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### Online Courses: *A Viable Option for Credit and A/R Education*

By Tom Diana

Recognizing an opportunity presented by rapidly improving Internet technology, the Credit Research Foundation began developing online courses in credit risk management in 2008. Today, there are 15 courses available for credit professionals interested in learning new skills or enhancing existing ones.

These online courses, collectively known as CRFOnline Classroom™, have been well received and utilized by hundreds of credit professionals from well over 300 different companies. CRF reached out to a few of those who most frequently utilize these courses to gain a better understanding of how they are perceived by credit managers. The following summarizes their reactions to their experiences with the CRFOnline Classroom.

#### Corporate Perspective

The need for companies to provide customized training for their credit and A/R employees is characterized succinctly by Darin Newton, Director of Credit for VF Outdoor LLC, who said, “You don’t go to college to be a credit manager. It requires a lot of on-the-job training.”

Meghan Conroy, Director of Credit for Mizuno USA Inc., summarized her view by stating, “When I interview someone without credit or collections experience but they’re hungry and want to learn, that is my favorite job candidate. I can utilize the resources I have, such as the CRF online courses, to mold that candidate into the successful employee that I want them to be.”

4th Qtr.

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# The Ten Most Important Things That the Collection Professional Absolutely Needs to Know About Bankruptcy

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The following article will outline the ten most important issues a collection professional should know about the Bankruptcy Code and process. These issues include: Chapter 11 process; committee of unsecured creditors; the automatic stay and adequate protection; claims process; unexpired leases and executory contracts; Chapter 11 plan; administrative expense claims; preference actions; involuntary bankruptcy; and bankruptcy discharge.

While the following is of a fundamental nature that most credit professionals are aware, it will serve as a checklist of issues of which to be vigilant with respect to potential and current bankruptcies.

## 1. Chapter 11 Process

A debtor commences a Chapter 11 case by filing a petition for relief under Chapter 11 of the Bankruptcy Code, along with its Schedules and Statement of Financial Affairs. Once the petition is filed, the debtor becomes a debtor-in-possession with all of the obligations and powers of a Chapter 11 trustee. In some instances, a Chapter 11 trustee may eventually be appointed, taking this power and authority away from the debtor. During the Chapter 11 bankruptcy process, a debtor-in-possession can employ professionals, such as attorneys, accountants, appraisers and auctioneers, to help it navigate the Chapter 11 case. All payment for such professionals can only be made after Court approval.

## 2. Committee of Unsecured Creditors

The Committee of Unsecured Creditors generally only exists in a Chapter 11 bankruptcy case. Three to seven unsecured creditors are appointed by the Office of the United States Trustee to sit on a committee to provide oversight and guidance to the case. The Committee members are usually selected from the debtor's 20 largest unsecured creditors, but in very large or complex cases, a smaller creditor may also be chosen to provide more diversity to the Committee. Committees also have the right to hire counsel and other professionals, whose fees are paid for by the debtor as administrative expense claims and by the individual members of the Committee. Committees are often most important in smaller Chapter 11 cases rather than larger cases.

## 3. Automatic Stay and Adequate Protection

The automatic stay, pursuant to Section 362 of the Bankruptcy Code, invokes a stay on all proceedings against the debtor related to collecting debts or enforcing a claim. The automatic stay is limited, but does relate to state court actions or foreclosure proceedings against the debtor or

property of the debtor's estate. Many courts, however, hold that the filing of a mechanic's lien does not violate the automatic stay.

One of the trustee's or debtor-in-possession's paramount duties is its obligation to provide and maintain the value of a secured claim's collateral. If this adequate protection cannot be provided, either by maintaining the property or by making adequate protection payments, the secured creditor will be entitled to relief from the automatic stay to pursue its rights and remedies outside of bankruptcy court.

## 4. Claims Process

When the debtor files its petition for relief under the Bankruptcy Code, it is required to file its Schedules listing all known secured and unsecured creditors. Once a creditor receives notice of the debtor's bankruptcy filing, and even if a creditor is listed on the debtor's Schedules, best practice is for the creditor to then file a Proof of Claim on the debtor's claims register. A creditor's claim can be discharged even if the creditor had no notice or knowledge of the bankruptcy case, so therefore it is best to actively pursue the claim and participate in the bankruptcy process.

## 5. Unexpired Leases and Executory Contracts

A powerful tool for a debtor under the Bankruptcy Code is the ability to reject or assume unexpired leases and executory contracts. An executory contract is one wherein the failure of one party to perform its obligations would excuse the performance of the other party, and the outstanding obligations are not solely for the payment of money. If the debtor assumes a lease or executory contract, the debts arising therefrom are not discharged, and the debtor must cure any prepetition defaults.

## 6. Chapter 11 Plan

The debtor or debtor-in-possession must file a plan of reorganization or liquidation, with an accompanying disclosure statement. The disclosure statement must provide adequate information, measured against a typical debtor that provides creditors with enough information so that they can make an informed decision regarding the plan. Creditors may object to the adequacy of the information provided in the disclosure statement. The debtor must obtain court approval of the disclosure statement before it can ballot the plan for acceptance by the creditors.

## 7. Administrative Expense Claims

A creditor can get a claim approved as an administrative expense claim for “actual and necessary costs of preserving the estate.” This can include the debtor’s and Committee’s professionals’ fees, as well as post-petition payments to creditors. Section 503(b)(9) of the Bankruptcy Code also defines an administrative expense claim to include claims for the value of any goods received by the debtor within 20 days before the date of commencement of a case in which the goods have been sold to the debtor in the ordinary course of business. The key issue for proving a 503(b)(9) claim is when the goods were “received” and the actual “value” of the goods.

## 8. Preference Actions

Pursuant to sections 547 and 548 of the Bankruptcy Code, the trustee or debtor-in-possession can avoid and recover payments made to creditors within 90 days before the date of commencement of the case. Debtors will often send demand letters before filing a complaint to commence an adversary proceeding. Creditors should never pay when they receive that demand letter; often, creditors have valid defenses to this demand and an attorney can assist in negotiating a settlement for a much lesser value.

## 9. Involuntary Bankruptcy

Involuntary bankruptcy cases can be commenced by the creditors of the debtor pursuant to section 303 of the Bankruptcy Code, and are often the creditors’ friend. If a debtor has 12 or more creditors, a case can be commenced by three creditors holding a total of \$15,325 or more of unsecured claims. If a debtor has less than 12 creditors, one creditor holding more than \$15,325 of unsecured claims can commence a case. These claims must not be the subject of a bona fide dispute as to liability or amount.

## 10. Bankruptcy Discharge

Certain debtors, such as individuals in a Chapter 7 bankruptcy case, are eligible for discharge. This achieves the purpose of bankruptcy, providing the debtor with a fresh start after discharging all of his or her debts. The debtor

is released of all liability for certain debts, and is no longer required to pay any debts that have been discharged. A corporation or other entity is not eligible for a discharge, but can eliminate debt through a Chapter 11 Plan.

The above issues are essential features of bankruptcy procedures and issues to which credit professionals are well-served to remain up to date on their latest developments.

### **About the Authors:**

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### **About CLLA:**

The Commercial Law League of America (CLLA) is a respected organization of attorneys and credit professionals actively engaged in the fields of commercial law, bankruptcy and insolvency. Since 1895, CLLA has been dedicated to providing expertise, in-sight, and results to the legal and credit communities.

CLLA’s Commercial Collection Agency Certification is an accepted standard throughout the industry. The accreditation program has been in place since 1975.

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