

# MAKE SURE YOU GET PAID

## Only do business with customers that can pay you.

vol.1 edition 6



*kmb notes*

It seems like the most obvious axiom of business, but many companies do not have systems in place to prevent bad credit risks from taking shipment of goods, or benefiting from services.

### ■ Maximize Your Cash Flow

You will realize immediate payback when you ensure that you only do business with customers that can pay you. However, this payback requires your business to be proactive. Only reacting to existing bad debts is often too late.

### ■ The Single Most Important Thing

When it comes to bad debt reduction, the single most important thing is not having the most aggressive lawyer or collection agency on retainer. It is to identify, and not sell to, bad credit risks in the first place.

In my experience as a commercial litigator and debt collector, the companies that have the most control over their A/Rs are those that have made credit risk awareness a fundamental part of their business culture and the way they do business. All the credit ratios and risk management policies in the world mean nothing if there isn't buy in with your staff.

It is critical that your front line staff – your sales reps and customer support staff – embrace bad debt reduction. These workers are your most valuable source of intelligence. They find, build relationships with, and stay in contact with your customers. They are your most effective early warning system if things are going downhill. Capitalize on this resource and get them engaged in the importance of bad debt reduction from the very beginning.

As a result, the single most important thing is to ensure that your front line staff have credit risk as a top concern every time they make a sales call or interact with a potential or existing

customer. Sales staff whose commissions or bonuses are based on sales, not collected sales, have little reason to care whether their hot new prospect actually has the ability to pay. Basing compensation for sales and customer support staff on collected sales, and not total sales, is a fundamental way engage this crucial resource.

### ■ Other Important Things

Turn your sales and support staff into your front line A/R department. Then give them the tools to be successful at it. Those can include the following:

- Establish and **enforce** guidelines by which credit is granted. Your staff must know when to raise the alarm.
- Get the full and correct legal name of your customer. And make sure your staff understands what a legal business name is. Get your customer's business card as a starting point.
- There are a plethora of searches commercially available – credit checks, bankruptcy searches, and searches to see how many lawsuits your customer (or its owner) is defending. These searches are a goldmine of information. Decide what size order warrants what level of due diligence.
- Communicate your requirements to customers. Review your invoice text to ensure that credit information is communicated **effectively**. The most important elements of your credit policies – when payment due and the interest you will charge – should not be buried in paragraph 13 of 25 on the back of your invoice (in 8 point font).
- Ensure that your customer positively acknowledges receipt of the goods and how much they must pay. For example, after delivery your truck driver does not leave the customer's premises until the

customer has signed off on having

- a. received the goods;
- b. in good condition;
- c. and acknowledged the price.

This can be accomplished with a properly drafted invoice or bill of lading that accompanies the goods to your client's premises and is signed by the customer before your driver leaves. This can help defeat the most common defences to debt collection law suits.

- Make sure the sales rep knows when the A/R department is getting worried. The sales rep has the relationship and should lever it to understand why payment is late. Also, he or she has to know to stop shipping if the customer has stopped paying.

### ■ You Can Still Do Business with a Bad Credit Risk

But be creative and make sure you are protected. It is foolish to turn away a sale, but more foolish to ship goods in the face of not getting paid. There are all sorts of ways to secure yourself. Get a personal guarantee from the owner, and agree to terminate the guarantee once they have proven themselves. Register a security interest in your goods, so if there is a problem your goods don't go to offset someone else's debt. There are several cost effective security options depending on the specifics of your business.

### ■ Collecting Your Debt

There are a number of tools available to assist in collecting your debt.

### ■ Judgment Against The Debtor

It is almost always easier to obtain a judgment than it is to collect on a judgment. If the debtor is in financial trouble, its assets will deplete quickly. Regardless of what other steps you take, start the judgment process immediately.

### ■ Interim Recovery of Property

In some cases if your goods are still at the debtors premises you can repossess your goods. To exercise this right you must move very quickly.

### ■ Fraud and Oppression Remedies

You might be able to pursue the principles of the company and include related businesses in your collection actions. In the right circumstances this affords you significant leverage.

### ■ Petition into Bankruptcy

Powerful remedy but often not practical. Speak to us first about this process and the implications before moving ahead.

When negotiating credit, particularly with a repeat customer, be polite. But be firm. After all, they have your money.

Wesley May is a commercial litigator. His client base is comprised of closely held owner operated companies ranging from family owned businesses to large multi jurisdictional operations. Please see [www.kmblaw.com](http://www.kmblaw.com).

### ■ Questions?

If you have any questions or comments regarding matters discussed in this newsletter, or you would like some assistance in developing preventative business strategies, please contact,

**Wesley May** [wesmay@kmblaw.com](mailto:wesmay@kmblaw.com)

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The comments in this newsletter are of a general nature and are not designed to replace professional advice in specific situations. If you would like extra copies of this newsletter, or you know of anyone who would be interested in joining our mailing list, please contact Cheryl Woolcott at (905) 276-9111.

