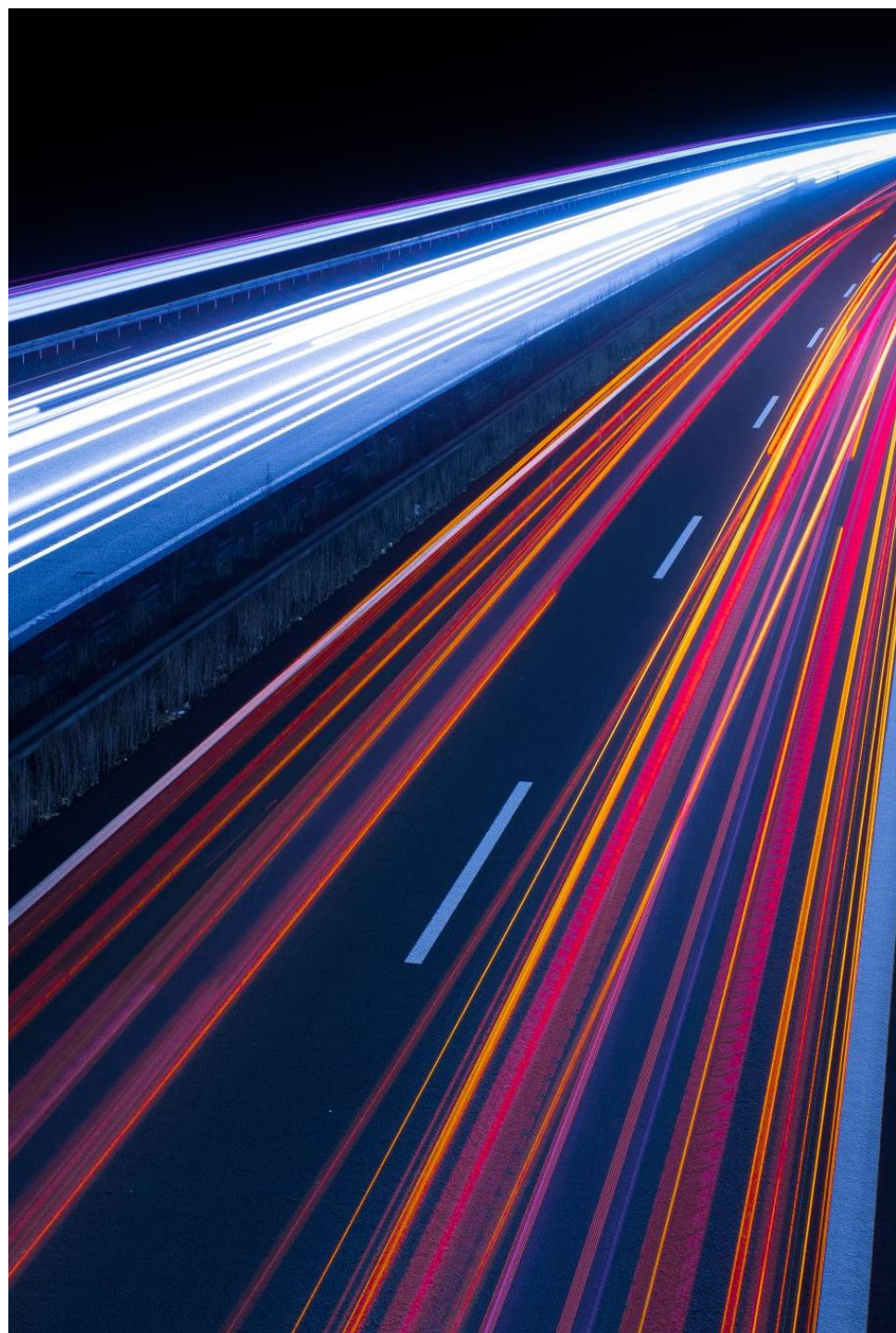
- **April 2025 - Motion to Reopen Sub Chapter V**
- **Attempt to Remove State Court Case to Bankruptcy Court**
 - **First Removal was filed in wrong court and subsequently withdrawn**
 - **Second Removal was filed in correct court but asked for relief that could not be granted by that court**
- **Removal was opposed and Defeated on the Merits**
 - **Decision Denying Removal issued February 2026**

The background features a series of overlapping, wavy, paper-like layers in various shades of blue and light blue, creating a sense of depth and movement. The colors range from a deep, dark blue on the left to a bright, light blue on the right.

