WHY USE A WRITTEN CREDIT APPLICATION?

Without a doubt, the best way to avoid a collection problem on an account is to *know your buyer.* To make sure you find out what you need to know about a new account, we offer the following outline of topics and present a few suggestions from the front lines:

A) IDENTIFY YOUR BUYER:

WHO - Get the obvious, including name, address, PACA license number, phone and fax numbers. Also, get the name of any principals and any related entities including subsidiaries, divisions or new branches of the main buyer. To confirm identities, get the Federal Employer ID Number ("FEIN") for each business entity and a Social Security Number on each principal.

BENEFIT - Because a buyer in financial trouble tends to spin off assets to related entities first, this information helps us identify potential sources of recovery on your unpaid PACA trust claims. The identification numbers greatly reduce the costs involved in doing an assets search on the company and the principals and greatly increase the chances of locating the funds missing from the PACA trust.

WHAT - Type of business enterprise, ie: corporation, partnership, LLP, LLC or sole proprietor.

BENEFIT- Once we know the specific legal form of the Debtor's operation, we know whether to look for corporate officers, partners, limited partners or to restrict our "principal search" to the sole proprietor himself.

WHERE - Other than a mere current address, this inquiry should includes items like the geographic scope of the Debtor's operations, location of all facilities which the Debtor owns or operates, including any units or stalls on any markets, and where the Debtor primarily sells your products.

BENEFIT - When Debtor is spinning apart, knowing where to look for the Debtor's assets saves crucial time in the early phases of a trust enforcement action or a collection situation. There is a very clear connection between how fast you move to lock down the Debtor's assets and how much you ultimately recover on your PACA trust claim. In many cases, the most substantial assets are the Debtor's accounts receivable. Having a sampling of its customer base or knowing who the Debtor is selling your product to allows us to step in and intercept the payment from these customers before the money gets into the Debtor's hands. Oftentimes, once the money hits the Debtor's hands, you can kiss it goodbye.

4) WHEN - Ask how long the Debtor has been operating overall, how long it has operated at its current location and how long it operated at its last location. Also, determine the length of time it has maintained a relationship with its Bank, its landlord, key customers, etc.

BENEFIT - This information helps identify a Debtor which is new to the industry or which has a tendency to change suppliers often. Generally, if a Debtor is changing suppliers too much or all of a sudden, it may mean its long time supplier cut them off or they have tapped out their credit line somewhere else. If they have a new banking relationship, it may signal a new line of credit or loan from the Bank which means new debt service for the Debtor to pay off from sales proceeds.

B) ADDITIONAL PROVISIONS

1. CREDIT TERMS - Remember, if you agree in writing to terms over Net 10 Days in a writing document, you must recite these exact terms on all your paperwork (ie: bills of lading, invoice, etc.). If you have an agreement stating the terms as Net 21 Days, while your invoices all say something else, many federal courts will disallow your PACA trust rights. If you lose these trust rights, you literally go from the front of the line to the end of the line to wait for payment from the Debtor's assets.

2. INTEREST or FINANCE CHARGES - Most courts will only allow interest on past due balances if there is an agreement to pay such interest charges as a term of the transaction. Accordingly, please include the following language either in the Credit Application the Debtor signs or on the face of your invoice:

> **Buyer agrees to pay interest on all past due balances at the rate of 1.5% per month (18% APR) as an additional sum owing in connection with this transaction.**

In the event you or a Buyer are reluctant to impose an interest charge, consider this. The only reason your account debtor does not pay within terms is because they needed your money to pay for something else - like their overhead or other operating expenses. If they went to their Bank to get a loan to finance their overhead, they would not expect to borrow from the Bank for free, so why should they expect to use your money for nothing? Bottom line, you agreed to credit terms of X number of days, anything more than that - and the Debtor is forcing you to give him a loan. Accordingly, there should be no reluctance to pay the same interest they would pay to any other lender for a loan.

3. ATTORNEYS' FEES - Just as with interest provisions, Courts will ***only*** allow you to recover attorneys' fees as part of your PACA trust claim if the Debtor had previously agreed to this provision as a "term of the contract". Accordingly, we suggest you include the following language either in the written Credit Application the Debtor signs to open the account in the first place or on the face of each invoice you send out:

> **In the event collection action becomes necessary, Buyer agrees to pay all costs of collection, including the Seller's attorneys' fees, as an additional sum owing in connection with this transaction.**

C) OUTLINE FOR A GOOD CREDIT APPLICATION

1) NAME (Identify the Buyer and get all contact information)

2) PRINCIPALS & OWNERSHIP (Identify the people behind the Buyer & how the Buyer is organized)

3) BANK INFORMATION (Get Bank name, branch, account numbers, types of accounts, any loans, etc.)

4) TRADE REFERENCES (Get names, duration of relationship, high credit and contact information)

5) CREDIT TERMS & RELATED PROVISIONS (PACA qualifying terms of 30 days or less and provisions regarding claims for return or credits, interest on past due balances and attorneys' fees)

6) SIGNATURES (Have a principal sign the application to ensure no problems with authority)

7) CREDIT CHECK (Assign someone to investigate and follow up on each application to ensure accountability for selling your new customer)

D) FURTHER INFORMATION

While the above discussion provides a good overview of how to best protect your company from the bad debt losses which come from loose credit practices, we recognize it cannot address every situation you may confront in your credit department. Accordingly, please feel free to call one of our attorneys for advice or with further questions. As always, there is no charge for these initial consultations which are designed to improve your credit practices and help you reduce your exposure to an insolvent or financially troubled buyer.