

Covering Credit Bulletin

June 2006

This Month's Topics:

- **Questions and Answers**
- **Website of the Month**
- **Free White Papers**
- **Free Subscriptions**

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Questions and Answers

Question: Do you have an inter-corporate guarantee?

Answer: I co-authored a book titled: "Credit and Collection Forms and Procedures Manual" so at this point in my career I hope I have a form for just about every situation. As you know, I do not offer legal advice, so please ask your attorney to evaluate this language and make any necessary changes to it:

In consideration for NAME OF CREDITOR COMPANY agreeing to sell merchandise on open account terms to NAME OF CUSTOMER, NAME OF GUARANTOR ("Guarantor") for valuable consideration hereby guarantees to NAME OF SELLER the punctual payment of all obligations to NAME OF CREDITOR arising out of sales made by NAME OF SELLER to NAME OF CUSTOMERS beginning on DATE.

Guarantor unconditionally guarantees and promises payment of all such indebtedness. Guarantor's liability may be enforced without first proceeding against NAME OF CUSTOMER or resorting to any collateral, security or other guarantors or obligors, if any, or pursuing any other remedy.

All remedies, rights, powers and privileges granted to NAME OF CREDITOR pursuant to this agreement are cumulative and not alternative. The exercise of any

or all such rights by NAME OF CREDITOR shall not reduce, limit, impair, discharge, terminate or otherwise affect the liability of Guarantor. No failure or delay by NAME OF CREDITOR in exercising any remedy, right, power or privilege pursuant to this agreement shall operate as a waiver, and any such remedy, right, power, or privilege may be exercised by NAME OF SELLER at any time. No partial exercise of any such rights shall preclude further exercise or the exercise of any other remedy, right, power or privilege.

This guarantee shall be governed by, and construed in accordance with, the laws of the State of THE STATE IN WHICH YOUR COMPANY IS LOCATED. Any action or litigation of any kind initiated by NAME OF SELLER in connection with this guarantee shall be adjudicated in the appropriate courts located in the county of COUNTY IN WHICH YOUR COMPANY IS LOCATED, STATE IN WHICH YOUR COMPANY IS LOCATED and Guarantor hereby consent to the jurisdiction of such courts and to service of process by any means authorized by STATE IN WHICH YOUR COMPANY IS LOCATED law or federal law, and hereby waives the right to transfer the venue of any such litigation.

In the event that NAME OF CREDITOR must initiate legal action, the Guarantor shall be responsible for NAME OF CREDITOR's attorney's fees and costs.

Name of Guarantor: _____

Date: _____

Signed: _____

Printed Title: _____

Print Name: _____

Question: Can you settle a long standing dispute – Can we lose money selling to a bankrupt customer on open account terms following their Chapter 11 bankruptcy filing?

Answer: Yes. There is no third party guarantor to ensure that creditors that choose to sell to a bankrupt customer will pay all creditors. If the debtor is unable to develop a Plan of Reorganization, your customer may choose to liquidate the company in which case you will be in line for payment along with other unsecured post petition trade creditors.

Question: What are your thoughts about credit insurance?

Answer: They are described in detail in the White Paper described below. Please send me an email and I will be happy to email it to you free of charge, and with no obligation.

Q. We have a customer that is publicly traded that tells me they cannot pay their past due balance because they are conducting a system upgrade. I suspect they are helping their balance sheet to look good by holding onto our cash. What are your thoughts?

A. You certainly could be right. It is close to the end of the calendar quarter, and this is the time that public companies start hanging onto their cash in order to dress up their Balance Sheets. If this customer's fiscal year end happens to be in the month of June, the possibility that the real reason they have not paid you is that they have decided hoard their cash is more likely. Here are a couple of suggestions.

- 1.** Ask for more details. Ask what kind of system is being installed, when the installation started and how long it is expected to take. I am surprised that a public company would take the risk of installing new software or hardware so close to the end of the calendar quarter given the financial reporting requirements mandated by the U.S. Securities and Exchange Commission.

- 2.** Ask for a payment on account. If the customer is not hoarding cash, they should be willing to at least consider this request.

Q. Two months ago, my employer bought another company. Just after that acquisition and before I had the chance to review their credit files, one of their customers went bankrupt. Just before the bankruptcy, the customer in question made a major purchase - increasing *our* credit exposure by just under \$100,000. I read somewhere about reclamation. What can you tell me? Where do I start?

A. I suggest that you start by requesting the White Paper on reclamation offered below. I think you may be too late, but please check. You may be pleasantly surprised.

Q. I have never heard this excuse before, and I wonder if you have any thoughts. A customer told us they will not pay past due invoices – which they acknowledge are not in dispute - until we issue a credit to clear a deduction they took on a payment last month. They insist on receiving a copy of our credit memo. I cannot understand the rationale. What are your thoughts?

A. I cannot understand the reason for the delay in payment. In these situations, I find the best solution is a direct approach. I suggest you call or visit the customer's accounts payable manager or Controller personally and ask why they believe their

actions are justified. I would explain your concern briefly and then wait for their explanation. I suggest something along these lines: “From what I have been told, you are withholding payment against invoices because we have not credited a deduction you took last month. Since you have already taken the deduction and therefore are in a sense financially whole, would you please explain the rationale for the payment hold on the invoices past due and not in dispute so that I can explain this situation to my manager?”

Q. I sometimes disagree with some of your answers in the question and answer section. I have never seen a disclaimer indicating that the answers you provide are simply your opinion. No offense intended, but why should we rely on the answers you provide?

A. No offense taken. Your comments are well taken. Here are some of my qualifications. I have been in the commercial credit profession for twenty five years. I have published this newsletter for five years. I have had three books on the subject of credit risk management published by reputable publishing companies within the last ten years. I have taught CAP and ACAP course since 1989. I have been a speaker at two National Credit Congress sessions and more than a dozen regional credit conferences in the last decade. That being said, I would suggest that anyone reading this newsletter accept and apply only the information and ideas that make sense to them.

I would also add that approximately 5,000 people receive this newsletter each month. When I make a mistake, even a spelling or grammatical error, I usually hear about it.

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Website of the Month

The website of the month offers information about the Secretary of State’s Office for all fifty states. In many states, the Secretary of State’s Office is the repository for information about corporations headquartered in that state. The URL is: <http://www.allbusiness.com/directories/SecretaryStateDirectory.asp>

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Free White Papers

Essays on the following topics will be emailed to readers on request. Please send your request to me at mcDennis@coveringcredit.com

- **How to Evaluate the Credit Department’s Performance**
- **Rules of Escheatment**
- **Spotting Credit Fraud**
- **Disputing Bankruptcy Preferences**
- **Bankruptcy Reclamation**
- **Financial Ratios for the credit department**

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Free Subscriptions

To receive a free copy of this Bulletin, please send the following information:

1) The Name and Title of the person requesting the subscription:

2) Their email address:

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Webinar Schedule

July 13, 2006 - How to Become a Better Negotiator

For more information about this Webinar and other Webinar programs, please visit: <http://www.acacredit.com>

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On Sale: “*The Credit and Collection Manager’s Concise Desk Reference*” published by the Institute of Credit Management and written by Michael C. Dennis. \$19.95 includes shipping and handling. [Terms are open account or credit card]. For more information, or to order this book please contact me at:

mcdennis@coveringcredit.com