

# THE ARROW

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## The Ten-Day Rule: A Seller's Right To Reclaim Goods

The following hypothetical telephone conversation between an open account seller and his counsel may be instructive in regard to the so-called "ten-day rule." We will designate the open account seller/client as "Joe Seller," or "Joe" for short, and his knowledgeable counsel as "A. Lincoln," or "Abe."

**JOE SELLER:** "Abe, I need help. One of my long-time customers has just filed a Chapter 11, and he owes me \$100,000. Believe me, I'm sweating bullets over this one."

**A. LINCOLN:** "Did you have a security interest in the goods you shipped, or anything else as collateral?"

**JOE:** "Nope, I've been selling to this guy for 20 years on open account. He's been slow at times, but I always got my money."

**ABE:** "When did you last ship to him?"

**JOE:** "Just five days ago."

**ABE:** "Did that last shipment constitute your entire balance?"

**JOE:** "Nope, the last shipment was for only \$50,000. He owes me a hundred grand."

**ABE:** "How long ago did you ship prior to the last shipment?"

**JOE:** "Oh, that was over 30 days ago. By this time, he's probably sold most of that stuff."

**ABE:** "What's your customer's name, and where is he located?"

**JOE:** "The name of the company is Widget Fabrication, Inc., and it's located right on Main Street here in town."

**ABE:** "In that case, I think I can save a good portion of your last shipment for you. Since Widget Fabrication would have received it within the last ten days, and as I understand it, the bankruptcy petition has only just been filed."

**JOE:** "That's right. I was discussing payment of the old invoice with Widget's buyer this afternoon when he informed me that the bankruptcy petition had been filed just this morning. I was so taken aback I didn't know what to say."

**ABE:** "In that case, I am going to have an express letter sent to the debtor with a return-receipt, making demand for return of those goods which you last shipped."

**JOE:** "How can we do that?"

**ABE:** "Well, you're darned lucky that you learned of the debtor's petition within ten days of its receiving your goods because the Uniform Commercial Code gives you special protection in such a situation."

Mr. Lincoln, obviously a knowledgeable creditors' counsel, is correct. UCC 2-702 provides that when an open account seller such as Abe's client, Joe, discovers that his customer has received goods on credit while insolvent, he may reclaim the goods upon demand made within ten days after the *receipt* of the goods by the buyer. Thus, so long as Widget Fabrication has not sold the goods to a good-faith purchaser in the interim, Joe Seller has a right to reclaim any goods which he can identify to his last invoice.

Abe could have gone a little further in his conversation with Joe, however, and no doubt he will later once he has attended to the matter of the written demand for return of the goods. Any goods remaining from the earlier shipment may also still be reclaimable under the same statute if Widget Fabrication has made a misrepresentation of solvency to Joe Seller in writing within three months before his delivery of the prior shipment. This is one reason some credit managers of open account shippers now ask for financial statements of some sort every quarter.

Joe Seller should have asked Abe if his demand for his goods vio-

lated the "automatic stay," the special protection afforded a debtor in bankruptcy against creditors attempting to enforce their lien rights or collect their accounts. Abe, being as knowledgeable about bankruptcy as he is about creditors' rights in general, would have informed Joe that he need not worry. A post-petition demand for reclamation of goods received by the debtor within ten days does not violate the automatic stay. The courts have so held on the theory that such a demand does not affect the debtor's right to possession of the property, but merely puts the debtor on notice of the seller's intent to seek reclamation.

It will be necessary for Abe to follow up by filing an adversary proceeding for reclamation in the Bankruptcy Court. This can usually be accomplished, however, by an agreed order between the debtor, any court appointed trustee, and the seller's counsel.

This right to reclaim goods received within ten days by insolvent customers is of such importance to open account sellers that your editors are planning to include other articles dealing with the topic in future issues of *The Arrow*. We have not included, for example, an explanation of what happens if some bank has a lien on all of Widget Fabrication's inventory. If you have specific questions about this topic which you would like to see answered, you should contact the editors.

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