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January 31, 2024

Commercial Law League of America

Attn: Dawn Federico dawn.federico@clla.org

RE: CLLA National Convention - Outstanding Education Items

Dear Dawn,

Enclosed please find my written material for the Chicago National Convention's Educational Program, that addresses issues that both the CRS & BS practitioners face in common.

Part One: How to Determine a Fraud Claim
Part Two: How E-Commerce Bankruptcies May Void Preference Claims
Part Three: Don't Let Unsecured Creditors Be Insecure when Competing with Secured Creditors

Let me know when these are available on line.

Very truly yours

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Please consider the environment before printing this email.

HOW E-COMMERCE BANKRUPTCIES MAY VOID PREFERENCE CLAIMS
by Joseph A. Marino, Esq.

This article is designed to provoke thought relative to how e-Commerce transactions have changed the traditional paradigm of commerce and in some instances fall outside the principles defining the basis for Preference Claims.

Traditional Bilateral Transactions Between Merchants

In a traditional business format, the manufacturer and/or wholesaler are the vendors/sellers. They are defined by Article 2 of the Uniform Commercial Code as "Merchants"[1] and "Creditors"[2] . The buyer/vendee is also a Merchant in the sale of goods. Thus, a transaction between any two of these Merchants is deemed a bilateral transaction.

Title for the goods passes from the Vendor/Creditor to the Buyer/Debtor

Title for the goods passes from the vendor/creditor to the buyer/debtor upon receipt.

Customarily the traditional documents involved consist of: Buyer's Purchase Order ("PO"), and/or Vendor's Acknowledgment, Invoice, Bill of Lading or Delivery Receipt and Packing List.

The merchandise is for Buyer's account, i.e., ownership and possession in its warehouse or storage facility for use or subsequent resale.

Payments from the debtor to the creditor, during the ninety-day[3]or one hundred twenty-day[4] "preference period", may be attacked as preferential.

E-Commerce Transaction

In Contras, in an E-Commerce Transaction, ("E-Transaction") Three (3) parties are involved, (1) the **e-Consumer**, (an individual or entity customer) who orders and purchases item(s) on-line, through internet sales portals of the (2) **E-Commerce Platform**, (**"EC Platform"**), which facilitates the purchase transaction vis numerous (3) Supplier/Vendors, (manufacturer and/or wholesaler), who ships the merchandise directly to the **e-Consumer** and is deemed a Third Party Creditor Beneficiary of the

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[1] UCC §2-104(1)
[2] UCC §1-201(13)
[3] 11 U.S.C. 547(b) and 11 U.S.C.550
[4] Preference period under some state statutes for Assignments for the Benefit of Creditors

e-Commerce transaction, between the **e-Consumer** and **EC Platform.** This is significant and is distinguishable from the traditional *Two Party Sale Transaction.*

Examples of **EC Platform**, are: Apple, Amazon, Wayfair, Wal-Mart. Note: most **EC Platforms** never takes possession nor title to the Goods, as their Third Party Suppliers ship directly to the consumer. (This avoids double storage, handling and freight costs).

Here, the voidable Title passes to the **e-Consumer**, subject to Vendor being paid with the **EC Platform** serving as the **e-Consumer's** facilitating agent. This is a significant distinction, as the **e-Consumer's** funds, via a credit/debit card transferred to the **EC Platform** constitute as the consumer's **"Trust Funds"** for the benefit of the Supplier/Vendor until the Vendor is paid. Only after Vendor is paid do the excess funds (a fee) becomes the property of the **EC Platform.**

Should the **EC Platform** take funds before paying the Vendor, there would be a Breach of Fiduciary Duty and a wrongful taking, i.e., conversion, embezzlement or theft.

The co-mingling argument should not hold as the funds are **trust funds** and not the property of the **EC Platform**, until a condition precedent occurs, i.e, paying the Vendor in full.

THE MECHANICS OF THE E-COMMERCE TRANSACTIONS

Prior to any sales, the **EC Platform**, in order to secure a reliable supply chain, enters into a series of **Credit Application/E-Commerce Merchants Agreement (" ECM Agreement")** with each **Supplier/Vendor**, which generally provides: **(i)** terms, such as **Net 30 days** from date of Invoice; **(ii) e-Consumer's** funds, via a credit/debit card transferred to the **EC Platform** constitutes **Trust Funds**for the benefit of the **Vendor** until the Vendor is paid; **(iii)** that future shipments will not be made on accounts past due; **(iv)** that Interest will be charged on all past due accounts at the periodic rate of 1.5% per month (A.P.R. 18% or the maximum as allowed by law at the location of the eConsumer, if lower), and; **(v) that** costs for collections including reasonable attorney's fees will be charged.

