

Credit collection plan cuts down on write-offs Having background information points out bad risks

By TIMOTHY CARL AIRES

The pace of economic growth for a nation and a single company is directly related to the extension of credit. While successful debt collection can make a difference in the financial performance of a large corporation, the very survival of a small-business enterprise absolutely depends on it.

In every endeavor, the key to success lies in the creation of a plan of action and the vigilant implementation of that plan. In the context of the collection of bad commercial debts, an appropriate plan would necessarily entail:

■ **Avoiding bad risks.**

Do not under any circumstances extend credit to a debtor that does not have the ability to repay the obligation incurred.

The financial condition of the debtor always should be tested through a credit application and multiple-reference verification.

■ **Obtaining information.**

Obtain as much information as possible about the debtor and its financial affairs in advance of the extension of credit. Once a debt has gone bad, recovery depends largely on the ability to locate the debtor and identify its assets. Therefore, background information on the debtor and, in most cases, its principals should be assembled at the time the credit application is completed.

At a minimum, the creditor's file should include information pertaining to business licenses, driver's licenses, Social Security numbers and banking relationships. All information should be maintained in permanent, regularly updated files. An annual credit-renewal application will ensure that information is kept current.

■ **Advance planning.**

Provide for the expense of collection and the cost of credit. Every debtor should sign a credit application that contains a provision to the effect that, if a lawsuit is filed to collect the

debt, the creditor will be entitled to recover its expenses of litigation, including attorney's fees, in addition to other recoverable costs.

■ **Well-documented claims.**

Make sure that the claim is well-documented. The capability of establishing the basis and validity of the claim is indispensable if litigation is required. At trial, shoddy bookkeeping can be a creditor's Waterloo. As such, commercial transactions always should be memorialized through written agreements, purchase orders, invoices, confirmations and the like.

■ **Internal action.**

Take timely internal action. Once a debt exceeds established aging guidelines, a written demand for payment should be sent to the debtor. The demand should be clear, concise and should identify a fixed period for payment. If a response is not promptly forthcoming, a single follow-up telephone call should be made to the person responsible for payment. A focus of the call always should be to verify the debtor's whereabouts and any other information that might aid in collection of the debt.

■ **Outside experts.**

Promptly engage the services of an expert. Notwithstanding the creditor's best efforts, debts do go bad and must be referred for collection. Commercial collection is an area requiring special knowledge, training and skill. Not every lawyer is equipped to handle collection cases. An attorney thoroughly familiar with the collection process should be engaged.

Money never should be wasted on endless letters that, in essence, plead for payment. A creditor's resources are conserved and the prospect of recovery on the claim is increased when a lawsuit is filed immediately and prosecuted effectively.

■ **Pre-trial remedies.**

Take advantage of the pretrial asset-attachment remedy. The pretrial remedy of attachment is a court-ordered procedure through which a creditor may secure its claim with the debtor's assets prior to trial. Attachment al-

lows an unsecured commercial creditor to instruct the county sheriff or marshal to seize and hold a debtor's assets during the pendency of the lawsuit, irrespective of the solvency of the debtor or the absence of any so-called great or irreparable injury.

In addition to certain other requirements, in order for a creditor to obtain remedy, the creditor must demonstrate that the lawsuit involves a contract claim against a partnership or corporation, or a contract claim against an individual that arises out of a debtor's conduct of a trade, business or profession. A creditor also must establish the probable validity of its claim by demonstrating that it is likely to succeed at trial.

If the creditor has been true to its plan, the creditor's lawyer will have as much detailed information about the debtor and the debt as necessary to obtain the attachment remedy.

■ **Prompt resolution.**

Be willing to assist in the rehabilitation of the debtor. In most situations, where the debt is undisputed, the debtor is not paying a particular creditor because that creditor is not alone. The debtor probably is experiencing pressure from several fronts. Recognizing this, the goal then is to get paid as much as possible as soon as possible, without forcing the debtor into the abyss of insolvency and bankruptcy.

Early in the process, a creditor always should consider a payment arrangement that provides for payment of the entire debt, together with costs, attorney's fees and interest during a reasonable period of time; and/or provides for a discount of the claim in exchange for a lump-sum payment.

The most disconcerting aspect of being in business is selling goods or rendering services and then not getting paid. A collection plan and adherence to that plan are a creditor's best defense against bad commercial debts.

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