

ORDER OF DISTRIBUTION IN BANKRUPTCY

Section 726 (11 U.S.C. § 726)

§ 726. Distribution of property of the estate.

(a) Except as provided in section 510 [dealing with subordination of claims] of this title, property of the estate shall be distributed —

(1) first, in payment of claims of the kind specified in, and in the order specified in, section 507 of this title, proof of which is timely filed under section 501 of this title or tardily filed before the date on which the trustee commences distribution under this section;

Section 507 Priorities - paraphrased

First Tier

One. Administrative expenses of the bankruptcy,

***including postpetition operating expenses of the bankrupt*

**Two. "Gap" claims, ordinary operational expenses incurred in the period between the filing of an involuntary bankruptcy petition and the entering of an order granting relief (i.e., approving the bankruptcy)*

***Three. Earnings and benefit claims within 90 days before the earlier of the bankruptcy or the closing of the business. SEE PAGE 1 OF THE OUTLINE FOR FULL TEXT*

***Four. Unpaid contributions to employee benefit plans. SEE PAGE 8 OF OUTLINE FOR FULL TEXT*

Five. Farmers/Fishermens' claims against grain storage or fish processing facilities, up to \$4000 per claimant

Six. Security deposit claims, up to \$1800

Seven. Alimony, support, maintenance claims

Eight. Governmental tax claims on income, property; "trust fund" claims for tax to be collected or withheld by debtor <sales, withholding>; employment taxes; customs duties

Nine. Claims based on commitments to maintain capital, made to a Federal depository regulatory agency

Second Tier

** (2) Second, in payment of any allowed unsecured claim, other than a claim of a kind specified in paragraph (1), (3), or (4) of this subsection, proof of which is —

(A) timely filed under section 501(a) of this title;

(B) timely filed under section 501(b) or 501(c) of this title; or

(C) tardily filed under section 501(a) of this title, if —

(i) the creditor that holds such claim did not have notice or actual knowledge of the case in time for timely filing of a proof of such claim under section 501(a) of this title; and

(ii) proof of such claim is filed in time to permit payment of such claim;

Third Tier

** (3) Third, in payment of any allowed unsecured claim proof of which is tardily filed under section 501(a) of this title, other than a claim of the kind specified in paragraph (2)(C) of this subsection;

Fourth Tier

** (4) Fourth, in payment of any allowed claim, whether secured or unsecured, for any fine, penalty, or forfeiture, or for multiple, exemplary, or punitive damages, arising before the earlier of the order for relief or the appointment of a trustee, to the extent that such fine, penalty, forfeiture, or damages are not compensation for actual pecuniary loss suffered by the holder of such claim;

Fifth Tier

* (5) Fifth, in payment of interest at the legal rate from the date of the filing of the petition, on any claim paid under paragraph (1), (2), (3), or (4) of this subsection; and

(6) Sixth, to the debtor.

(b) Payment on claims of a kind specified in paragraph (1), (2), (3), (4), (5), (6), (7), or (8) of section 507(a) of this title [*those in (3) and (4), here*], or in paragraph (2), (3), (4), or (5) of subsection (a) of this section, shall be made pro rata among claims of the kind specified in each such particular

paragraph, except that in a case that has been converted to this chapter under section 1009, 1112, 1208, or 1307 of this title, a claim allowed under section 503(b) of this title incurred under this chapter after such conversion has priority over a claim allowed under section 503(b) of this title incurred under any other chapter of this title or under this chapter before such conversion and over any expenses of a custodian superseded under section 543 of this title. [underlining and explanation added]

. . .

employer was late in providing notice and, on behalf of the affected employee, retiree or dependent, attempt to recover from the employer or former employer the payment under sub. (3).

(b) If the department does not recover payment within 180 days after a claim is filed or within 30 days after it notifies the affected employee, retiree or dependent of its determination under par. (a), whichever is first, the department shall refer the claim to the department of justice. The department of justice may bring an action in circuit court on behalf of the affected employee, retiree or dependent to recover the payment under sub. (3).

(c) If the department of justice does not bring an action under par. (b) within 120 days after the claim is referred to it, the affected employee, retiree or dependent may bring an action in circuit court to recover the payment under sub. (3). If the affected employee, retiree or dependent prevails in the action, he or she shall also recover costs under ch. 814 and, notwithstanding s. 814.04 (1), reasonable attorney fees.

