

Surviving Your Customers' Financial Difficulties

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Contract Packaging Association
2010 Annual Meeting



What are Contract Packagers?

- Bailee
- Reasonable Care
 - Common Law/UCC
 - Fluid Concept
 - Defined by Many Factors
- Primary/Secondary Liability

Damages

- No limitation of liability
 - Replacement cost
 - No lost profit unless ...
- Limitation of liability
 - Original UCC
 - Article, Item, Weight
 - UCC Revised Article 7



Impact of Customer Agreements on Reasonable Care Standard and Damages

- Customer purchase orders
- Customer prepared agreements
- Hand Shake Agreement



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Impact Continued

- Higher standard of care
- Damages at selling price
- Other problems

Standard of Care Provision:

“Warehousman shall be liable for and agrees to indemnify customer from all loss or damage to product which warehousman accepts for storage.

Notwithstanding the above, the warehousman shall not be liable for such losses or damages which are directly attributable to the negligent acts or omissions of customer.”



- Storage Agreement

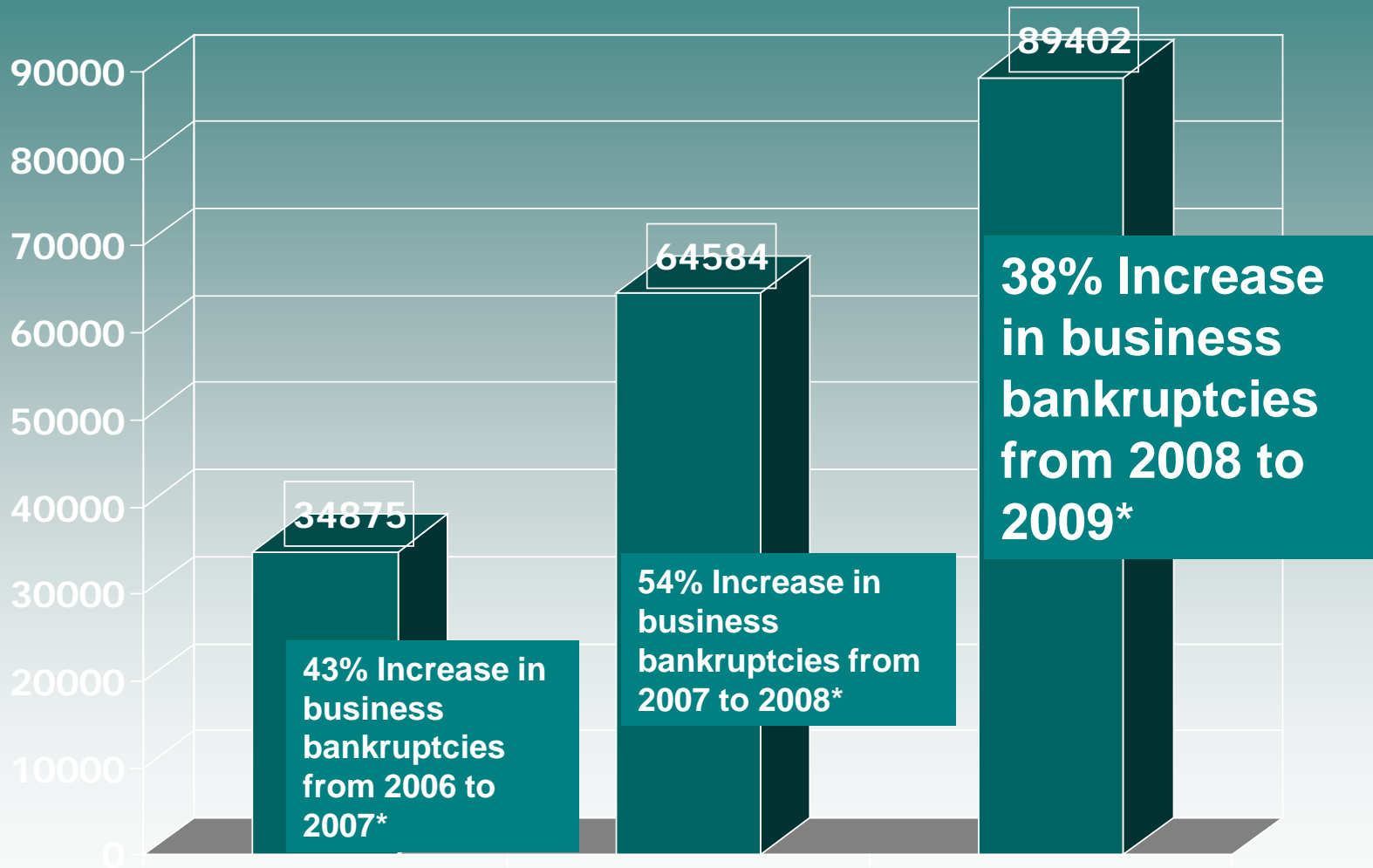
“The Warehouseman shall perform all services in accordance with and shall follow the instructions and procedures specified in that document supplied to the Warehouseman entitled “Operating and Documentation Requirements for Warehousing Facilities”, which is incorporated herein by reference.