These Five Essential Provisions should be incorporated in every **Vendor's, Credit Application/E-Commerce Merchants Agreements.**

The **ECM Agreement** may and should specifically provide that: the econsumers credit/debit card funds are deemed **trust funds** for the Benefit of the Vendor, and the agreed balance/residue after Vendor is paid, will then become the property of the **EC Platform.** Note: the Vendor's Price, is referenced in a separate Vendor Price List ("VPL"), along with other related details: SKU, pricing, packaging, carriers etc.

In contras, voidable Title for the goods passes from the vendor to the **e-Consumer,** who desires that the card funds are **Trust Funds** entrusted to the **EC Platform** to pay the Vendor.

Thus, the **Trust Funds** are not the property of the **EC Platform.**

NOTE: there may be many unique logistical procedures distinct from traditional vendor-vendee relationships, to wit:

A. The **e-Consumer** places an E-Order, on-line, directly into **EC Platform's** computer, which automatically recognizes the desired item(s) based upon existing **ECM Agreements**, and its computer will issue an E-Invoice to Vendor's computer, which includes **(i)** consumer's info, **(ii)** shipping instructions, and; **(iii)** charging details necessary for **ECP's** computer to place an **E-Purchaser Order, (E-PO)** with the appropriate Vendor.

B. Vendor's computer automatically **E-Acknowledges** receipt and generates: **(i)** a warehouseman instruction to pull the requested items per E-PO, ' **(ii)** a Packing Slip, and **(iii)** Bill of Lading, for a warehouseman to place on the package delivered to a carrier for shipment to the **e-Consumer.** Upon shipment, **Vendor's** computer automatically generates an **E-Invoice** sent to **EC Platform's** computer, for payment.

C. Upon shipment, the **EC Platform's** computer automatically submits an electronic payment order to the **eConsumer's** card which payment is made within 1-3 days.

D. Under the **ECM Agreement** the Supplier/Vendor is to be paid within 30 days or less based upon volume and dollars involved.

NOTE: the **EC Platform's** computer and the Supplier/Vendor's computer's respective algorithm automatically perform all the traditional functions that people used to performed. There is little to no paper nor human actions involved (except for the warehouseman's performance, which may be replaced by ***AI***

automation). [**e-Consumer** complaint is segregated from the system until their resolved.]

NOTE FURTHER: the various Consumer Fraud Statutes are designed to aid the consumer in securing the intended benefit of the bargain which includes receiving Good Title and all Warranties annexed to the Goods.

Therefore, all payments are in the ordinary course of business for contemporaneous exchange for value. The Trust Fund scenario renders the "preference actions" against the Supplier/Vendors inapplicable.

If the Vendor is not paid on or before the 30 days from shipment, it is most probably due to someone changing the algorithm(s), in violation of the **ECM Agreements**.

> **"When EC Platform fails to live up to its obligations and diverts the proceeds of the e-Consumer's accounts to its own use, it became a *constructive trustee* for the Vendor[5], 2 Williston on Contracts, § 445; 1 Restatement, Contracts, § 175(1)(a).**
>
> **It is well settled by the great weight of authority in this country that the officers of a corporation (formation entity) are personally liable to one whose money or property has been misappropriated or converted by them for the benefit of the corporation, (formation entity), although they derived no personal benefit therefrom and acted merely as agents of the entity. The underlying reason for this rule is that an officer should not be permitted to escape the consequences of his individual wrongdoing by saying that he acted on behalf of a corporation in which he was interested[6] 5.**

Under a factual situation analogous to this discussion, the court stated:

Under a factual situation analogous to this discussion the court stated:

"Where there is a fraudulent and unlawful conversion by the corporation (**EC Platform**), then those who participate therein by instigation, aid or assistance are liable. … The mere fact that Bernhardt was acting as the president of the corporation and Weisberg was acting as its treasurer and that they individually did not receive any of this money is immaterial since there was

[5] 2 Williston on Contracts, §445; 1 Restatement, Contracts, §175(1)(a).

