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In the Business of Going Out of Business: What Unsecured Creditors Need to Know About Liquidation Agreements

October 11, 2018

The “Retail Apocalypse” has arguably been upon us for the last decade and continues to be a force today. From January 2006 through September 2017, 46% of all retail bankruptcy filings with more than \$50 million in liabilities resulted in liquidations. This percentage excludes more recent high-profile liquidations such as Toys “R” Us and The Bon-Ton Stores, which filed for Chapter 11 and liquidated after September 2017. In situations where liquidation may be inevitable, unsecured creditors should be aware of the typical terms of a liquidator agency agreement and certain issues that may arise thereunder in order to ensure the highest possible recovery on an unsecured claim. This article examines “going out of business” sales generally, the most common terms of liquidator agency agreements, including fee structures, and steps unsecured creditors can take to protect themselves and their consigned goods in a challenging liquidation scenario.