TransVantage Group

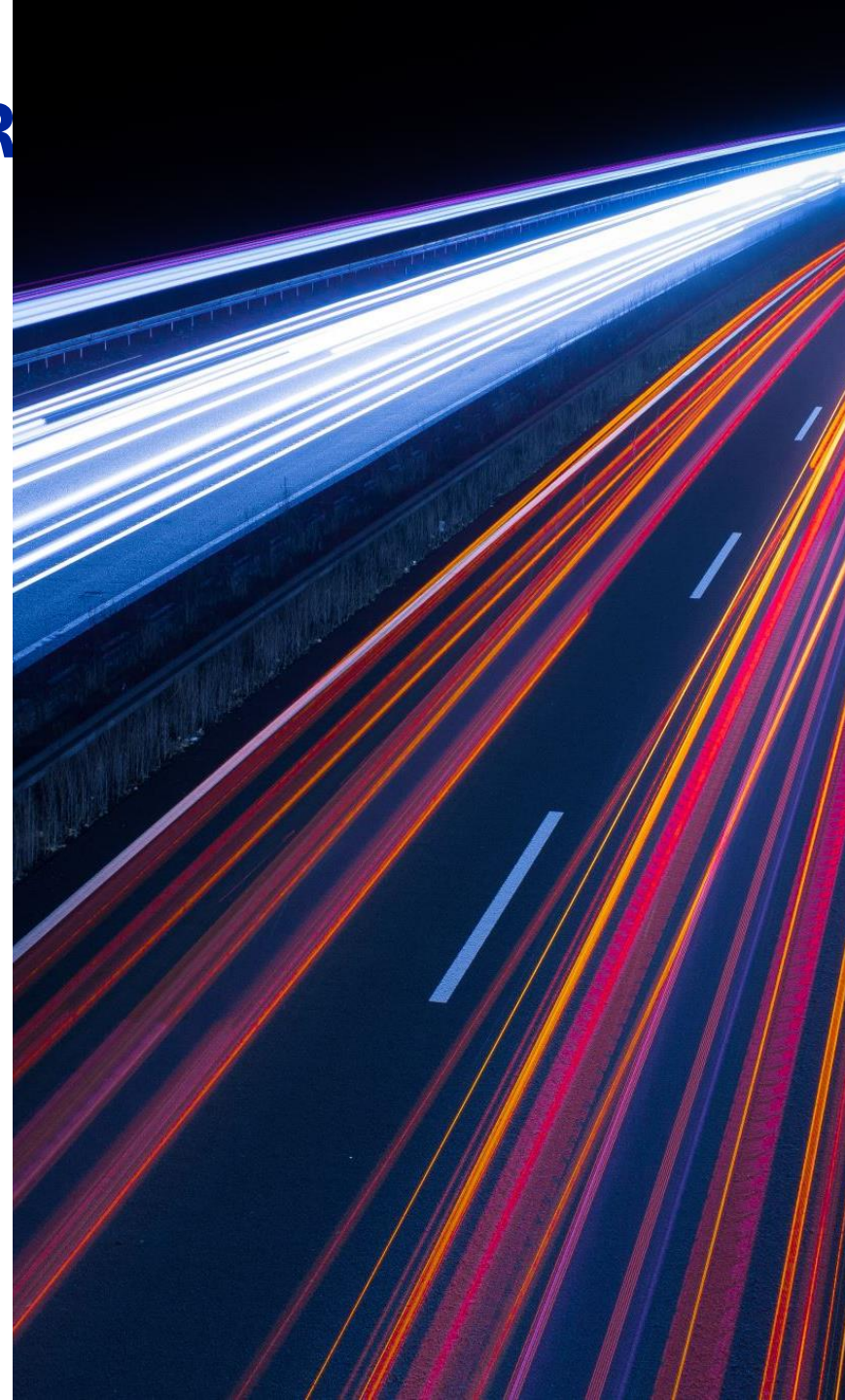
UNIQUE PREFERENCE DEFENSES RAISED IN PONZI SCHEME CASE

- **TransVantage Group Chapter 11**
 - **Transportation Services company provided audit services, among other things**
 - **TransVantage would audit transportation invoices**
 - **Moneys paid to TransVantage to be held in trust pending audit and clearance of invoices**
- **\$40 million “disappeared” from the trust account**
- **Principal pleads guilty to fraud**
- **Chapter 11 converted to Chapter 7**
 - **Trustee appointed**



