



“Too big to fail” no longer applies to the
medical & healthcare industries.

Healthcare Bankruptcies

A Financial Risk to Suppliers

It's All in The Numbers

Lower patient volumes, declining reimbursements, Medicare/Medicaid funding cuts, growing healthcare costs, political uncertainties, and industry lawsuits are just a handful of reasons cited for healthcare bankruptcies.

“Too big to fail” no longer applies to the medical/healthcare industry. Suppliers must take proactive steps to secure their receivables or risk the unfortunate status of unsecured creditor.

The "healthcare industry" includes pharmaceuticals, hospitals, nursing homes, various private practice and specialty services.

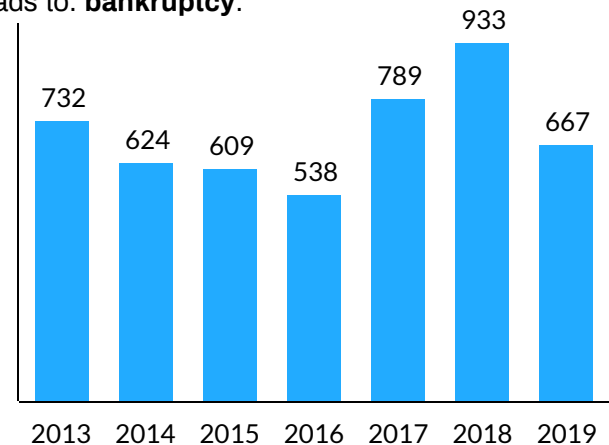
There have been nearly 5,000 healthcare industry bankruptcies in the last 5 years, and over 600 healthcare bankruptcies in 2019.

**5,000 healthcare
industry bankruptcies**

Of the healthcare bankruptcies filed in 2019, **25% have reported liabilities in excess of \$10M** and **15% reported liabilities over \$50M.**

If an entity has assets up to \$10M, but their liabilities are between \$100M and \$500M, how will the entity pay its creditors?

The simple math doesn't work; there isn't enough money within their assets to pay off the debts, which leads to: **bankruptcy.**



■ Number of Healthcare Bankruptcies by Year

Priority Pays

Secured Creditors Are Paid 1st!

Once in bankruptcy, we know the drill: **secured creditors are paid first**, followed by administrative claims, and last place goes to unsecured creditors.

In a scenario of \$10M in assets and \$100M in liabilities, do you think there will be funds left to pay unsecured creditors?

Even secured creditors may see only partial recovery; but *something* is much better than nothing.

Suppliers Need to File UCCs!

Article 9 of the Uniform Commercial Code (UCC) provides an opportunity for trade creditors to secure their goods and/or accounts receivable by leveraging the personal property assets of their customer.

UCCs are a form of consensual security, which means your customer must grant you the security interest.



Secured



Administrative



Unsecured

UCCs are a basic risk mitigation tool; they are a low-cost solution, requiring nothing more from a customer than a signature.

A properly perfected security interest is comprised of two parts: **Security Agreement and Financing Statement**.

The Security Agreement is the portion that creates and grants the security interest and the Financing Statement creates the public record of the security interest.

Creditors often include security language within their credit applications and establish standard business practices by always obtaining a signed Security Agreement, because UCCs work.

The Bankruptcy Case of Hooper Holmes, Inc.

According to **BankruptcyData** a division of new **generation research** (www.bankruptcydata.com), the healthcare company Hooper Holmes, Inc. provided health & well-being programs nationwide. *“These services included on-site biometric screening services and flu shots, laboratory testing, health risk assessment, and sample collection services to, among others, corporate and government employers, health plans, well-being companies, and third-party administrators.”*

In August 2018, Hooper Holmes, Inc. filed for Chapter 11. Events leading to the bankruptcy included mergers and acquisitions: transactions that typically lead to increased sales. Unfortunately, with mergers and acquisitions come the debt of said acquired businesses. Heading into 2018, Hooper Holmes, Inc. had a significant shortfall of working capital.

What was the capital deficit? **\$31.5 million.**

*“The most significant factor leading to the commencement of these chapter 11 cases was the amount of debt on the Hooper Holmes’ balance sheet. **The Company incurred year-over-year losses from operations with negative cash flows.** To fund the Company’s operations, the Company incurred debt in the ordinary course. Further, mergers and acquisitions by the Company in recent years added significant debt to its balance sheet, resulting in unsustainable leverage.”*

In December 2018, the court approved the Amended Joint Plan of Liquidation (i.e. the bankruptcy plan).

According to the bankruptcy plan, secured creditors were to receive 100% of their claims and unsecured creditors were to receive approximately 3.5% of their claims.

**Unsecured creditors received 3.5 cents on the dollar.
Can you afford to recover a mere 3.5 cents on the dollar?**

Which UCC Filing Type is Ideal for Your Business?



Which UCC is Best?

Blanket Filing

A Blanket Filing is a security interest in all assets of your customer on a non-priority basis, eliminating potential conflict with your customer's primary lender. The priority or payout in a bankruptcy is determined by the filing date (first in time, first in right). For example, if ABC Co. files the first UCC and XYZ Co. files the second UCC, ABC Co. will be paid first and XYZ Co. will be paid second.

Blanket filings are popular among those supplying to the healthcare industry, as they are most commonly used in situations when your customer “consumes” or otherwise does not stock your goods. **A blanket filing may be right for you if you supply nearly any medical supply used during a given day in a hospital or doctor's office. This may include antiseptics, disposable textiles, housekeeping supplies, needles/syringes, anesthesia masks, cardiology chart paper, imaging media paper, basic office supplies, etc.**

Purchase Money Security Interest Filing

A Purchase Money Security Interest (PMSI) filing provides the same benefits as the blanket filing with the addition of priority of repossession of specific identifiable goods, primarily inventory or equipment, that your company would provide. To determine whether your goods are inventory or equipment depends on what your customer is doing with the goods you provide. If you sell goods to your customer and your customer intends to resell them to other entities, then your goods would be considered inventory.