Insurance Coverage

- First Party Property Policy
 - Expensive
 - Many normal bailee exposures not covered
- Bailee Legal Liability Policy
 - Most provide bailee coverage
 - Warehouse receipts required by many insurers
 - Premises definition can limit coverage
 - Processing exclusion
- Bailee E & O Policy
- Commercial General Liability Policy
 - Care, custody and control exclusion
 - Completed operations coverage
 - Contractual liability coverage
 - “Your Product” “Your Work”



Statistics on Company Bankruptcies



*AACER (Automated Access to Court Electronic Records) February, 2010



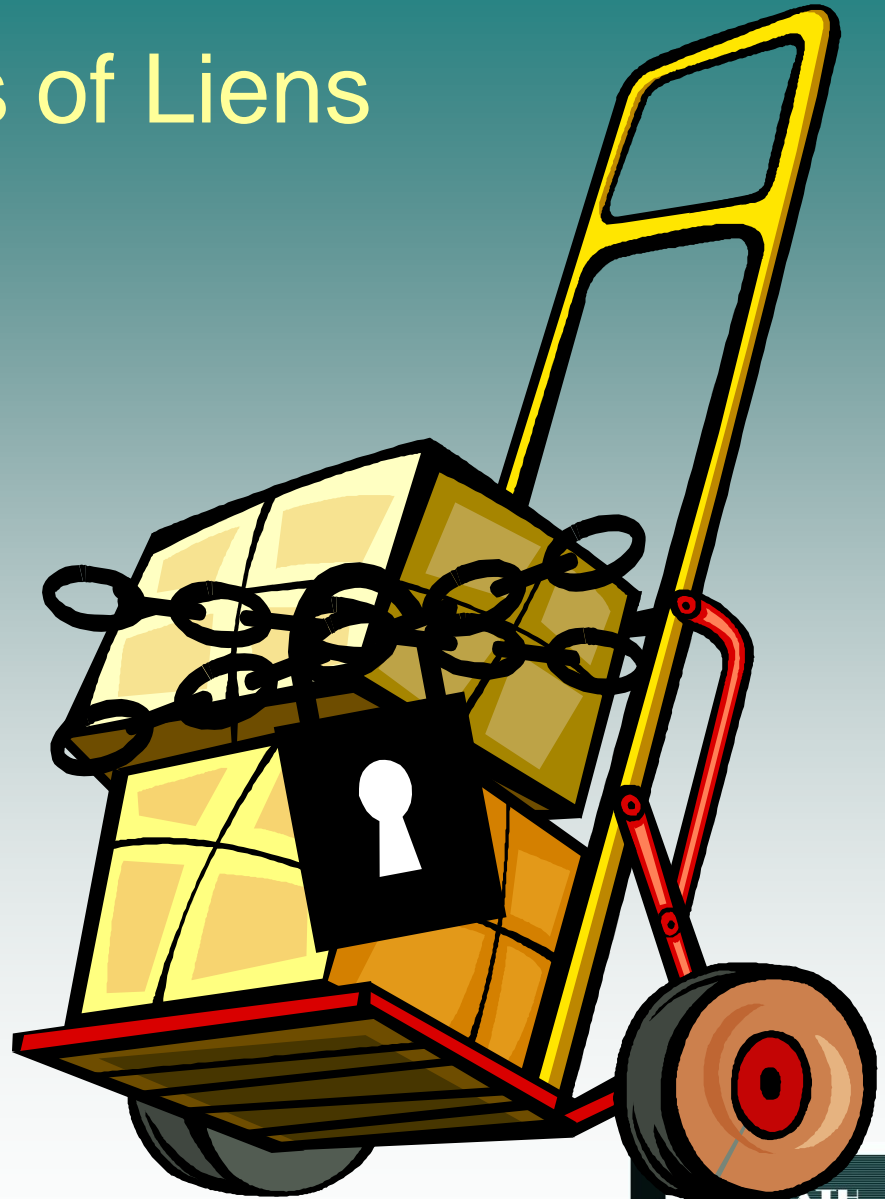
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Bankruptcy Issues