[6] City of Kiel v Frank Shoe Mfg. Co. et al., 152 A.L.R. 703; 3 Fletcher on Corporations, §§1140-1142

evidence to justify the jury in concluding there was an unlawful and fraudulent conversion by the corporation which was directed by them."[7]

BANKRUPTCY PREFERENCE IN THE WORLD OF E-COMMERCE TRANSACTIONS

In order to best comprehend how 11 U.S.C. §§547(b) and 550(a) will work in today s world of E-Commerce Transactions, let's look at some situations which may occur when an E-Commerce Platform, ("ECP") files for protection for reorganization or liquidation, under either state or federal bankruptcy statutes.

Scenario #1: A Vendor receives payment in the E-Commerce Transaction described above.

Does a Chapter 7 trustee have a Preference Claim against the Supplier/Vendor, for payment received by it within the 90 day Preference Period?

In this case, No: as the **trust funds** were not the property of the **EC Platform**, Debtor, nor Debtors Estate. The **EC Platform**, Debtor never took either possession nor title to the Supplier/Vendor's Goods sold and ship directly to the **e-Consumer**.

The **EC Platform**, Debtor was merely a *conduit* for the **e-Consumer** i.e., the customer's agent, and; is guided by the

[7] In Rose v. Bernhardt, 107 N.J.L. 501, 504 (E. & A. 1931), mentioned by 2015 WL 5096049 (N.J. Super.1.) (trial order), Pantheon Construction LLC, v. Automotive Innovations Inc., Yohanan (John) Hartog; Joseph Janowski (aka Seffi Janowski) and AII1 LLC ; see also Reliable Woodworking Co. v. Lindeman, 105 N.J.L. 121." Hirsch v. Phily, 4 N.J. 408 at 417,(1950), 73 A.2d 173

principles of Agency.

Moreover, Supplier/Vendor has an ***In Pari Delicto*** (equally at fault) defense against the Trustee, Receiver, and/or Assignee, who stands in the debtor's shoes, and various tort claims against the ECP's officers, directors and owners.

Scenario #2

The Supplier/Vendor is not paid in accordance with the terms and conditions under the **ECM Agreement** and there is no bankruptcy or assignment for the benefit of creditors. This section will examine what recourse is available to the Supplier/Vendor, against whom? And why?

The Vendor has recourse against the **EC-Platform** and its owners, officers and directors who have liability exposure, under both Breach of Contract and Tort claims, such as: Conversion, Theft by Deception, Embezzlement; Larceny, Conspiracy and Fraud and Constructive Fraud and Deceit, and; under various Fraudulent Transfer Claims, and R.I.C.O. claims.

Take particular note that a Debtor who secures possession of another's property by means of Conversion, Theft by Deception, Embezzlement; Larceny, Conspiracy and Fraud and Constructive Fraud and Deceit, will never gain Good Title.

It is submitted the Bankruptcy Acts and Codes were drafted relative to the tradition two party sales transaction, and did not consider the three party e-commerce transaction thus a change of paradigm.

HOW TO DETERMINE A FRAUD CLAIM EXISTS IN COLLECTION AND BANKRUPTCY CASES

By: Joseph A. Marino, Esq.

Very often what appears to be a simple collection claim is more of a Fraud Claim not visible to a creditor, and/or collection agency. This article will provide you with some fact patterns and options to consider to determine if your client's collection claim may actually be a fraud claim which will enable you to recover funds for your client.

Example 1: Mr. John Jones president of XYZ, Inc., orders $250,000.00 in goods from ABC Creditor over a four to six month period of time. After "acceptance" XYZ, Inc. closes its doors. (goes out of business). ABC places the claim with We B Good Agency, who learns the phones are disconnected and the mail is returned. ABC wants the claim placed with an attorney. You are that attorney. What should you do? If you merely commence a suit against XYZ, Inc., on a book account and are able to effectuate service, you may obtain a default judgment which can become a nice wall decoration. Instead, consider drafting a complaint including a **"Constructive Fraud"** Count against the principal(s) of XYZ, Inc.

WHAT IS "CONSTRUCTIVE FRAUD" AND HOW DOES IT WORK?

