

2022 SOUTHWEST BUSINESS & CONSTRUCTION CREDIT VIRTUAL CONFERENCE

(Thursday) May 12, 2022 - 12:00 PM



Credit Applications That Prevent Losses

Credit Application Essentials

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Credit Application Issues and Enforcement

- 1. Identifying the purpose of your credit application.**
 - A. Describing the nature of your company.**
 - i. Rental of returnable equipment versus final sales on credit.
 - ii. Anticipating lien and bond rights for improved property, whether a construction project or use in an otherwise finished commercial enterprises, i.e., an operational factory or restaurant.

Credit Application Issues, cont'd

B. **The nature of your customer** – what business they are in and whether they are dependent upon project draws to make their credit payments.

C. **Think bad outcome first** - anticipate the default on the credit account.

D. **Use clear terms** that reward the good customers and scare off the bad ones.

Credit Application Issues, cont'd

2. **Front of the Credit Application versus back** – how to decide what goes where.

A. **Prioritize** – what do you want your customers to understand the most about their obligations – their duty to pay and the penalties for failing to do so.

B. **Understand your customer** - What do you need to know about the customer to decide whether to extend credit and later pursue collection on a delinquent account.

Credit Application Issues, cont'd

- i. Full identifying information, including social security numbers and dates of birth of personal guarantors or sole proprietors.
- ii. Trade references.
- iii. Current bank name and account numbers, and current industry licenses, with type and license number. If bonded, name of surety.

Credit Application Issues, cont'd

iv. **Type of company and date of company formation.**

A company in business less than two years should have a personal guarantee, including the guarantor's spouse, if possible.

v. **Primary officers of a smaller corporation or LLC members or other owners.** A one or two officer corporation or one- or two-member company should have a personal guarantee with spousal guarantee, if possible.

vi. **Right to run a credit report on sole proprietors or personal guarantors,** either for credit extension decisions or collections purposes.

Credit Application Issues, cont'd

- C. What terms are required to form a complete credit contract called an “Open Account”.
- i. **Identity of the parties**. This should be set forth on the credit application and the invoices.
 - ii. **Offer and acceptance**. This is established by signature on the credit application and rental agreement or by other proof of customer’s placement of the order for materials purchase. The offer is considered accepted by supply of equipment or materials and issuance of an invoice.

Credit Application Issues, cont'd

- iii. **Identification of the equipment rented or materials sold.** This is normally found on the rental agreement or invoices.
- iv. **The price terms.** This appears on the invoices.
- v. **The time for performance.** This appears on the invoices and sometimes on the credit application.

Credit Application Issues, cont'd

- D. **Your necessary account operation and management data:**
 - i. Internal account number, area to note credit approval, anticipated credit levels, date of approval, office approving or declining credit (helpful to establish venue and jurisdiction for lawsuits to collect account)
 - ii. Additional space to reflect any name change or change of information related to personal guarantees.

Credit Application Issues, cont'd

E. Reverse side boilerplate.

- i. Remedies upon nonpayment.
 - a. Choice of law and jurisdiction and venue.
 - b. Right to obtain credit reports on sole proprietors and personal guarantors.
- ii. Rights of re-entry and repossession rights.
- iii. Miscellaneous.

Credit Application Issues, cont'd

3. Relationship of Credit Applications to Mechanics' and Supplier's Lien Claims and Payment Bond Claims.
 - i. You must have an enforceable contract to have a lien or bond claim. Lien and bond rights are simply security for the underlying credit obligation.
 - ii. As a result, all lien and bond claim foreclosure lawsuits begin with a statement of the contractual obligation and proof that the credit account is in default.

Common Problems in Credit Applications

Insufficient Information to Locate Customer

- The credit application should clearly identify your customer and, in the event of default, allow you to locate and obtain a judgment against them, and collect on that judgment.
- In addition to the information about the identity and credit-worthiness of the company and its principals, your credit application should request the following:

Common Problems, cont'd

- Alternate names of company
 - dba or aka or subsequent name change
- For a sole proprietorship or small LLC or Inc.
 - Social security numbers of principals
 - Dates of birth of principals
- Whether personal guarantors have a spouse
- Bank name, location, and account numbers

Common Problems, cont'd

Credit Application Statement of Essential Terms

- The credit application is the formation document for an Open Account. Together with delinquent invoices, you can establish a default, or “Closed Account.”
- The credit account should state the number of days for timely payment to be made and the interest rate that will apply to unpaid balances.

Legal Terms - The credit application, whether front or back, should contain at least three other clauses:

Common Problems, cont'd

- **Venue and jurisdiction:** The credit application is your opportunity to control which court hears the credit account lawsuit and where.
 - If your credit application does not designate the jurisdiction and venue, you will have to sue in the state and county where the transaction occurred or where your customer is located.

Common Problems, cont'd

- If there is a lien claim foreclosure, the foreclosure suit must occur in the state and county where the property is located.
- **Choice of law:** In addition to choosing which court hears the lawsuit, you can choose which state law the court will apply

Common Problems, cont'd

- **Entitlement to Award of collection costs and attorney fees:**
 - Providing for attorney fees and collection costs can make the award mandatory as opposed to statutory discretion given to a judge.
 - Without a fee entitlement provision, you are at the mercy of the state statutes. Also, the fee award provision gives you leverage and bargaining power during the negotiation process.

Common Problems, cont'd

Personal Guarantees - Two common problems:

- **Not clearly designating the guaranty**

It should be clear to the person signing the credit application that they are giving their personal guaranty. The preferred personal guaranty is separate from the credit application signature to remove any doubt. If the credit application contains a dual-purpose signature, the language preceding the signature should make clear, in bold or underlined font, that the signor is giving a personal guaranty.