(d) An action under this section shall be begun within one year after the department refers the claim to the department of justice under par. (b), or be barred.

(5) (a) An employer is not liable under this section for a failure to give notice to any person under sub. (2), if the department determines all of the following:

1. When the notice under sub. (2) would have been timely given, that the employer was actively seeking capital or business to enable the employer to avoid or postpone indefinitely the cessation of health care benefits.

2. That the employer reasonably and in good faith believed that giving the notice required under sub. (2) would have prevented the employer from obtaining the capital or business.

(b) The department may not determine that an employer was actively seeking capital or business under par. (a) 1. unless the employer has a written record, made while the employer was seeking capital or business, of those activities. The record shall consist of the documents and other material specified by the department by rule under s. 109.12 (1) (b). The employer shall have individual documents in the record notarized, as required by the department's rules. The employer shall provide the department with an affidavit verifying the content of the notarized documents.

(6) An employer is not liable under this section for a failure to give notice to any person under sub. (2), if the department determines that the cessation of health care benefits is the result of any of the following:

(a) The sale of part or all of the employer's business, if the purchaser agrees in writing, as part of the purchase agreement, to provide health care benefits for all of the affected employees, retirees and dependents with not more than a 60-day break in coverage.

(b) Business circumstances that were not foreseeable when the notice would have been timely given.

(c) A natural or man-made disaster beyond the control of the employer.

(d) A temporary cessation in providing health care benefits, if the employer renews providing health care benefits for the affected employees, retirees and dependents on or before the 60th day beginning after the cessation.

(7) Each employer shall post, in one or more conspicuous places where notices to employees are customarily posted, a notice in a form approved by the department setting forth the rights of employees, retirees and dependents under this section. Any employer who violates this subsection shall forfeit not more than \$100.

(8) Section 111.322 (2m) applies to discharge and other discriminatory acts arising in connection with any proceeding under this section.

History: 1997 a. 237.

109.09 Wage claims, collection. (1) The department shall investigate and attempt equitably to adjust controversies between employers and employees as to alleged wage claims. The depart-

ment may receive and investigate any wage claim which is filed with the department, or received by the department under s. 109.10 (4), no later than 2 years after the date the wages are due. The department may, after receiving a wage claim, investigate any wages due from the employer against whom the claim is filed to any employee during the period commencing 2 years before the date the claim is filed. The department shall enforce this chapter and ss. 66.0903, 103.02, 103.49, 103.82, 104.12 and 229.8275. In pursuance of this duty, the department may sue the employer on behalf of the employee to collect any wage claim or wage deficiency and ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions. Except for actions under s. 109.10, the department may refer such an action to the district attorney of the county in which the violation occurs for prosecution and collection and the district attorney shall commence an action in the circuit court having appropriate jurisdiction. Any number of wage claims or wage deficiencies against the same employer may be joined in a single proceeding, but the court may order separate trials or hearings. In actions that are referred to a district attorney under this subsection, any taxable costs recovered by the district attorney shall be paid into the general fund of the county in which the violation occurs and used by that county to meet its financial responsibility under s. 978.13 (2) (b) for the operation of the office of the district attorney who prosecuted the action.

(2) (a) The department of workforce development, under its authority under sub. (1) to maintain actions for the benefit of employees, or an employee who brings an action under s. 109.03 (5) shall have a lien upon all property of the employer, real or personal, located in this state for the full amount of any wage claim or wage deficiency.

(b) 1. A lien under par. (a) upon real property takes effect when the department of workforce development or employee files a notice of the lien with the clerk of the circuit court of the county in which the services or some part of the services were performed, pays the fee specified in s. 814.61 (5) to that clerk of circuit court and serves a copy of that petition on the employer by personal service in the same manner as a summons is served under s. 801.11 or by certified mail with a return receipt requested. The clerk of circuit court shall enter the notice of the lien on the judgment and lien docket kept under s. 779.07.

2. A lien under par. (a) upon personal property takes effect when the department of workforce development or employee files notice of the lien in the same manner, form, and place as financing statements are filed under subch. V of ch. 409 regarding debtors who are located in this state, pays the same fee provided in s. 409.525 for filing financing statements, and serves a copy of the notice on the employer by personal service in the same manner as a summons is served under s. 801.11 or by certified mail with a return receipt requested. The department of financial institutions shall place the notice of the lien in the same file as financing statements are filed under subch. V of ch. 409.