The Elements of Constructive Fraud are the same as those for actual fraud with the crucial exception that the element of ***scienter***, i.e., the knowledge and intent to mislead upon the part of the defendant, perpetrator and/or his knowledge of the falsity of his representation is dropped and replaced by a requirement that the plaintiff prove: the existence of a fiduciary duty (including that which is imposed by law in cases of insolvency) or confidential relationship warranting the trusting party (victim) to repose his confidence in the defendant and therefore to relax the care and vigilance he would ordinarily exercise in the circumstances.

Particular attention should be given to the definition of **"insolvent"** The Uniform Commercial Code ("UCC") defines "insolvent" to mean

> **"(A) having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;**
> **(B) being unable to pay debts as they become due; or**

(C) being insolvent with the meaning of federal bankruptcy law."[1]

The **Uniform Voidable Transaction Act**[2] **("UVTA")** states, in pertinent part "A debtor is insolvent if, at a fair valuation, the sum of the debtor's debts is greater than the sum of the debtor's assets. (b) A debtor that is generally not paying the debtor's debts as they become due other than as a result of a bona fide dispute is presumed to be insolvent. …"[3]

1*See* Uniform Commercial Code Section 1-201(23)

2The Uniform Voidable Transactions Act was approved, as amended by the National Conference of Commissioners on Uniform Laws in 2014 and recommended for enactment in all states. As of this writing, fifteen (15) states have enacted the Uniform Voidable Transactions Act. In 2017, it was introduced for passage in eight (8) states. The remaining states still maintain some form of the Uniform Fraudulent Transfer Act.

3See Uniform Voidable Transactions Act Section 2(a) and (b)

ELEMENTS OF DECEIT AND/OR CONCEALMENT OF INSOLVENCY

The essential elements are also present in a cause of action for **Deceit**: the wrongdoer Mr. Jones fraudulently produces a **False Impression** on the mind of the victim, ABC (of solvency) and if such result is accomplished, it is unimportant whether the means of accomplishing it are words or acts of the defendant, as Jones's silence regarding the insolvency of XYZ is his act of concealment or suppression of material facts which are not equally within reach or knowledge of the credit grantor.

Note: the Latin axiom "*Qui Tacet, Consentire Videtur*", "Silence Gives Consent". Black Law Dictionary

Consider this scenario: had Jones call ABC and said:

"We're having cash flow problems" or "We're not sure when or if you are going to get paid". Query: Would a prudent credit grantor extend any credit, in response? Said phases constitute clear admissions of insolvency.

Under the UCC there is a duty to act in Good Faith i.e., ("honesty in fact") and Engage in Fair Dealing; i.e. not act in a manner nor omit to act in a manner that would frustrate plaintiff's anticipated benefit(s) under their contract"

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[1] *See* Uniform Commercial Code Section 1-201(23)

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[3] *See* Uniform Voidable Transactions Act Section ("UVTA") 2(a) and (b)

Thus, presentment by the wrongdoer creates a **False Impression** of "Solvency" and the "Ability to Pay". Constitute the act of Deceit. Jones is an "insider" and "person in control" of debtor XYZ Inc., as defined by UVTA 1(8)(ii)(C) and, 11 U.S.C. 101(31)(B)(iii).
Note: Jones is also the ***Instrumentality*** of the act of Deceit.

A classic Example 2: A person enters into a restaurant. Without speaking a word motions for a menu and wine list, and proceeds to order by pointing, no word is spoken. At the end of the meal he is unable to pay for the meal by cash or credit card. Historically this was considered a Larceny. Note: it is also an act of Deceit and; also Constructive Fraud.

Example 3: A wrongdoer on behalf of a formation entity (collectively "Buyer") orders merchandise and services from a Vendor. The wrongdoer knows or should have known the formation entity was grossly under-capitalized and/or hopelessly insolvent and will be unable to pay for the merchandise and services when the bill becomes due.

Alternatively, the wrongdoer intends to use the proceeds from its sale of that merchandise to (i) pay-off a secured party who holds a mortgage and/or personal guaranty, knowing it has no intention to pay the credit grantor, or; (ii) the wrongdoer intends to use the proceeds from its sale for a personal benefit, or (iii) recapture his capital investment over creditors in violation of the principles of "Equitable Subordination".

