Covering Credit Bulletin

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Serving on a Creditor's Committee – The Pro's and Con's

In the last twenty-five years, I have served on several creditors' committees, and I learned a great deal from each experience. There are advantages and disadvantages of agreeing to serve on a creditor's committee. I will list the items that I consider most important:

Pro:

- **You have the ability to impact the direction and the outcome of the bankruptcy filing**
- **You have access to information about how the debtor got into trouble**
- **You have a good idea about whether it is safe to sell the debtor on open account terms 'post petition'**
- **If your post petition invoices are 'overlooked' and become past due a call by you to senior management usually results in the oversight being corrected quickly**

Con:

- **Committee membership involves a significant time commitment over an extended period of time [In my case, the record was a seven year commitment]**
- **It sometimes requires out of town or out of state travel**

- **Your duty is to act in the best interest of all unsecured creditors. Theoretically, this means that you might have to recommend action – such as pursuing preferences – that would be detrimental to your employer**
- **Your employer receives the same rate of return whether you participate as a member of the official committee or not**
- **You receive no compensation for your work – but usually you are reimbursed for travel expenses**

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Questions and Answers

Question: Do you have any language suggesting venue for litigation that would be appropriate for the back of our invoice?

Answer: Possibly. Please ask your attorney to evaluate this:

ANY AND ALL DISPUTES ARISING UNDER THIS CREDIT AGREEMENT OR ARISING UNDER OR RELATED TO ANY ACCOUNT(S) WITH *NAME OF DEBTOR* SHALL BE HEARD IN *NAME OF COUNTY, STATE*. DEBTOR HEREBY CONSENTS TO JURISDICTION AND VENUE IN THE STATE OR FEDERAL COURTS (AS APPROPRIATE) IN AND FOR *NAME OF COUNTY, STATE* AND FURTHER WAIVES ANY OBJECTION TO VENUE AND JURISDICTION WITH RESPECT TO ANY ACTION BROUGHT BY CREDITOR NAME IN SUCH COURT OR COURTS.

Question: What is a DIP?

Answer: A DIP is an acronym for a Debtor in Possession. Under the U.S. Bankruptcy Code, it is a company that continues to operate while going through the bankruptcy process.

Q. Here is a follow on. I have a customer whose parent has filed bankruptcy. I assumed that if the parent filed bankruptcy that the subsidiaries would have to do so. Is that incorrect? Is it possible for the parent company to be in bankruptcy and subsidiary not to be?

A. A subsidiary does not have to file because the parent company has done so but it is *very* unusual for a subsidiary to avoid bankruptcy and the parent to be in bankruptcy.

Q. Our first sale to a company we assumed was associated with a major car manufacturer did not make their first payment and has apparently gone out of

business according to the collection agency we placed the account with. The strange part is that we assumed and were led to believe that this customer was a branch of "GM" and in fact it had "GM" (not the initials, the name itself) as part of the corporation name. Management has asked what went wrong and how we will prevent it in the future. Do you have any comments?

A. You *may* have been the victim of the Same Name Game scam, a popular form of credit fraud in which entities deliberately choose names similar to those of well known companies hoping that the confusion will result in orders being released. My advice is to purchase a credit report on any entity that has a similar name to a well known company. If the credit report is ambiguous, learning what you need to know may be as simple as calling the well known company's headquarters and providing the switchboard operator with the address and for the telephone number. If they have never heard of the entity, use caution. If they confirm the number and the address, you may have all the information you need.

Q. Is a customer that issues a bounced check guilty of a crime?

A. Anyone who issues a check knowing that there are insufficient funds or credit to honor it is guilty of check fraud.

Q. Please let me know if you can provide an address for financial statements for Canadian companies.

A. Sure, financial statements relating to publicly traded companies in Canada can be found online on the SEDAR website at: www.sedar.com. This data is found both in English and in French.

Q. Would you sell to a customer on the basis of having a security agreement?

A. A security agreement or security interest may allow you to increase sales by accepting customers you would otherwise reject.

Q. I do not understand why you would take the position, as you did in a presentation last month that bad debt losses are inevitable.

A. Bad debt losses are a cost of doing business on open account terms. It is true that in credit management, one mistake can more than outweigh one hundred good decisions, the fact is that bad debts are inevitable.

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Webinar Schedule

"Developing Leadership Skills." This program will be offered February 21, 2006. For more information about this and other programs, please visit:

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