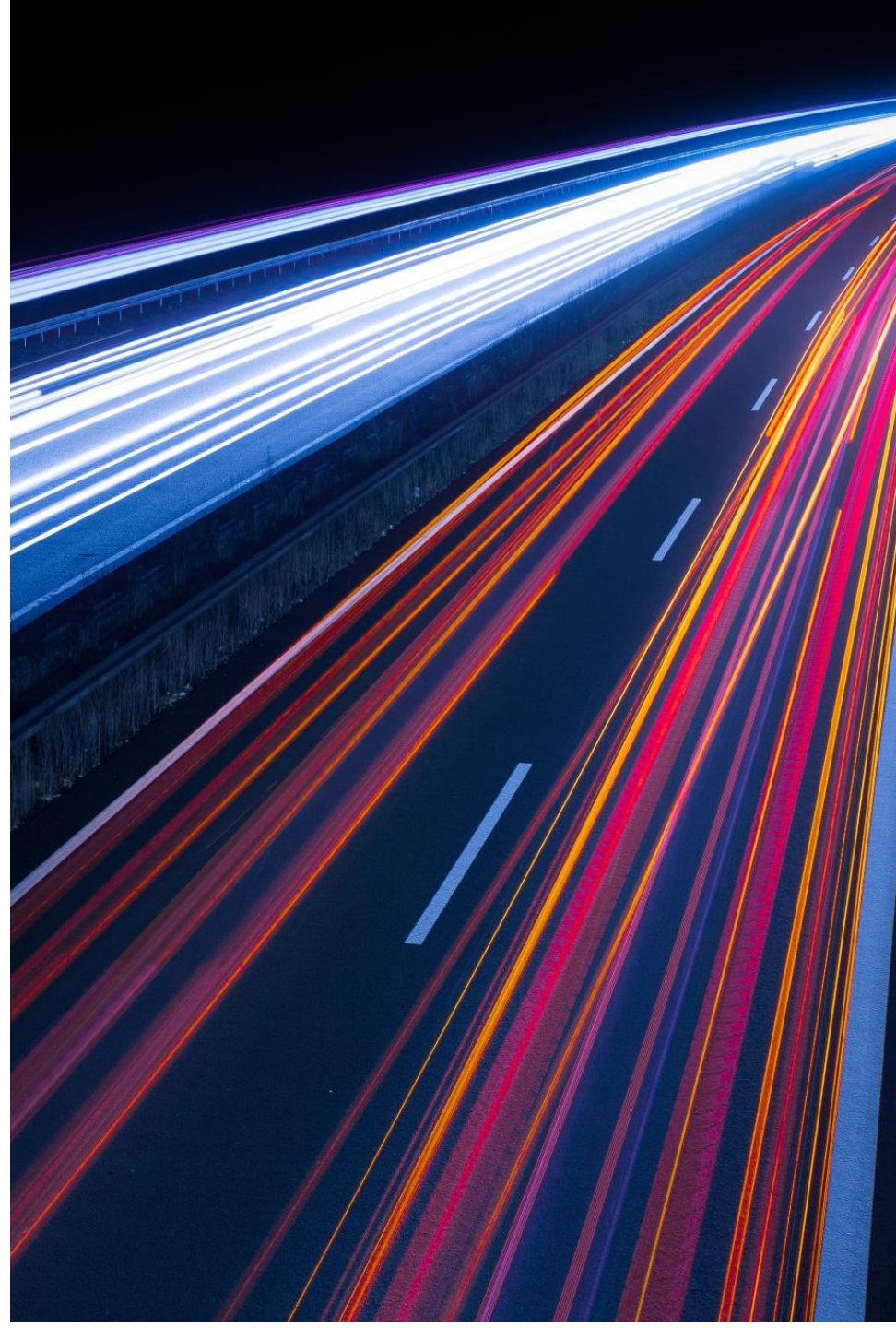
PREFERENCE ACTIONS COMMENCED BY CHAPTER 7 TRUSTEE

- Trustee sues more than 500 transportation companies for alleged preferential payments
- Although \$40 million is stolen from trust account, Trustee sues for more than \$600 million in alleged preferences and fraudulent transfers
 - Carriers who trusted TransVantage to reconcile invoices and disburse trust funds to them were sued
 - Customers of TransVantage were sued for moneys purportedly owed to TransVantage
- Joint Motion to Dismiss filed