3. The department of workforce development or employee must file the notice under subd. 1. or 2. within 2 years after the date on which the wages were due. The notice shall specify the nature of the claim and the amount claimed, describe the property upon which the claim is made and state that the person filing the notice claims a lien on that property.

(c) 1. In this paragraph:

a. "Commercial lending institution" has the meaning given for "financial institution" in s. 234.01 (5k).

b. "Financial institution" has the meaning given in s. 69.30 (1) (b).

1m. A lien under par. (a) takes precedence over all other debts, judgments, decrees, liens, or mortgages against the employer, except a lien of a commercial lending institution as provided in subd. 2. and 3. or a lien under s. 292.31 (8) (i) or 292.81, regardless of whether those other debts, judgments, decrees, liens, or mortgages originate before or after the lien under par. (a) takes effect. A lien under par. (a) may be enforced in the manner provided in

ss. 779.09 to 779.12, 779.20, and 779.21, insofar as those provisions are applicable. The lien ceases to exist if the department of workforce development or the employee does not bring an action to enforce the lien within the period prescribed in s. 893.44 for the underlying wage claim.

2. Except as provided in this subdivision, a lien under par. (a) does not take precedence over a lien of a commercial lending institution against the employer that originates before the lien under par. (a) takes effect. Subject to subd. 3., a lien under par. (a) takes precedence over a lien of a commercial lending institution against the employer that originates before the lien under par. (a) takes effect only as to the first \$3,000 of unpaid wages covered under the lien that are earned by an employee within the 6 months preceding the date on which the employee files the wage claim under sub. (1) or brings the action under s. 109.03 (5) or the date on which the department receives the wage claim under s. 109.10 (4) (a), whichever is applicable.

3. Notwithstanding subd. 2., a lien of a financial institution that exists on November 30, 2003, and that originates before a lien under par. (a) takes effect takes precedence over the lien under par. (a), and a lien of a financial institution for any amount advanced by the financial institution after a lien under par. (a) takes effect under a contract entered into before December 1, 2003, including any extension or renewal of such a contract, takes precedence over the lien under par. (a). Notwithstanding subd. 2., a lien under par. (a) that exists on November 30, 2003, takes precedence over a lien of a commercial lending institution that is not a financial institution, regardless of whether the lien of the commercial lending institution originates before or after the lien under par. (a) takes effect.

History: 1975 c. 380; 1979 c. 32 s. 92 (9); 1985 a. 29, 220; 1989 a. 113; 1991 a. 146; 1993 a. 86, 453; 1995 a. 227; 1997 a. 27, 237; 1999 a. 9; 1999 a. 150 s. 672; 1999 a. 167; 2001 a. 10; 2003 a. 63; 2005 a. 434.

Under sub. (1), courts may award costs to DILHR when DILHR prevails but may not tax costs against DILHR when a defendant employer prevails. *DILHR v. Coatings, Inc.* 126 Wis. 2d 338, 376 N.W.2d 834 (1985).

Chapter 103 does not provide the exclusive remedy for enforcement of claims under that chapter. Claims under statutes enumerated in sub. (1) may be enforced by a private action brought under s. 109.03 (5). *German v. DOT*, 223 Wis. 2d 525, 589 N.W.2d 651 (Ct. App. 1998), 98-0250. *Affirmed.* 2000 WI 62, 235 Wis. 2d 576, 612 N.W.2d 50, 98-0250.

109.10 Reciprocal agreements. (1) In this section, "responsible agency" means a state officer, agency or other body that is responsible for the collection of wage claims or wage deficiencies.

(2) The secretary and the responsible agency of another state may enter into a reciprocal agreement governing the collection, under the laws of the other state, of wage claims and wage deficiencies received by the department.

(3) Consistent with the terms of a reciprocal agreement entered into with a responsible agency of another state under sub. (2), the department may do any of the following:

(a) Bring an action, through the department of justice, in any court of competent jurisdiction in the other state to collect wage claims and wage deficiencies received by the department.

(b) Through the department of justice, enforce a judgment in the other state on wage claims or wage deficiencies received by the department.

(c) If permitted under the laws of the other state, refer wage claims or wage deficiencies to the responsible agency for collection in the other state.

(4) (a) Subject to par. (b), the department, through the department of justice, may bring an action under s. 109.09 on wage claims or wage deficiencies received by the department from a responsible agency of another state.

