STATEMENT FROM STUART S. ZISHOLTZ

In the era of online shopping, many retail stores and businesses are feeling the economic crunch. Retailers are closing all or large portions of their stores.

Bankruptcy filings are on the rise. Retailers are taking advantage of Chapter 11 proceedings in order to obtain a fresh start in dealing with the various creditors. Many retailers first try and seek out their creditors to negotiate a reduced payment schedule in order to avoid bankruptcy. However, bankruptcy seems to be inevitable for many of these businesses and retailers.

For creditors, bankruptcy could be a nightmare. Besides being a possible unsecured creditor, there are provisions in the Bankruptcy Code which address preference payments. These preference payments are funds remitted to a creditor within 90 days prior to the bankruptcy filing which must be returned to the bankruptcy estate. Thus, if you receive $100,000 within 90 days from the bankruptcy filing and the trustee deems it a preference, the creditor must return the funds. There are defenses to a preference claim but those issues are for another article.

With respect to the construction industry, a creditor can file a Mechanic's Lien once a bankruptcy is filed. The lien secures the debt. In addition, the creditor may have a trust violation claim under the Lien Law which would allow for a personal liability against the debtor's principals. However, a claim against the bankrupt debtor cannot be commenced due to the automatic stay associated with the Bankruptcy Code.

The key aspect to any bankruptcy is knowing how to proceed. If you are in a position where you need to file a bankruptcy, you need to understand the ramifications associated with the filing. As a creditor, you need to understand your rights and obligations in order to protect your receivable.

Never let your lien time run out!

For a free copy of a pamphlet pertaining to Mechanic's Liens and payment bond issues, kindly contact me or the Association.