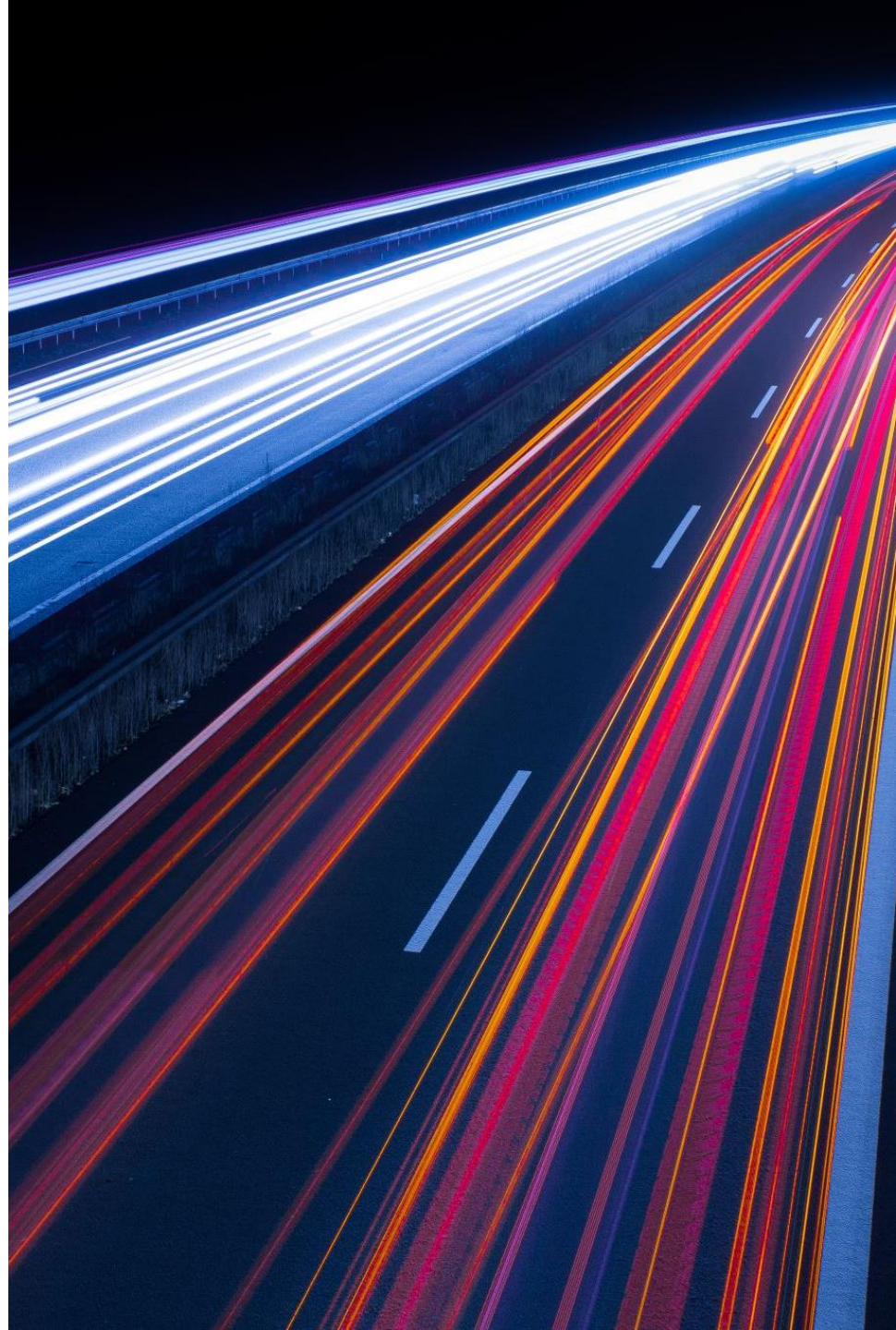
MEETING THE DEFINITION OF A PREFERENCE UNDER 11 USC 547

- **Property of the Estate**
 - **Funds transferred never belonged to TransVantage since TransVantage was a mere conduit**
- **Payments to or for the benefit of creditor**
 - **The Carriers were not creditors of TransVantage but were owed moneys from the Customers of TransVantage**
- **In payment of an antecedent obligation**
 - **The obligation existed between the Customers and the Carriers, not between TransVantage and the Carriers**



CREDITORS WHO HELD OUT AND REFUSED TO PAY WERE THE MOST SUCCESSFUL

- **Customers willing to settle with TransVantage and pay funds owed to the Carriers BUT ONLY IF ALL CLAIMS WERE RELEASED**
 - **Carriers would not receive 100%**
 - **The Trustee would receive funds for the Estate**
- **Most Carriers took the settlements**
- **Some Carriers refused and “dragged out the fight”**
 - **Those who held out the longest made the lowest settlements with the Trustee**



**KUMTOR GOLD
COMPANY**

**THE
INTERNATIONAL
CHALLENGE**

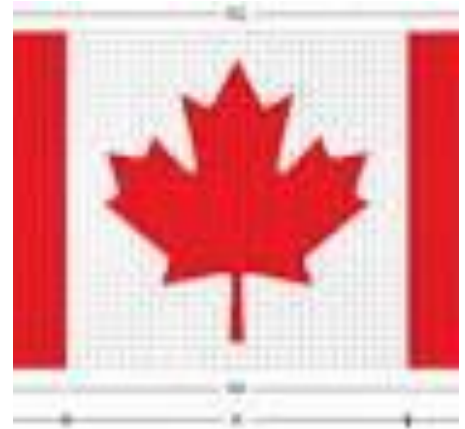


Getting Paid on Post-Petition Goods or Services Rendered

- 11 U.S.C.365 – Executory Contract Assumption
 - Debtor does not always agree
- Critical/Essential Vendor Status
 - You may believe you are Critical – but are you?
- Think Outside the Box
 - When all else fails – get creative

Multiple Countries Involved

- Debtor located in Kyrgyzstan
- Debtor owned by Canadian Company
- Debtor's gold mine taken over by the Kyrgyz Government





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The International Challenge

- Client headquartered in Australia
- Corporate counsel located in Germany