(b) Actions under par. (a) may only be brought if the other state by law or reciprocal agreement permits similar actions in that state on wage claims or wage deficiencies arising in this state.

History: 1989 a. 113; 1993 a. 86.

109.11 Penalties. (1) **ADMINISTRATIVE PENALTIES.** (a) In adjusting a controversy between an employer and an employee as to an alleged wage claim filed with the department under s. 109.09

(1), the department may compromise and settle that wage claim for such sum as may be agreed upon between the department, the employee and the employer.

(b) If the department finds that a wage claim is valid, the department may instruct the employer against whom the wage claim is filed to audit his or her payroll records to determine whether the employer may be liable for any other wage claims of the same type as the wage claim that prompted the audit instruction. If after the requested completion date of the audit the department receives a wage claim against the employer of the same type as the wage claim that prompted the audit instruction and if the department determines that the subsequent wage claim is valid, the department may audit the employer's payroll records to determine whether the employer may be liable for any other wage claims of the same type as the wage claim that prompted the audit instruction. For any valid wage claim that is filed against an employer after the department has instructed the employer to audit his or her payroll records under this paragraph and that is of the same type as the wage claim that prompted the audit instruction and for any valid wage claim that is discovered as a result of the department's audit under this paragraph and that is of the same type as the wage claim that prompted the audit instruction, the department shall require the employer to pay, in addition to the amount of wages due and unpaid, increased wages of not more than 50% of the amount of wages due and unpaid, unless the employer shows the department that payment of the increased wages would cause extreme hardship.

(c) If an employer does not agree to compromise and settle a wage claim under this subsection, the department may refer the wage claim to a district attorney under s. 109.09 (1) or to the department of justice under s. 109.10 (3) for commencement of an action in circuit court to collect the amount of wages due and unpaid plus increased wages as specified in sub. (2) (b).

(2) **CIVIL PENALTIES.** (a) In a wage claim action that is commenced by an employee before the department has completed its investigation under s. 109.09 (1) and its attempts to compromise and settle the wage claim under sub. (1), a circuit court may order the employer to pay to the employee, in addition to the amount of wages due and unpaid and in addition to or in lieu of the criminal penalties specified in sub. (3), increased wages of not more than 50% of the amount of wages due and unpaid.

(b) In a wage claim action that is commenced after the department has completed its investigation under s. 109.09 (1) and its attempts to settle and compromise the wage claim under sub. (1), a circuit court may order the employer to pay to the employee, in addition to the amount of wages due and unpaid to an employee and in addition to or in lieu of the criminal penalties specified in sub. (3), increased wages of not more than 100% of the amount of those wages due and unpaid.

(3) **CRIMINAL PENALTIES.** Any employer who, having the ability to pay, fails to pay the wages due and payable as provided in this chapter or falsely denies the amount or validity thereof or that such wages are due, with intent to secure any discount upon such indebtedness or with intent to annoy, harass, oppress, hinder or defraud the person to whom such wages are due, may be fined not more than \$500 or imprisoned not more than 90 days or both. Each failure or refusal to pay each employee the amount of wages due at the time, or under the conditions required in this chapter, constitutes a separate offense.

History: 1975 c. 380, 421; 1977 c. 26; 1993 a. 86.

In a collective bargaining/arbitration situation a defense of "good cause" under s. 111.70 (7m) (e) is available if the employer fails to pay wages pursuant to s. 109.03 (1). *Employees Local 1901 v. Brown County*, 146 Wis. 2d 728, 432 N.W.2d 571 (1988).

Whether payments under an arbitration award are due from the entry of the award depends on the overall circumstances. *Kenosha Fire Fighters v. City of Kenosha*, 168 Wis. 2d 658, 484 N.W.2d 152 (1992).

Penalties under sub. (2) (b) may only be applied when wages are due and unpaid at the time an enforcement action is commenced in court. *Hubbard v. Messer*, 2003 WI 145, 267 Wis. 2d 92, 673 N.W.2d 676, 02-1701.