Thus, at the time the Order(s) was placed:
(i) the wrongdoer concealed formation entity's insolvency, i.e., a material fact that was not equally within reach or knowledge of Vendor, and;
(ii) wantonly produced a *False Impression* upon the mind of the Vendor, victim, to wit: that the individual and/or formation entity
(a) are solvent and;
(b) are able to pay for the merchandise and services they ordered, and;
[c] was acting in Good Faith, and;
(iii) the wrongdoer actually intended that the Vendor/victim would believe and rely upon its false impressions, and;
(iv) knowingly ordered merchandise and services, with the knowledge and intent that the Vendor/victim, will not be paid.

Conspiracy Theory against the Principals of the Debtor
NOTE: if there are two or more principals of XYZ, you will have a Conspiracy cause of action along with a claim for Conversion,

Preference and a violation of the Uniform Voidable Transactions Act. The act of placing an order would constitute the *overt act*.

Finally, if the bank or Secured Party seeks to retain the goods and/or funds paid by Jones and XYZ, its lien may not attach as XYZ's title to those goods and/or funds may be *voidable*.

Hopefully, this article will stimulate some thought into pursuing fraud causes of action in commercial collection cases.

Remember: Focus on Excellence and the Rest Will Follow.

DON'T LET YOUR UNSECURED CREDITOR CLIENTS BE INSECURE WHEN COMPETING WITH SECURED PARTIES

By: Joseph A. Marino, Esq.

Most collection attorneys understand the basics of protecting a trade creditor by taking and perfecting a security interest in personal property owned by the customer/debtor. This program will not focus upon those basics. Instead, this will focus on the steps an unsecured party can take to overcome the alleged rights of a prior secured party.

While a Secured Party has taken additional steps to become a "Superior" or a "Senior" Creditor, there are many scenarios where a tenacious unsecured creditor can prevail.

When an unsecured creditor competes with an alleged Secured Party, there are certain vital steps that should be taken.

First, ask for a copy of the (i) Security Agreement, and; (ii) UCC Financing Statement, and; review the Collateral description.

Was the UCC Financing Statement properly filed in the debtor's state of formation?

Does the *assets* your client is competing for, covered by the Collateral description?

Has the Secured Party taken actual possession and/or foreclosed on the property?

Did the Secured Party institute a legal proceeding to foreclose on its secured interest?

SCENARIO ONE:

UCC §9-207: (A) IMPOSES RIGHTS AND DUTIES UPON A SECURED PARTY WHEN THEY ACTUALLY HAVE POSSESSION OR DOMINION OR CONTROL OVER THE COLLATERAL.[1]

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[1] UCC §9-207: Rights and Duties of Secured Party Having Possession or Control of Collateral.
(a) Duty of Care when secured party in possession. Except as otherwise provided in subsection (d), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.
(b)Expenses, risks, duties, and rights when secured party in possession. Except as otherwise provided in subsection (d), if a secured party has possession of collateral:
(1)reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;
(2)the risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;
(3)the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and
(4)the secured party may use or operate the collateral:

These are the Essential Factors to consider, when a General Unsecured Creditor (generally a trade credit grantor) is competing against a Secured Party for an asset to levy upon and sell.

Point One: Under a Security Agreement, the debtor, owner of an asset(s) grants, conveys and, transfers an **inchoate lien** upon the asset(s) which is **"Constructive" but not "Actual"** until it is properly perfected by filing a UCC Financing Statement in the debtor's State of Organization.

This is significant, where an Unsecured Judgment Creditor can levy upon a debtor's asset(s) and move to sell assets or turnover money, (a levy on a bank account or receivable).

Example: Judgment Creditor causes a levy upon debtor's bank account, or asset, and moves for turnover of funds or assets, notwithstanding the Bank's Perfected Secured Interest.

Point Two: The Bank cannot merely claim a superior right to the funds because it has a **"perfected security interest"**. In order to prevail against the Judgment Creditor, **the Secured Party must move to foreclose upon all debtor's assets covered by UCC Financing Statement and take actual possession.**

Note: In most jurisdictions, the Secured Party, a financial institute/Bank needs to proceed to Court and secure an Order recognizing its perfected lien and permitting the Bank to take possession, and; **(a)** liquidate the assets, or; **(b)** allow debtor's management to "temporarily" operate the business in an orderly

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(A)for the purpose of preserving the collateral or its value;
(B)as permitted by an order of a court having competent jurisdiction; or
(C)except in the case of consumer goods, in the manner and to the extent agreed by the debtor.
(c)Duties and rights when secured party in possession or control. Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under 12A:7-106, 12A:9-104, 12A:9-105, 12A:9-106, or 12A:9-107:
(1)may hold as additional security any proceeds, except money or funds, received from the collateral;
(2)shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and
(3)may create a security interest in the collateral.
(d)Buyer of certain rights to payment. If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:
(1)subsection (a) does not apply unless the secured party is entitled under an Agreement:
(A)to charge back uncollected collateral; or
(B)otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and
(2)subsections (b) and (c) do not apply.

liquidation, i.e., complete work-in-progress and fill and deliver on existing purchase orders, to maximize liquidation proceeds.