- Chapter 11 filed in New York



Sleepness Nights

- Government wants equipment
- Debtor refuses to consent
- Client's query
 - Is it safe to ship?
 - Will the court hold it in contempt?
 - Who is going to pay for equipment?

Judge Barred from Kyrgystan???

- Case finally resolved
- NCBJ
- Judge's comments – 2021 and 2022





Trail Blazer Chapter 11: A Victory for the Creditor

Diligence and Proper Documentation Key to Success



Credit Application

**Security Agreement Language Contained
Therein**



Perfection of Security Interest

**Close Monitoring of Account Balance
Creditor Exchange Group Information**

Chapter 11 Filing Seeks to Wipeout Creditor

**Debtor Suggests Creditor
Should Not Waste Time
Attending 341 Meeting**

**Debtor Claims Senior
Lender has Priority
Creditor Opposes Senior
Lender's Status**

Chapter 11 Filing Seeks to Wipeout Creditor

Senior Lender also Creditor's
Banker

Creditor Proves its Secured
Position
Bank capitulates

Creditor Recovery

Creditor takes Possession of Inventory

**Inventory is Resold
Creditor is Paid
There is even money left over for the Bank**

Lessons Learned

**Creditor took Possession
of its Inventory Only**

**Did not realize its Security
Agreement gave it the right
to all collateral**

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Lessons Learned

Value of Repossessed Property especially during or as a result of a Bankruptcy Will be impacted

The Repossessed Property had a lower resale value that anticipated

Fraud hidden was later discovered

Owner of Debtor had taken \$500,000 out of the company months before the bankruptcy

Wife of Principal used company credit cards for personal expenses (clothes for their grandchildren, etc.)