UCC FINANCING STATEMENT



NAME & PHONE OF CONTACT Michael P. Jakus Law Office of Michael P. Jakus mjakus@aol.com 608-773-0033
SEND ACKNOWLEDGMENT TO: Michael P. Jakus Law Office of Michael P. Jakus MikeJakus@aol.com

Filing # - ~~100007212214~~
 Filed - 6/10/2010 3:07:25 PM
 Wisconsin Department of Financial Institutions

Debtor's Exact Full Legal Name

OR	Organization's Name Rec Graphics Inc.				
	Individual's Last Name	First Name	Middle Name	Suffix	
Mailing Address W221550 Cherry Road		City Waukesha	State WI	Postal Code 53180	Country UNITED STATES
Type Of Organization Business Corporation		Jurisdiction of Organization Wisconsin	Organizational ID#, if any 1G08440 * = get from DFI		

corp/HLC records

Secured Party's Name (or name of Total Assignee or Assignor S/P)

OR	Organization's Name				
	Individual's Last Name Massek	First Name Ryan	Middle Name	Suffix	
Mailing Address 1003 Oakdale Court		City Waukesha	State WI	Postal Code 53180	Country UNITED STATES

This financing statement covers the following collateral:

~~Ryan Massek~~ ("RM") claims the wage lien provided by Wis. Stat. section 109.09(2), to secure all unpaid wages and employee benefits due him as an employee of the above Debtor, as well as any related costs, forfeitures, surcharges, expenses, interest and attorneys fees.

PROPERTY ON WHICH LIEN IS CLAIMED: All personal property now owned or hereafter acquired by the Debtor that is located in the State of Wisconsin including, without limitation, all accounts, inventory, equipment, fixtures, documents, instruments, chattel paper and general intangibles; and all proceeds thereof.

AMOUNT CLAIMED: ~~\$8,325.40~~ in wages and commissions; ~~\$564.48~~ in reimbursement of employment expenses; together with interest thereon from date of this filing, at five percent (5%) per annum; and reasonable attorney's fees.

Alternative Designation:

Non-UCC Filing

Optional Filer Reference Data:

Notice of Wage Lien

Miscellaneous:

EXHIBIT C, PAGE 1

Not filled in.

Debtor Type:

Not Applicable

Form Type:

UCC Financing Statement

Wisconsin Department of Financial Institutions
Strengthening Wisconsin's Financial Future

Order Confirmation

We have received your order. Individual confirmation messages have been sent for each item purchased.

Purchase Summary

Order Date

6/10/2010 3:07:25 PM

Order Number

201006102258452

Payment Method


XXXX-XXXX-XXXX-1439

Purchase Total

\$10.00

You will see a charge on your credit card from:
WI Dept of Financial Inst

Your UCC Statements will be effective as of the date and time you submit payment. Please see the [FAQ](#) for details.

Order Details

Type	Name	Status	Price
Original Financing Statement	<u>Filing #100007212214 Printer Friendly Copy</u>	Active	\$10.00
Total Price:			\$10.00

File Another UCC Document

- [InstantFile - UCC Original Lien Filing](#)
- [UCC Instant Debtor Amendment](#)

EXHIBIT C, PAGE 3

UCC FINANCING STATEMENT AMENDMENT



NAME & PHONE OF CONTACT
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SEND ACKNOWLEDGMENT TO:
~~Michael Jakus~~
 MikeJakus@dfi.com

Filing # - ~~10007212214~~
 Filed - 6/28/2010 7:30:05 PM
 Wisconsin Department of Financial Institutions

INITIAL FINANCING STATEMENT FILE #
~~10007212214~~
 STATEMENT TYPE

Termination: Effectiveness of the Financing Statement identified above is terminated with respect to security interests(s) of the Secured Party authorizing this Termination Statement.

AUTHORIZING PARTY

ORGANIZATION'S NAME			
OR	INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME
	Michael	Jakus	
			SUFFIX

OPTIONAL FILER REFERENCE DATA
 Not Filled In.

RELEASE OF CHAPTER 109 WAGE LIEN AGAINST BANK

I hereby acknowledge that I received the sum of \$3,000 from _____. I acknowledge that I have received full payment of any lien or claim I may have against _____ Bank for unpaid wages due to me from my employer, _____. These lien claimant rights are found under Chapter 109 of the Wisconsin Statutes. If I file a claim with the Wisconsin Department of Workforce Development/Equal Rights division or if I have filed a financing statement for same with the Wisconsin Department of Financial Institutes, I acknowledge that this payment extinguishes that lien claim against _____ Bank. I will seek no other funds either personally or through the Wisconsin Department of Workforce Development/Equal Rights Division against _____ Bank.

I understand that by accepting this \$3,000, I am asserting that I in fact do have \$_____ of unclaimed wage payments due me from my employer, _____.

Dated _____.

(Employee)