- Pre-petition debt/post-petition debt
- Preferential transfer

Types of Liens



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Specific Lien

General Lien

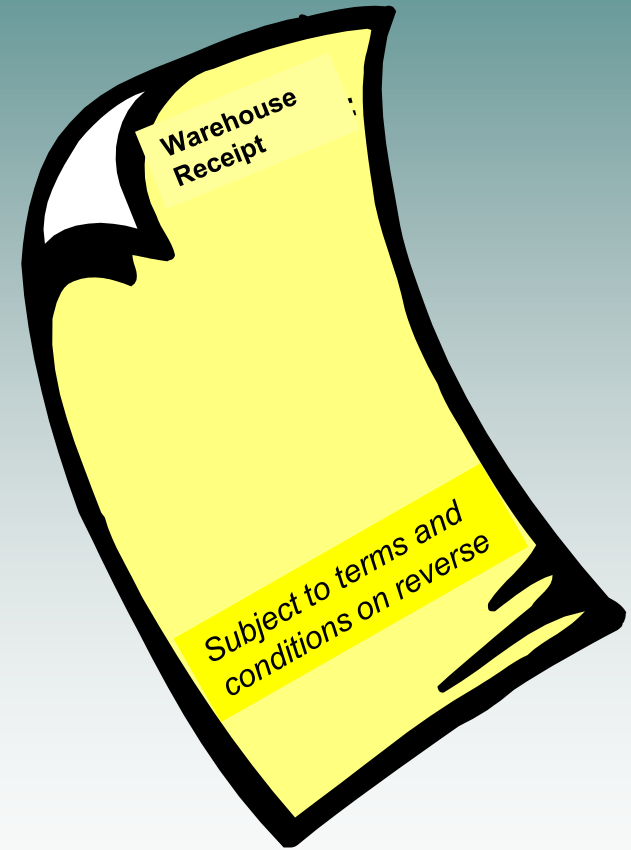
COMPANY shall have a lien against the GOODS and on the proceeds thereof for all charges for storage, handling, transportation (including demurrage and terminal charges), insurance, labor and other charges

COMPANY further claims a lien on the GOODS for all such charges, ADVANCES and expenses in respect to any other property stored by STORER in any warehouse owned or operated by COMPANY or its subsidiaries wherever located and whenever deposited and without regard to whether or not said other property is still in storage.



How Created

- Original Article 7
 - Must issue warehouse receipt
- Revised Article 7
 - Warehouse receipt not required



States Adopting Article 7

new states in 2009

Alabama	Iowa	North Carolina
Alaska	Kansas	North Dakota
Arizona	Louisiana	Oklahoma
Arkansas	Maine	Oregon
California	Maryland	Pennsylvania
Colorado	<u>Massachusetts</u>	Rhode Island
Connecticut	Minnesota	South Dakota
Delaware	Mississippi	Tennessee
<u>Georgia</u>	Montana	Texas
Hawaii	Nebraska	Utah
Idaho	Nevada	Virginia
Illinois	New Hampshire	<u>Washington</u>
Indiana	New Mexico	West Virginia



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Case Studies

Questions?



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