

PUBLICATION

Insolvency Proceedings: Protecting your interests early in the process

January 1, 2018

In business, insolvency proceedings can be initiated by another company that has become insolvent (the "Debtor Company"). In these situations it is important to be diligent about protecting your financial interests. In this article, we outline some of the specific interests that have been addressed in recent insolvency proceedings in Alberta.

Matters to keep in mind in Insolvency Proceedings

Formal insolvency proceedings may be looked at as consisting of three separate filings:

1. A filing for protection under the *Companies Creditors Arrangement Act* ("CCAA") by the Debtor Company
2. The appointment of a Receiver or Receiver/ Manager over the assets of the Debtor Company by a creditor
3. The assignment or petition into Bankruptcy by the Debtor Company or a creditor

Construction Services Companies

As an example, as a provider of construction services, your company may receive notice that the Debtor Company has entered into CCAA, Receivership or Bankruptcy Proceedings. If this occurs, it is important to take steps immediately to protect your position. This may often involve the filing of Builders' Lien within the strict timelines that apply to such a filing. It is also very important to make the filing against the appropriate Lands of the Debtor Company, if applicable. The usual CCAA Initial Order or Receivership Order will halt further legal proceedings against the Debtor Company. However, these Orders will usually allow the proceedings to continue in order to meet the tight timelines of a Builders' Lien filing. The filing of a Builders' Lien may elevate your company to a secured creditor position and may also enhance your prospects of recovery from the Debtor Company.

Recently, there was a complicated Receivership process involving the Pacer/ Promec group of companies. There were a number of Builders' Liens filed. We acted for a Builders' Lien claimant and filed the Builders' Lien, along with subsequent negotiation with the Monitor. These early steps in the process allowed for a successful recovery for our client.

The moral of this story is that a filing in CCAA, Receivership or Bankruptcy does not necessarily mean that your company is out of luck with recovery, it means that you must take action promptly at the outset of the process and throughout.

Proof of Claim Process

There are several situations where corporations become insolvent and each insolvency proceeding will have its own unique characteristics.

For example, our firm recently acted on a matter involving a large group of holders of life-lease interests that were met with a CCAA process when the owner of the lands, which were subject to the life-leases, became insolvent. The Proof of Claim process can become very complicated in these types of situations. We were able to help our clients navigate through the process and obtain a very good recovery in the circumstances.

The above are only a couple of examples of a construction and lease-related scenario. There are many situations where a creditor of a Debtor Company entering into Insolvency Proceedings may be able to place itself in a better position by taking the appropriate steps early on in the process.

If you receive formal notice or become aware of Insolvency Proceedings, it is important to understand your legal position.