

Commercial Counsel

KMKSC CLIENTS AHEAD OF THE CURVE

When it comes to legal representation, KMKSC clients can take credit for having recognized the bottom line value of high quality, cost-effective representation from a smaller firm. Even the largest businesses are realizing that employing the classic large law firm is often not a good business decision.

On April 6th, the Bloomberg financial news service published an article by Cynthia Cotts detailing how giants, such as DuPont, have reevaluated their legal services, moving first from international to national, then to regional and finally realizing the value of what Bloomberg calls "boutique" firms, such as KMKSC, "with fewer than 50 lawyers that specialize in a few areas of law." In KMKSC's case, the focus is on all aspects of commercial law, including business-to-business contract enforcement and creditors' rights.

Even the head of one of the largest US law firms admits that "clients trying to control costs without sacrificing quality are encouraged to 'stratify' the legal work, matching her firm with smaller regional firms that have skilled lawyers and lower costs." As one lawyer put it, "Small firms offer quality work at a discount because they are more conservatively managed, with fewer offices, fewer junior attorneys and less debt." Another noted that "at many of the big firms, clients end up dealing with a fourth-year associate," not a partner.

In DuPont's case, they have placed much of their litigation with a firm that assumes part of the risk. Of course, KMKSC clients are even better placed, since much of our work is on a true contingent fee basis. It seems that there is still some catching up room left for these big corporations. Until then, KMKSC clients are ahead of the curve in their legal representation.

The full Bloomberg article can be found on the web at <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aPaoB9uRSvQk>.

SECURING TANGIBLE BENEFITS FOR CLIENTS

Although it is evident that each of you is aware of our value in the areas in which we represent you, a few of our clients have expressed surprise at the breadth of our everyday activities, scope of legal representation and geographical reach. KMKSC's acceptance into The International Society of Primerus Law Firms enhances its appeal to even the most discriminating purchasers of legal services. The following are 5 recent assignments that illustrate the breadth of our usual practice:

1. *Chris Kailas recovers oil delivered to, and commingled by, an insolvent Canadian company.*

General Discussion Relating to Business Legal Issues

The information contained herein is not provided as legal advice. Legal advice should be sought as to any factual and legal issue.

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In a case crossing North American borders, KMKSC convinced a Canadian appellate court to overturn a Canadian bankruptcy court ruling. As a result, our client was able to recover tens of thousands of barrels of fuel oil, worth many hundreds of thousands of dollars, despite international complications and the fact that the Canadian company was insolvent and had commingled the oil with that of other suppliers.

2. *Robert Gegios establishes existence of oral contract and unfair competition in dispute with significant international aspects.*

Client entered into what it believed was a 5-year contract with one of the largest makers of paper bags in the world, to supply woven, non-paper bags for resale. Though defendant denied that any contract existed with our client, KMKSC litigators persuaded a federal court jury to find the existence of a contract based upon a body of oral and unsigned material resulting in a \$3.7 million jury verdict.

3. *Jordan Reich secures out-of-court resolution of export contract dispute involving competing claims, venue and choice of law.*

Client faced non-payment of over a million dollars from a foreign company without a U.S. presence. Debtor had a colorable claim that documents exchanged between the parties mandated binding arbitration in its home country under the law of that country, which in this case suggested a different outcome to that likely under U.S. federal law. KMKSC overcame notable difficulties to secure service in a potentially hostile environment. After the start of legal action and extensive discussions, KMKSC leveraged the debtor's fears of a protracted battle over jurisdiction to secure a substantial financial settlement satisfactory to our client.

4. *Sam Wisotzkey protects client from disgorgement, claim, curtailment and preference claims in US and Canadian reorganization.*

Customer filed for bankruptcy under reorganization proceedings in both U.S. and Canada. Client had received payment of more than \$1 million within days of filing, and feared this could be disgorged as a preference payment under applicable bankruptcy laws. KMKSC successfully filed objections to a U.S. motion to limit client's protections by characterizing it as a provider of last resort. KMKSC then negotiated acceptable deposit and pre-payment procedures to secure services provided to the debtor under both U.S. and Canadian law.

5. *Darrell Zall demonstrates the advantages of a selfish receiver.*

Originally retained by one creditor, KMKSC ended up representing multiple business creditors seeking to recover a six-figure sum from a corporation. KMKSC negotiated a repayment plan that incorporated personal guarantees. When debtors defaulted, KMKSC sought an asset discovery hearing which revealed that the principal owned unencumbered real estate. KMKSC immediately moved for the appointment of a "selfish" Receiver under Wis. Stat. § 816, as opposed to seeking judgment lien foreclosure, enabling immediate steps to sell the real property without noticing all other creditors and at a distinct cost savings to our client.

DELAY IN LIQUIDATING DELINQUENT DEBT IN A RECESSIONARY PERIOD CAN COST "BIG"

When it comes to liquidating delinquent accounts receivable, even in good economic times, "the early bird gets the worm." **In a recession it is more realistic to say "only the first bird gets a worm."**

Clearly, those businesses that police their accounts receivable in a timely manner and act without delay are recovering at the expense of their less aggressive brethren. Those that do not accelerate evaluation of delinquent accounts receivable and delay aggressive collection are subsidizing more economically astute businesses, including their competitors. As a result of our many warnings on this point, most of our clients are prime beneficiaries of the generosity provided by other businesses. Because of the recession, we are seeing the crucial period between initial default and complete insolvency shrink materially. As a result, the window of opportunity in which to secure payment is more difficult to assess. **Every day literally can make a difference.**

One critical economic reality should be at the forefront of all our minds. **In prior recessions, bad debt and bankruptcies were typically accelerated in the six months to a year after the recovery began.** Thus even after the economy reaches bottom, the worst period for debt loss will just be beginning, and last for six months to a year. **For this reason, increased vigilance and vigorous action when warning signs are detected will continue to be essential in the coming months.**

We caution readers to consider that accounts receivable performance can have even greater significance. For some businesses, the efficiency with which accounts receivable are converted into cash-flow revenue will determine whether the business survives the recession. For many more, the impact will be on their ability to capitalize on the opportunities that come with recovery.

Lenders and investors have great interest in scrutinizing the value of accounts receivable figures and average collection periods as critical measures of the strength of businesses when determining whether, and in what amount, to provide capital. Those **businesses that act effectively now can better their prospects for closing a business loan in the future.**

If you would like a review of your credit policies, policing methods, credit agreements or collection processes, call Matthew Gerdisch (mgerdisch@kmksc.com) at 414-962-5110 as soon as possible to discuss how KMKSC can assist your business to weather the recession and to emerge in the best possible position to seize future advantage.



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International
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LATEST SPEECHES AND PRESENTATIONS BY KMKSC ATTORNEYS

- January, 20, 2009 - "**Tactics for Business Executives Faced With Bulk Sales & Customer Receivership Notices**" David S. Chartier, Wisconsin Credit Association "Lunch and Learn program," Muskego, Wisconsin.
- April 20, 2009 - "**Early Warning Signs, Red Flags and Protective Measures to Help Creditors Limit The Risk of Loss for a Problem Account,**" Matthew P. Gerdisch, 72nd annual conference of the National Petroleum Energy Credit Association, San Antonio, Texas.
- April 20, 2009 - "**Making Electronic Discovery Your Friend, Not Your Foe!**" Robert L. Gegios, 72nd annual conference of the National Petroleum Energy Credit Association, San Antonio, Texas.