

Commercial Counsel

TOO MANY BUSINESSES ARE LETTING REVENUE SLIP AWAY AT THE WORST POSSIBLE TIME

In our last issue, we warned of the danger of a double dip recession. Since then, there has been increasing speculation that the US—indeed the World—economy is teetering on the edge of a second recession. Certainly, the US economy has been torpid since late spring and Chinese manufacturing appears to have stagnated since then. Meanwhile, European countries are in the midst of a crisis of confidence over debt.

Businesses are often cited taking all possible steps to protect their interests. The consensus is certainly that one of the prime reasons for the lack of job creation is that businesses are stock-piling cash or near-cash assets in case of further economic turmoil. Yet, seemingly in direct contradiction, **many businesses appear to be continuing lax credit policies, or weak enforcement of credit terms.** This is in spite of the generally recognized fact that, in the short-to-medium term, **one of the best means to improve the financial strength of any enterprise is by converting receivables into cash in the bank.**

While referred to as assets in accounting terms, **accounts receivable only represent a paper gain: only banked income shows up in an income statement.** The value of outstanding receivables is actually the amount due on paper less a percentage discount derived from historical payment rates. This makes recovery performance particularly significant since by raising recovery rates, one not only increases real income, but also the balance sheet value of owners' equity. This in turn has a significant impact on the cost of financing (borrowing) and, perhaps more significantly given the current tight business credit environment, on the ability to secure funding. Actually, the effect is multiplied because more effective conversion of accounts receivable directly increases available working capital, and thus affects the need for financing and the asset to loan ratio.

The time to act is now! Whether it is a question of enforcing existing policies more proactively or of amending credit policies and procedures to reflect the current economic climate, acting now to educate customers could yield major dividends. Recall the advice of long-time Chairman and CEO of GE, Jack Welch: **“Control your own destiny or someone else will.”** If the economic malaise continues, the window of opportunity will diminish. Additionally, in comparable periods in the past, the tendency has been for stakeholders to ask why such actions—obvious with the aid of hindsight—were not taken. Funding operations of failing customers or more

General Discussion Relating to Business Legal Issues

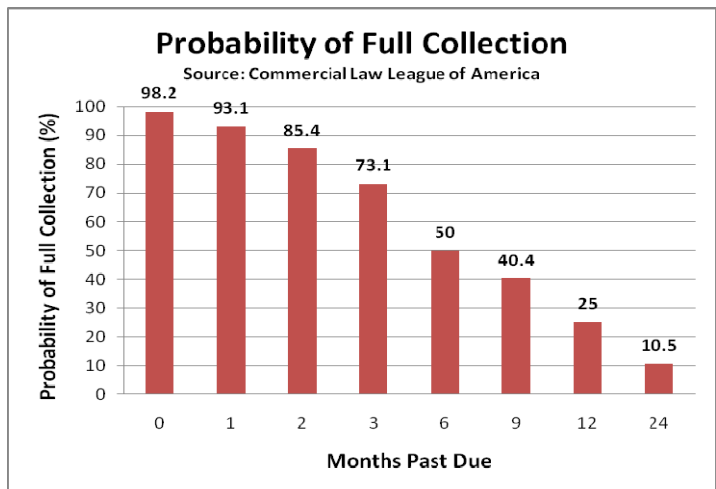
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efficient co-creditors at the expense of one's own income statement is generally hard to justify. It is important to keep in mind that, if the economy truly has entered prolonged stagnation or, worse, the second phase of a double dip, many businesses will be financially stressed, having depleted their financial reserves during the first dip.

Time is always the enemy of collection. The average time taken to convert debt into cash received is measured by several key accounting and investment ratios for this reason, as is the percentage of all overdue debt collected.

The first law of debt recovery is that time is of the essence: the sooner action is taken the better. Empirical evidence shows that, the older the delinquent debt, the less likely you are to recover it. Most senior executives, finance people, investors and bankers know that each day a debt is late erodes profit margins and available working capital. This removes the other valued uses to which the money could have been put if paid in accordance with the agreed terms. As the chart below shows, ***lax enforcement and delay greatly diminish the chances of recovery.***



Of course, there is a balance between not deterring good customers and yet not financing the failing businesses of bad-credit risks. The answer is a blend of policy, procedure, communication and credibility. A reasonable credit policy, clearly communicated to customers and enforced efficiently and evenly, can have a very significant impact on both profitability and on cash reserves. Where customers know and understand that payment terms are generally enforced, they will prioritize payments. It is when enforcement is unexpected or perceived as selective that customer relations suffer.

