Overview of Wisconsin Law Governing Warehouse Liens

Wisconsin has adopted Article 7 of the Uniform Commercial Code (UCC), which creates a statutory lien in favor of a warehouse on goods in possession of a warehouse to secure costs of storage and transportation. *See UCC § 7-209*. With the 2001 amendments to the UCC, Wisconsin law provides for a statutory lien in favor of a warehouse on goods held by the warehouse, and covered by a storage agreement to secure the costs of storage and transportation of such goods.

A warehouse lien may be enforced by public or private sale of the goods covered by the storage agreement. UCC § 7-210(a). The sale may take place at any time and on any terms that are commercially reasonable after notifying all persons known to claim an interest in the goods. *Id*. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. *Id*. The warehouse sells in a commercially reasonable manner if: the warehouse sells the goods in the usual manner in any recognized market therefore; sells at the price current in that market at the time of the sale; or otherwise sells in conformity with commercially reasonable practices among dealers of the type of goods sold. *Id*. For sales of goods other than goods stored by a merchant in the ordinary course of its business, the UCC requires sale by public auction. UCC § 7-210(b).

Section 7-209 of the UCC provides that a warehouse lien is "effective against any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good-faith purchaser for value would have been valid." The rights of a warehouse lienor are thus the same rights as would be available to a hypothetical bona fide pledgee. To determine whether a warehouse lien takes priority over a prior, perfected blanket security interest, courts look to the language of a secured lender's security agreement. In *In re Sharon Steel Corp.*, 176 B.R. 384 (Bankr. W.D. Pa. 1995), the bankruptcy court found that a security interest held by a secured lender with a security interest in all of the assets of a borrower was subordinate to the lien of a warehouse under UCC § 7-209. The court found that the secured lender's loan documentation permitted the borrower to incur certain "permitted liens" in the ordinary course of business, including warehouse liens. *Id*. at 388. The court held that this provision "effectively permitted the debtor to transfer its inventory to the [warehouse] as security for the [debtor's] payment of the warehouseman's . . . liens."

By contrast, in *In re Siena Publishers Associates*, 149 B.R. 359 (Bankr. S.D.N.Y. 1993), the court found that a warehouse lien was second in priority to the lien of the secured lender because under the loan documentation, "the debtor could not validly pledge its inventory to a bona fide pledgee for value." Thus, a warehouse's lien priority vis-à-vis the lien of a secured lender depends on whether a court would construe the secured lender's security agreement as allowing for the pledge of collateral to secure obligations incurred for warehousing such collateral. Please contact your Reinhart attorney or any attorney in Reinhart's Business Reorganization Practice Area if you have any questions concerning UCC § 7-209 and warehouse liens.