

FCIA Claims Perspective 2009

In last year's Claims Perspective we questioned whether better economic management by emerging countries had made high rates of default in these countries a relic of the past. We concluded that the low default rates of recent years might just be the lull before the storm. We also noted that defaults/insolvencies in developed countries had been lower than usual over the past few years and wondered whether lower past incidence of losses in these countries translated to lower risk going forward. Our conclusion was that in spite of good loss and payment experience, risk was increasing as buyer limits had been pushed to "uncomfortable" levels in relation to traditional credit analysis criteria. We also noted that while years of prompt payment experience is sometimes considered to be a valid reason on its own to extend significant credit, our post-default reviews indicated that in many cases payment experience was prompt right up to date of bankruptcy.

The "perfect storm" for credit insurers hit in 2008 and roared into 2009. Payment defaults and bankruptcies increased first in developed countries and shortly thereafter in emerging countries. Recessionary conditions, the sudden lack of available credit, commodity price volatility and currency devaluations all created havoc for companies around the globe. But so far, companies operating in developed countries, including the US, have been hurt the worst. On a bright, sunny April day, it would be un-Spring-like to list calendar year 2008 chapter 11 filings, predicted filings and those that would have been filings absent the government bailouts. Few want to hear the word bankruptcy right now so we'll limit our discussion to helpful, perhaps even positive bankruptcy news.

The 2005 Bankruptcy Code amendments expanded the rights of vendors who delivered goods within 20 days prior to a Chapter 11 (or 7 or 13) filing. Section 503(b)(9) provides that after notice and a hearing, there shall be an allowed administrative expense claim for "the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business." Creditors must file written proof of the administrative claim with a request for payment and some courts have set deadlines ("bar dates"). A number of bankruptcy courts routinely issue orders setting deadlines for filing reclamation claims and allowing the debtor to negotiate and settle reclamation claims.

A second change adopted in the revisions is a new 45-day bankruptcy reclamation right that was added to Section 546(c) of the Bankruptcy Code. Once a bankruptcy is filed, a vendor



Questions or comments? Contact us.

*FCIA Management Company, Inc.
125 Park Avenue, 14th floor
New York, NY 10017*

*Phone 212-885-1500
Fax: 212-885-1535
service@fcia.com*

www.fcia.com

can assert a reclamation demand for goods received by the debtor within 45 days of the bankruptcy filing as long as the vendor has demanded in writing the reclamation of the goods no later than (a) 45 days after the receipt of the goods by Buyer, or (b) 20 days after the Petition Date if the 45-day period expires after such date. Note that prior sale of the goods by the bankrupt debtor or a secured lender with a lien on the goods defeats the reclamation claim.

How are we responding in this environment? Yes – claims have increased. In 2008 claims were up significantly from our record low year in 2007, but were still below our average annual claims count. Reported overdues have increased and 2009 claims are coming in somewhat faster than 2008. But, our disciplined underwriting over recent years has positioned us well. We believe this higher claims environment is a great opportunity for FCIA. It is our chance to show our brokers/insureds that the credit insurance product is a valuable one and that choosing FCIA as their credit insurer was the right choice. We know that any insurance product will be considered worthless in the future if valid claims are not paid today, so we are working hard as always to provide a top level claims service to our insureds. In other words, ***it is business as usual at FCIA.***

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