Effective credit and collection policy cannot be formulated in isolation: there is a balance between

sales and credit needs. However, in an environment where sales are hard to come by, **improving on the rate of conversion of accounts receivable into cash generally represents an effective, low-cost means to augment real revenue.** KMKSC can aid clients in striking an appropriate balance through the current economic turbulence and is currently assisting many of its clients. We can assist your organization too. Speak with Steve Kailas at (414) 962-5110 (skailas@kmksc.com).

THE LAST WORD

*"If saving money is wrong,
I don't want to be right!"*

William Shatner (actor)

KMKSC TAKES LEAD IN HELPING BUSINESSES RECOVER CANADIAN AND MEXICAN DEBT

Chris Kailas, who chairs KMKSC's International Debt and Asset Recovery practice, was invited to participate in 2011 Credit Professional's Conference on Legal Aspects of Trade & International Credit Management co-sponsored by the Business Credit Management Association and the Wisconsin Credit Association. Chris joined in the member roundtable discussion of credit applications, credit policy and procedures. He also presented to the International Credit Executive Group on legal considerations in effective trade and international credit management.

Drawing on his experiences in international debt recovery litigation, Chris focused on providing practical insights that listeners could employ in their own businesses when the debtor or its assets reside outside the United States. Chris reviewed the practical impact of differences he has encountered in the Canadian legal system in comparison to that of the United States and at the distinctively different requirements of effective action under the Mexican legal system.

Understanding such differences is, Chris explained, key to identifying how to enhance collection options should a payment dispute arise and suit be required. If you have any questions about how your organization can improve

your international collections performance, call Chris Kailas at (414) 962-5110 (ckailas@kmksc.com).

KMKSC HELPS LOCAL VILLAGE WIN NATIONAL "BICYCLE FRIENDLY COMMUNITY" RECOGNITION
"Sandie" Pendleton, chair of KMK's Sports, Fitness & Recreational Team, recently helped his community (Shorewood, Wisconsin) win the League of American Bicyclist's Bicycle Friendly Community award.

Shorewood is the first and only village in Wisconsin to have received the award, and is one of only a few communities with populations of less than 15,000 to have qualified nationwide.

KOHNER, MANN & KAILAS ATTORNEYS NAMED TO THE BEST LAWYERS IN AMERICA®

Kohner, Mann & Kailas, S.C. ("KMKSC") attorneys have achieved six entries in the 2012 edition of *The Best Lawyers in America*®

Congratulations to shareholders **Robert L. Gegios**, **Matthew P. Gerdisch** and **David S. Chartier**, who were selected by their peers for inclusion in multiple practice areas, covering both commercial litigation and transactional work. The full roster of entries for 2012 is:

Robert L. Gegios

- Antitrust Litigation
- Antitrust Law
- Commercial Litigation

Matthew P. Gerdisch

- Bankruptcy and Creditor Rights/Insolvency Law
- Bankruptcy Litigation

David S. Chartier

- Bankruptcy and Creditor Rights/Insolvency Law

Best Lawyers is based on an exhaustive peer-review survey in which more than 41,000 attorneys cast votes on the legal abilities of other lawyers in their practice areas. Because lawyers are not required or allowed to pay a fee to be listed, inclusion in Best Lawyers is considered a singular honor. *Corporate Counsel* magazine has called Best Lawyers "the most respected referral list of attorneys in practice."

LATEST SPEECHES AND PRESENTATIONS BY KMKSC ATTORNEYS

- July 26, 2011 – "**From Negotiated Reorganization to Pre-Packaged Bankruptcy: What Creditors Need to Know**," KMKSC shareholder Samuel C. Wisotzkey, International Society of Primerus Law Firms National Webinar Series.
- September 27, 2011 - "**Legal Considerations in Effective Trade and International Credit Management**," KMKSC shareholder Christopher C. Kailas, International Credit Executive Group, Credit Professional's Conference on Legal Aspects of Trade & International Credit Management, Pewaukee WI.
- September 27, 2011 - "**Credo of a Business Creditor**," KMKSC shareholders David Chartier & Darrell Zall, 2011 Credit Professional's Conference on Legal Aspects of Trade & International Credit Management, Pewaukee WI.

MOST RECENT PUBLICATIONS BY KMKSC ATTORNEYS

- "**Collecting Commercial Debt in the US Need Not Be Daunting**," Christopher C. Kailas and Stephen D. R. Taylor, *Paradigm* magazine, International Society of Primerus Law Firms, Fall 2011, pp. 30-31.

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