WANDA BORGES

WANDA BORGES, the principal member of Borges & Associates, LLC., has been specializing in commercial insolvency practice and commercial litigation representing corporate clients throughout the United States for more than forty-five years.

She is admitted to practice before the courts of the State of New York and the United States District Court for the Southern, Eastern, Northern and Western Districts of New York, the United States District Court for the District of Connecticut, the United States District Court for the Eastern District of Michigan, the Second Circuit Court of Appeals and the Supreme Court of the United States. She is a member of several professional organizations, including the American Bar Association, the New York State Academy of Trial Lawyers, American Bankruptcy Institute. As a member of the Commercial Law League of America, she is a Past President of the League, is a Past Chair of its Bankruptcy and Creditors' Rights Sections' Executive Councils and currently serves on the CLLA Eastern Region Executive Council. She is currently the Co-Chair of the Board of Associate Editors for the Commercial Law World and other CLLA publications. She is a Past President of the CLLA Fund for Public Education

WANDA BORGES

She is a regular lecturer for the National Association of Credit Management (NACM) and its various affiliates. She has prepared and continues to update courses on "Advanced Issues in Bankruptcy", "Basics in Bankruptcy", "Current Cases in Bankruptcy", "Creditor's Committees", "Credit and Collection Issues", Sarbanes-Oxley Act of 2002, "Litigation Issues" and "Antitrust Issues" which have been presented at past NACM Annual Credit Congresses and at trade credit association meetings. Even prior to the passage of the "Red Flags Rule", Ms. Borges worked with the NACM and the FTC to determine the applicability of the Rule to business creditors. Ms. Borges has prepared and presents seminars on the Red Flags compliance issues for the NACM, its various affiliates, corporations, collection agencies and various other organizations. Ms. Borges had been a faculty member for the NACM's Graduate School of Credit and Financial Management at Dartmouth College from 1994 through 2020. Ms. Borges has been a faculty member for the National Institute on Credit Management, a program jointly sponsored by the Commercial Law League of America and the National Association of Credit Management

WANDA BORGES

She has been a regular lecturer for the American Management Association on the Uniform Commercial Code and Fundamentals of Business Law for the Non-Lawyer, and for both the American Management Association, the Media Financial Management Association (formerly the Broadcast Cable Financial Management Association) and the Broadcast Cable Credit Association on Creditor's Rights in Commercial Litigation and Bankruptcy Matters. Additionally, she has presented seminars and webinars for the National Conference of Bankruptcy Judges, the American Bankruptcy Institute, The Commercial Law League of America, The International Association of Commercial Collectors, various local and national Bar Associations, Thomson West Publishing Company, the New York State Food Service Distributors Association and Riemer/Plus.

Ms. Borges frequently presents live seminars, tele-seminars and webinars for various trade credit groups, many of whom are managed by NACM Affiliate Associations. Additionally, she has prepared and presented these educational programs for the American Automotive Leasing Association, the National Chemical Credit Association, the National Cement Trade Credit Group, the Health Industry Manufacturers Association, the Beauty and Barber Manufacturers Credit Association, the New Hampshire Association of Broadcasters and the Credit Association for Satellite History.

WANDA BORGES

She has served as the Managing Editor and still is one of the contributing authors of the Manual of Credit and Collection Laws published by the National Association of Credit Management and is a contributing author to its Principles of Business Credit. She is a member of NACM's Editorial Advisory Committee. She is an Associate Editor for the Commercial Law League of America's magazine "The Commercial Law World" and has contributed to the CLLA's Law Journal and the Bankruptcy Section Newsletter. Her treatise Hidden Liens: Who is Entitled to What? was published in the Fall, 1998 Edition of the Commercial Law Journal. She has authored Antitrust, Restraint of Trade and Unfair Competition: Myth Versus Reality, published by the NACM. Ms. Borges is the lead author and Editor-in-Chief of Enforcing Judgments and Collecting Debts in New York published by Thomson West Publishing Company and updated annually. She routinely publishes articles for the National Association of Credit Management "Business Credit" magazine and has published articles for its "Fraud Prevention News". Upon the passage of the BAPCPA in 2005, Ms. Borges prepared and presents educational programs on this new legislation and co-authored The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 – An Overhaul of U.S. Bankruptcy Law, published by the NACM.

