

Assignments of PACA Claims
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LAW ALERT

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Assignments Of PACA Claims: New Opportunities For Unpaid Produce Sellers, Credit Insurance Companies, Claims Purchasers & Others



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The Perishable Agricultural Commodities Act ("PACA") is an invaluable tool for produce sellers to ensure repayment for goods sold and delivered. Traditionally, it has been used by sellers of produce to recover against purchasers for unpaid goods inside and outside of bankruptcy proceedings.

PACA grants qualifying sellers statutory trust beneficiary rights in fresh and frozen fruits and vegetables and the proceeds thereof. PACA trusts are floating, non-segregated trusts, created upon sellers sending certain proscribed statutory notices to buyers, which, among other things, provide that the produce is sold subject to the PACA trust. In light of the trust created, PACA imposes fiduciary duties upon purchasers and their controlling agents, each as trustees, to preserve the PACA trust property until the sellers as trust beneficiaries are paid in full.

As a general rule, in bankruptcy proceedings, PACA trust property, whether segregated or comingled with non-PACA trust property, does not become property of the debtor's bankruptcy estate. While PACA trust property does not become property of a bankruptcy estate, bankruptcy courts are empowered to administer PACA trust assets. Accordingly, PACA creditors often assert their PACA claims in bankruptcy proceedings to ensure they are paid through the bankruptcy process senior to other secured and unsecured creditors.

While traditionally, unpaid PACA sellers have looked to the defaulting purchasers and their controlling agents inside and outside of bankruptcy proceedings to seek recovery for unpaid amounts, recent legal developments suggest that PACA creditors may be able to look to an alternative avenue for recovery: assigning PACA claims to third parties, regardless of whether the third parties are licensed PACA dealers.

In *JE Corcoran Company v. Reed Saul, Inc., d/b/a Green Grocer*, a recent case (apparently of first impression) from the United States District Court for the Western District of Pennsylvania, JE Corcoran, a PACA licensed produce wholesaler, sold and delivered approximately \$350,000 to Reed Saul, which defaulted on payment. JE

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Corcoran then entered into an assignment agreement with Coface North America Insurance Company, which vested Coface with absolute title to all amounts owing by Reed Saul to JE Corcoran and full authority to take any action it deemed necessary to pursue collection for its own behalf. Coface then filed a federal action against Reed Saul and its principal asserting PACA trust rights. Reed Saul and its principal argued that Coface did not have standing (was not the proper party) to bring the PACA claim because Coface was a credit insurance company and not a seller, grower or supplier of fruits and vegetables or a registered PACA licensee. The Court held that Coface did have standing to assert the PACA claim by virtue of the absolute assignment from JE Corcoran and was not required to be a licensed PACA dealer itself to maintain the PACA claim as assignee. The Court reasoned that when a party assigns its *entire* interest to an unpaid debt, the assignee steps into the shoes of the assignor and asserts the assignor's rights as opposed to third party rights. The Court further noted that allowing Coface to maintain the PACA claim against Reed Saul was consistent with PACA's legislative intent to hold buyers accountable for their PACA violations.

This recent federal court decision indicates that PACA suppliers may have an alternative means to be reimbursed for unpaid goods sold and delivered, other than through the traditional method of pursuing collection against defaulting purchasers and their controlling agents. Produce suppliers should become familiar with the process of assigning PACA claims as an alternative source of recovery for unpaid amounts upon purchaser defaults or bankruptcies. Furthermore, credit insurance companies and claims purchasers, as well as factors, secured lenders and others, should become familiar with this new legal precedent pertaining to the assignment of PACA claims for new opportunities, particularly, because PACA claims prime other secured and unsecured creditors' claims.

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