Creditors who would benefit from a PMSI in Equipment would supply items like copy machines, beverage dispensing machines, ice machines, specimen coolers, computers, exam room equipment, mobility products, bath accessories; equipment your debtor would keep, use in their ordinary course of business and not re-sell. These are items that you could potentially repossess because there is a resale value to you.

Fixture Filing

In the healthcare industry, fixtures could include exam room tables, surgical lighting, and specimen coolers/freezers. Notice the overlap with equipment? How can a cooler be a piece of equipment and a fixture?

Based on the definition under Article 9, a fixture is anything that is “so related to a particular property.”

“**So related**” indicates the item isn’t permanent, but is still physically attached to the real property.

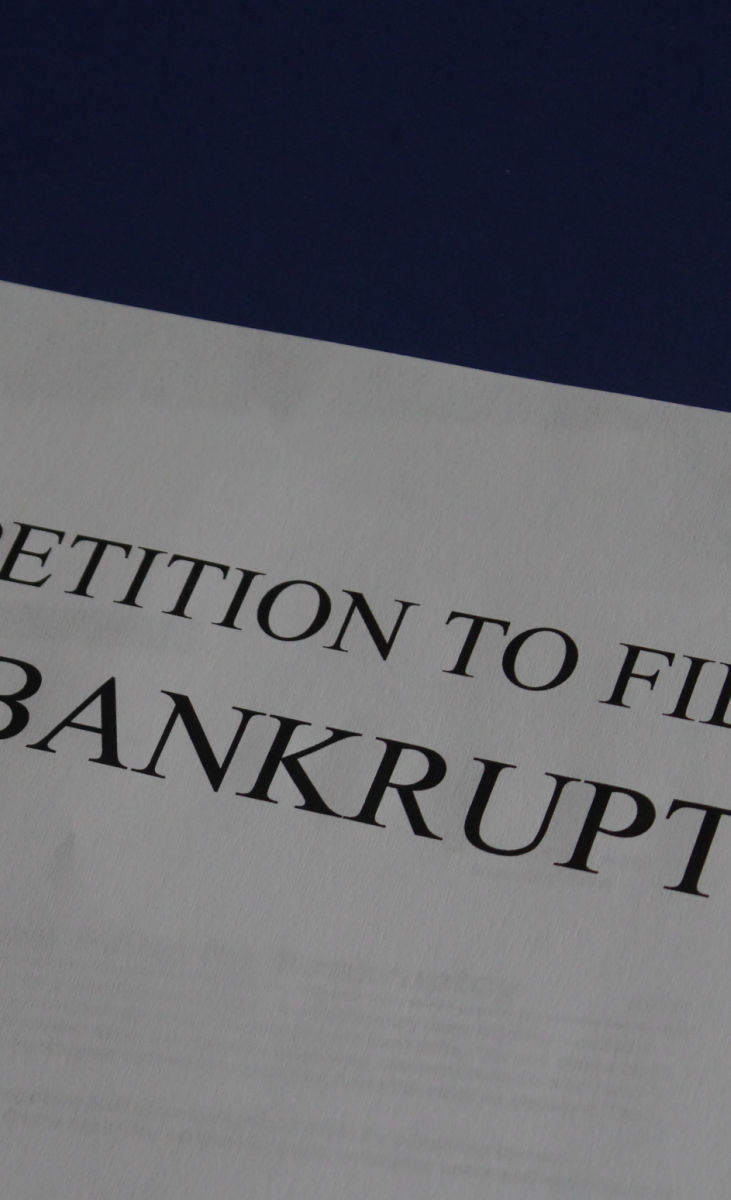
You will likely notice a theme here: **fixtures are secured to the building or premises, but can be removed if necessary** (if their removal won’t impact the structural soundness of the building or property). **Items that may qualify as a fixture would be exam tables, MRI equipment, CT Scan equipment, and even specialty lighting. These are items that are secured or affixed to the floors/walls of the establishment.**

Lease Filing

A true lease is automatically perfected under Article 2A. A filing is not needed. However, occasionally doubts arise concerning whether a transaction creates a relationship to which Article 9 or its filing provisions apply.

For example, questions may arise whether a "lease" of equipment in fact creates a security interest. *In this case a UCC-1 Financing Statement will be recorded, listing the equipment - in case the **"lease" is construed to be a security interest.**

Many of the items that would qualify under a PMSI in Equipment would also qualify under a lease. Just think of technology equipment used in a hospital! Computers for record keeping, computers monitoring patient vitals, machines used for imaging, not to mention the mass pieces of lab equipment!



[Default, Bankruptcy & Your UCC](#)

Your debtor defaults, or is in default, when they fail to fulfill the obligations identified in the Security Agreement. Default includes bankruptcy or insolvency of your debtor, debtor's failure to pay debts when due, removal of collateral and failure to insure collateral.

If you have properly perfected your security interest and your customer defaults or files for bankruptcy protection, your next steps will be dependent on the type of UCC filed.

[Chapter 7](#)

If your customer filed **Chapter 7**: File your secured proof of claim, regardless of whether you filed either a PMSI or Blanket UCC.

[Chapter 11](#)

If your customer filed **Chapter 11**:

PMSI UCC: If you would like your goods back and your goods are at your customer's location, contact the Trustee to repossess. If the Trustee is uncooperative, you may need to take additional legal action.

Blanket Filing: File a secured proof of claim and monitor for distribution.

Need assistance with determining which UCC is Ideal for Your Business?

**Contact
NCS
Today!**



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