



## Keep Your Friends Close, but Keep Your Critical Vendors Closer

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An article written by Burr's Richard Robinson and Russell Heller titled "Keep Your Friends Close, but Keep Your Critical Vendors Closer" is featured in the *American Bankruptcy Institute Journal*.

The Seventh Circuit Court of Appeals' 2004 decision in *Kmart* is the most frequently cited case on critical-vendor motions. In *Kmart*, the Seventh Circuit, in an opinion authored by Hon. Frank Easterbrook, affirmed a district court order setting aside a bankruptcy court order approving critical-vendor payments.<sup>1</sup>

In that case, the Seventh Circuit noted that it did not need to reach the issue of whether critical-vendor payments could ever be authorized in bankruptcy cases because the record before the court did not show the "prospect of benefit to other creditors."<sup>2</sup> The *Kmart* court nevertheless noted that if the Bankruptcy Code permits critical-vendor payments, such payments should only be authorized if it is shown "that the disfavored creditors will be as well off with reorganization as with liquidation ... but also that the supposedly critical vendors would have ceased deliveries if old debts were left unpaid while the litigation continued."<sup>3</sup>

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<sup>1</sup> *In re Kmart Corp.*, 359 F.3d 866 (7th Cir. 2004), cert. denied sub nom., *Handleman Co. v. Capital Factors Inc.*, 543 U.S. 986, 125 S. Ct. 495 (2004).

<sup>2</sup> *Id.* at 874.

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3 Id. at 873.

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