Moreover, under such a **"Temporary Operating Orderly Liquidation"** scenario, the Bank under **UCC §9-207(a)** is charged with a **heightened Duty of Care** when it is in actual possession and control, the bank actually "steps into the debtor's shoes", as a **"quasi-successor"** and; becomes exposed to **"new" third party claims, such as (i) new debts; (ii) new tort claims, and; (iii) employee claims.**

Point Three: A Secured Party and insolvent debtor may not seek new credit from suppliers with the intent not to pay the new debt in order to favor the Secured Party.

To avoid these exposures, some Secured Party will seek Court authorization and/or supervision, to allow foreclose and/or authorization to allow debtor's management to form a new entity and purchase all the secured assets under a new Security Agreement and UCC Financing Statement.

We submit this is a dicey transaction, which still requires adherence to **"commercially reasonable standards"** with **"notice to creditors"**.

Here the Secured Party and Debtor and an unofficial unsecured creditors committee may negotiate a dividend with Court approval, i.e., a "common law bankruptcy".

Or the bank lets the Unsecured Judgment Creditor proceed with a levy and moves for turnover of funds or collateral.

<u>SCENARIO TWO</u>:

A NEW PARADIGM, i.e., E-COMMERCE (Internet Commerce)

Traditional commerce has been **"Two Dimensional"**, i.e, between two merchants: a buyer and a seller, whose assets may be subject to the rights of a perfected secured party.

Under the *New Paradigm*, we have a **"Three Dimensional"** commercial transaction between a Consumer (buyer) and, a Platform (order taker/conduit/trustee) whose assets may be subject to the rights of a perfected Secured Party and; a Manufacturer/Seller/Merchant, who will convey title and product warranties.

Typically, the Internet Platform does not take either (i) title, nor; (ii) physical possession of merchandise for its own account.

The Consumer places an Order through the internet with Platform seeking Good Title and Warranties for the merchandise it orders.

The Platform has made numerous "strategic partnership" arrangements with Manufacturers to host their merchandise for sale to the public, at an agreed price below the published price, creating a "quasi-trust agreement", with the promise to remit Manufacturer's portion of the credit card proceeds in exchange for the Manufacturer's promise to ship directly to the Consumer's merchandise with Good Title and Warranties.

Plaintiff's counsel must understand that there are two separate Third-Party Beneficiary contracts involved:

Contract One: The First Contract is between the Consumer and Platform constitutes a Third Party Creditor Beneficiary Agreement favoring the Manufacturer who receives payment to ensure the Consumer receives Good Title and Warranties from the Manufacturer for the merchandise which the Consumer pays for and receives

Contract Two: The Second Contract between the Manufacturer and Platform constitutes a Third Party Consumer Beneficiary Agreement where the Platform is entrusted with the Consumers' monies and the Manufacturer will convey Good Title and issues warranties it will honor.

Point One: Platform does not (i) take Title to the merchandise, nor; (ii) issue any product Warranties, and; is a "Trustee" of the Consumer's money, obligated to pay the Manufacturer as an agent of the Consumer, from the Trust Funds place with the Platform.

Point Two: Until the Platform pays the Manufacturer, it is not entitled to its residual portion of the "trust monies", and; the Consumer does not secure Good Title nor Product Warranties.

These are Significant Factors relative to a Manufacturer competing with a Secured Party over the "trust monies".

Moreover, these are essential factors when the Manufacturer Defends a Preference Action in Bankruptcy.

Query: How would your State Courts interpreting the legislative intent of its Consumer Protection Laws, in viewing these transactions and competing interests? Most likely in favor of the Consumer.

Query: How would your State Courts and/or Federal Courts view the competing interest between the Debtor Platform and Manufacturer?