



# Bernie's Brainers

A publication of Commercial Collection Corporation of NY

PO Box 288, Tonawanda, New York 14150

Phone: 1-800-873-5212 Fax: 1-800-873-5211

[www.commercialcollection.com](http://www.commercialcollection.com)

July 2005

## **CHANGES TO RECLAMATION UNDER NEW BANKRUPTCY ACT**

The Bankruptcy Abuse Prevention & Consumer Protection Act of 2005 was recently signed into law by President Bush in April. There have been some significant changes made to the bankruptcy code that will be especially pleasing to credit grantors. One of the sections in the bankruptcy code being revamped is the creditors' right for reclamation.

Reclamation is the seller's right to require an insolvent buyer to return goods purchased on credit. The expansion of the reclamation rights will allow creditors to further enhance the possibilities of recovery. Under the old Reclamation Law, only goods received by the debtor within ten (10) days from the filing of the bankruptcy were subject to reclamation. The new law expands the time period up to 45 days from the bankruptcy filing. With the old law, if the 10-day reclamation period did not expire when the bankruptcy case was commenced, you would receive an additional 10 days after the bankruptcy filing date to make your reclamation demand. The new law allows you an additional 20 days after the commencement of the bankruptcy case, if the 45-day period expired after the date the bankruptcy case commenced. Hypothetically, the new law allows you up to 65 days to make reclamation demands upon the bankrupt company.

Under the existing law, reclamation rights are subject to the rights of a secured lender of the goods. It is questionable whether a secured lender will ever consent to the debtor's return of the goods free and clear of its security. The new section provides creditors with a safety net. For goods sold on credit and received by the debtor within 20 days of the bankruptcy filing, creditors who made the necessary reclamation demands, and were not able to retrieve their goods, will be allowed to file an administrative expense claim instead of a general unsecured creditor claim. This will enhance the creditors' chances of getting paid through the bankruptcy proceedings.

The new Bankruptcy Protection Act will go into full effect in October of this year. The restructured reclamation laws provide creditors with a little more power should the debtor prove to have been insolvent when they ordered the goods. If you have a situation that you believe is covered under this change, check with your corporate attorney or give us a call. We are always looking for new ways to recover your money.

Bryan Rafferty  
Legal Management  
[brafferty@commercialcollection.com](mailto:brafferty@commercialcollection.com)  
800-873-5212. ext. 203

## **Bernie's Brainers**

E-mail your answer to Bernie's Brainers to [bkurzdorfer@commercialcollection.com](mailto:bkurzdorfer@commercialcollection.com) or fax to 1-800-873-5211

Decipher the Hidden Meaning:

# **TIMINGTIMING**

Answer to last Bernie's Brainers: Space Invaders

**BE SURE TO ENTER OUR**

**FAX-O-GRAM CONTEST**

**USING THE ENCLOSED FORM!**

*5 Fax-O-Grams will be pulled at random & sent a FREE gift. If you don't have the form, call us and we will fax one to you immediately!*

## **Extending Credit to a Business? Beware of FCRA Requirements for Obtaining Credit Reports**

*By: Lisa Summer*

*Credit Today, June 2005*

Businesses often fail to comply with the Fair Credit Reporting Act (FCRA) and thereby expose themselves to civil penalties and potential criminal liability. FCRA is a Federal statute that regulates the activities of credit reporting agencies, those who furnish information to credit reporting agencies, and businesses who are users of credit reports.

Frequently, a business that is considering extending credit to a closely held corporation will want to run a credit check on related individuals such as the business owner or a guarantor. The mere fact that a business is the source that initially requested credit is no exception to compliance with FCRA's requirements when the credit report of an individual is pulled.

Consider these examples of situations that can expose your firm to claims of a FCRA violation:

Pulling the credit report on an officer of a corporation when the corporation has applied for credit or on an individual partner of a partnership when the partnership has applied for credit. Written authorization from the individual under FCRA is required.

Pulling the credit report on the spouse of an applicant for credit or employment. Generally, FCRA does not authorize pulling a spouse's report unless the spouse will be liable on a credit account.

Taking a copy of an individual's credit report that was pulled for a permissible purpose and using it later for an impermissible purpose (such as to identify new marketing opportunities or offer unrelated products or services), or sharing it with someone who does not have a permissible purpose.

Pulling the credit report of an individual to get information useful to potential or ongoing litigation. FCRA does not list litigation as a permissible purpose for obtaining or using a credit report. Therefore, unless the litigation is of such a nature that one of the enumerated purposes under FCRA applies, it is generally impermissible to pull a credit report for use in litigation.

Because credit reports contain confidential information about an individual's credit history, FCRA only allows an individual's credit report to be released for certain purposes. Whether obtaining a credit report from one of the "Big Three" nationwide agencies (Equifax, Experian and Trans Union) or a different agency or bureau, FCRA requires that you certify the purpose for which the report is being obtained and that the report will not be used for any other purpose.

Having written permission is not necessary when pulling a credit report on the business entity itself. However, when you want a report on an individual business owner, proprietor, officer, partner, guarantor or spouse, in addition to the business report, you are required to have written authorization.

### Record Retention

When obtained, it is advisable to retain written authorization for a period of five years. The statute of limitations period for claims based on FCRA violations is two years from the date of discovery of the violation, but in no event longer than five years from the date of the violation.

Finally, FCRA was amended by the Fair and Accurate Credit Transactions Act of 2003. A key reason for the amendment was to protect consumers from identity theft. The amendment did not materially change the law regarding obtaining and using credit reports, but you should pay renewed attention to your procedures for ensuring that the individual for whom you seek to pull a credit report is, in fact, the same as the individual seeking credit.

**For more information or to place a claim, please contact us at:**

**PO Box 288, Tonawanda, New York 14150**

**Phone: 1-800-873-5212 Fax: 1-800-873-5211**

**[www.commercialcollection.com](http://www.commercialcollection.com)**