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## CLIENT ADVISORY (January 2003)

### RESOLVE TO REVIEW YOUR ACCOUNTS RECEIVABLE *A quick AR check-up can help you avoid collection headaches all year long*

It's the start of another year and that means it is a good time to give your organization's accounts receivable policies a thorough check-up. The weak economy, a change in your customer's corporate status, and even a change in a customer's personal situation can all impact your ability to collect on those accounts. Here are a few suggestions to help you get the New Year off to a fiscally sound start.

Take a look at your credit applications and credit agreements to make sure you have all the information you need and that you are protected in the event of a default. For example:

- Does your credit agreement specify the proper and correct legal identity of the customer? Are you able to discern whether the customer is a sole proprietor? A limited partnership? A corporation? Knowing the identity of the customer is key to formulating your strategy should collection become an issue in the future.
- Does the agreement specify an amount for interest in the event the account goes into arrears? Make sure that your contract is clear on the rate of interest that must be paid. Absent an agreement, many states dictate a percentage for interest and you don't want to be left settling for a lesser amount by neglecting to include a provision for interest.
- Does the credit agreement provide for the recovery of collection costs or attorney's fees if the account goes into default? It's a good idea to enter into any credit arrangement with an eye toward how the collection will be handled should the account end up in default.
- Does your agreement contain a "confession of judgment clause" where permitted? Sometimes referred to as a *cognovit clause*, this provision provides for a judgment in your favor as soon as a complaint is filed. A confession of judgment clause will allow for a less cumbersome and less costly collection process should you end up in litigation with your customer.

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The New Year is also a good time to revisit your existing accounts to make sure that the information you have on file is current and that your customers remain creditworthy. For example:

- Find out if your existing customer has undergone a change in legal status. Perhaps you entered into an agreement five or six years ago with a sole proprietor who is now operating under a corporate umbrella. A change in status can affect your collection practices should a default occur.
- Take a look at your existing accounts to make sure that the information you have regarding assets and credit is still current. Your customer's business and/or personal status may have changed since the credit application was filled out. For instance, are your customer's personal assets held jointly with a spouse? If so, you may want to get the spouse's signature for guarantee. You will need to be careful, however, that you don't run afoul of the Equal Credit Opportunity Act when requesting a co-signature. Also, your customer may be going through a divorce and assets could end up part of an equitable distribution in a marriage settlement agreement. Check with your customer directly to see how this change in status could affect the business's ability to pay.
- Watch for warning signs that your customer's business could be in trouble. Has there been a slow down in payments? Is your customer reporting a slow down in his accounts receivables? The time to work out a new arrangement is before collection becomes an issue.
- Look to see if credit enhancements, like guarantees, letters of credit or security interests might improve your chances down the line.

Finally, review your credit and collection policy to make sure that you address problems timely. Implement a policy to address all collections matters within a workable time frame, say 60 days, and don't delay contacting a collection professional should the need arise.

Happy New Year to all!

For more information or a review of your credit policies or documents, please contact Bob Bernstein ([bob@bernsteinlaw.com](mailto:bob@bernsteinlaw.com)) or Nicholas Krawec ([nkrawec@bernsteinlaw.com](mailto:nkrawec@bernsteinlaw.com)) at the Bernstein Law Firm, P.C. at 412-456-8100 or toll free at 1-800-927-3197.

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