WANDA BORGES

She has published articles for the Broadcast Cable Credit Association "Creditopic\$" and continues to publish articles for the "The Financial Manager" on Commercial Creditors' Rights in Bankruptcy, Bankruptcy issues generally, the FTC's Red Flags Rule, the ECOA and Regulation B, Electronic Invoicing, "Dot Com" Businesses, and on Advertiser/Agency Liability; and has prepared the "white paper" on the discontinuance of notarization of broadcast invoices. She is a co-author of the National Association of Broadcasters' book Out of the Red and into the Black, as well as the Broadcast Cable Credit Association's Credit & Collection Handbook. Ms. Borges has appeared as a guest on the Fox News Channel program, "Fox on Consumers", speaking on consumer bankruptcy exemptions. In February, 2010, Ms. Borges prepared and presented a program entitled "Avoiding Bankruptcy Pitfalls: Creditors' Rights and Professional Obligations in Bankruptcy Proceedings" for the Georgia Bar Association and the Institute of Continuing Legal Education in Georgia" which was televised live and telecasted to satellite locations throughout the State of Georgia.

WANDA BORGES

She has conducted "in-house" seminars on credit, collection, secured transactions and insolvency for corporate clients such as Agrium, Inc., Bristol-Myers Squibb, Burlington Industries, Inc., Cosmair, Inc., Doric Enterprises, Ferguson Enterprises, Inc., Ingram, Mars Incorporated, McKesson Corporation, Mobil Chemical Company, Multi-Arc Corp., Pfizer Inc., R.J. Reynolds Tobacco Company, Sandvik, Inc., Sharp Electronics Corporation, Simon & Schuster Corp., SONY Corporation, Southeastern Freight Lines, Inc., Stanley Works, Sumitomo Corporation and SunTrust Bank.

She is a past Chair of the Board of Trustees of Mercy College and served as a member of that board for nine years. She has served on the board of Regents College, and has taught Business Law at Seton College in Westchester County, New York. She is a past Chair of the Broadcast Cable Financial Management Association.

WANDA BORGES

Ms. Borges actively participates in community events. She is a Leader of Song and has directed the Youth Music Ministry at her parish, Our Lady Star of the Sea. She remains a member of the Fairfield County Chorale for which she served as its president for the years 1995 through 1997, Executive Vice-President of the Fairfield County Chorale during the years 2012 through 2013 and served several years as a director on its Board.

She received the "Human Valor" Award by Noticias del Mundo, a New York based spanish-language newspaper in 1985, the Mercy College Alumni Association's "Professional Achievement" Award in 1991, honorary membership in Delta Mu Delta - The National Honor Society in Business Administration - in May, 1995 and in October, 1996, was awarded the Mercy College Trustee's Medal for outstanding dedication to her profession and alma mater. She is listed in Who's Who of American Women. In September, 2000 she was named one of the "50 Outstanding Alumni" of Mercy College. In February, 2001 she received the "Career Achievement Award" from the Broadcast Cable Credit Association. In May, 2004, she received the "Strength in Numbers Recognition Certificate" from the NACM. In December 2006, she was named one of "2006 Top25 Most Influential Collection Professionals" by Collection Advisor Magazine. Ms. Borges was recently inducted into Mercy College's Alumni Hall of Fame celebrating its 60th year in existence. In November, 2010, Ms. Borges received the "Robert E. Caine Award for Leadership" from the Commercial Law League of America. Ms. Borges has been included on the New York Super Lawyers – Metro Edition list (Bankruptcy & Creditor/Debtor Rights) each year since 2009. Ms. Borges received a "Woman of Distinction" Award from St. Catharine Academy in April, 2015. Ms. Borges is listed in Who's Who in America. In November, 2023, Ms. Borges received the "Warren Pinchuck Service Award" from the Commercial Law League of America. In January 2025, Ms. Borges received the Leadership and Distinctive Service Award from the International Association of Commercial Collectors.