Common Problems, cont'd

Personal Guarantees - Two common problems:

- **Not requiring the spouse's signature**

In community property states, one spouse cannot unilaterally bind the community with a personal guaranty. If your personal guaranty only has the signature of one spouse, your collection rights may be limited to the sole and separate assets of the spouse that signed the guaranty.

Best Practices in Credit Applications

Beyond the minimal information required on a credit application to form an enforceable contract, there are terms that your credit application can include that improve the quality of your credit advance and your customer's experience with your company.

Certainty is always good. Clear terms and unambiguous terms remove doubt about where your customer and your company will stand in the event of default on the credit terms. Here are some suggestions.

First, limit the credit terms to the credit application and invoices. You can do this by:

Best Practices, cont'd

Limiting the effect of “puffery” and customer-friendly greetings.

- You may wish to put a customer at ease with a statement of your desire to provide good materials, equipment, or services, but friendly assurances cannot become a warranties or terms of the credit agreement.
- Put such “getting to know you” language in a cover letter only, and give yourself the latitude to overcome such representations by using...

Best Practices, cont'd

- “Integration clauses“ in the credit application that prevent items of chatter from becoming enforceable representations to the customer.

Example: “This agreement constitutes the entirety of the contract between the parties and incorporates any and all other agreements between the parties, oral and written. Any terms not reflected in this contract or in the terms of the invoices are unenforceable. Any subsequent changes to this agreement must be in writing and signed by both parties.”

Best Practices, cont'd

Avoid the customer using credit limits to deny responsibility for credit extensions that exceed those set amounts.

What are credit limit clauses or anticipated monthly order levels:

- These clauses are intended as a guide to the credit manager when opening a credit line and a notice to the customer that they should calculate their product usage and payment to avoid exceeding the limit or else apply for a larger limit.

Best Practices, cont'd

- The problem is that customers may claim that this is an affirmative duty by the supplier not to sell or rent over those credit limits.
 - A court could agree with the customer's interpretation, even if the credit limit took the form of merely an estimate of monthly purchase.
 - A court could also find in the supplier's favor and either:

Best Practices, cont'd

- 1) View the credit limit as merely an internal, self-imposed limitation on the supplier that it can choose to disregard if it wants; or
- 2) Consider the parties to have waived the limit as a consequence of the customer placing orders that exceed the limit and the supplier granting those orders – i.e., an offer and acceptance.

Best Practices, cont'd

The problems:

- a) an integration clause may prevent that theory of law.
- b) And in all cases, the credit application should be simple enough that the customer will understand that the credit limit does not restrict the purchase levels or credit extensions.

Best Practices, cont'd

- Solution to credit limits becoming a defense by customers to a demand for payment of unpaid amounts that are over the credit limit:
 - 1) Don't use a credit limit clause; or
 - 2) Use the following language: “Anticipated monthly orders \$_____. (Note: estimated monthly purchase levels do not limit supplier’s right to extend credit above the anticipated amount or in such event, excuse customer from payment of amounts exceeding the anticipated monthly purchase amounts)”

Best Practices, cont'd

Waivers of liability:

- **Sample language:** “Seller expressly disavows and Customer expressly waives any and all claims for breach of express or implied warranty, including warranties of fitness for a particular purpose, merchantability, and any other common law or Uniform Commercial Code warranties or other protections. Customer’s rights against Seller for breach of this credit agreement are limited to the purchase value of the materials. Customer expressly waives any and all claims for damages against Seller, including incidental, consequential, special, or punitive damages, or damages for lost profits, negligence or other tort claims.”

Best Practices, cont'd

Claims process:

- **Sample language**: “Customer must inspect and state in writing any and all claims by Customer for nonconforming product or non-delivered product within ten days of delivery or agreed-upon date of delivery.”

Arbitration clauses are undesirable.

- They limit your options and arbitrators are less inclined to enforce contract terms and waiver provisions when compared to a judge.

Best Practices, cont'd

- If you believe that you may prefer binding arbitration in certain circumstances, then use a clause that gives you the option of requiring it:
 - “At Seller’s discretion, the parties will use any of the following dispute resolution forums: non-binding mediation, appealable arbitration, or binding arbitration to be conducted according to the rules of AAA arbitration, or a state or federal court of competent jurisdiction in (Name of County), (Name of State). The selection of form of dispute resolution is entirely the decision of Seller. Customer waives any right to jury trial, regardless of the nature of Customer’s claims or defenses in any litigation between Seller and Customer.”

Best Practices, cont'd

Credit reports:

- Be careful not to limit them just to business credit reports.
- **Sample language**: “The undersigned agrees that Seller may obtain credit reports regarding Customer and regarding any personal guarantor(s) for purposes of evaluating a decision to extend credit and at any time while Customer has an unpaid credit account balance. In the event of late payments or delinquent balances, Customer agrees that Seller may provide credit information to third party reporting agencies.”

Best Practices, cont'd

Request the customer's website address and email addresses for the owner and main contact(s) at the customer's offices.

Avoid inadvertent release of personal guarantees:

- If Seller reaches a compromise with the principal obligor, this can potentially limit the liability of the guarantor.

Best Practices, cont'd

- **Sample avoidance language:**

“The personal guarantors agree to be held jointly and severally liable for payment of any delinquent account balance of Customer. Notwithstanding Seller’s obligation to prove the liability of the Customer for any account balance as part of any claim against the personal guarantor(s), Seller is not required to proceed first against Customer before pursuing claims for payment against the guarantor(s). Customer agrees that Seller may

Best Practices, cont'd

release Customer or any other guarantor(s) from any and all liability on the account balance without having the effect of releasing remaining guarantor(s) from any or all of the remaining obligation to pay the Customer's account balance. No release, insolvency or bankruptcy of Customer or other guarantor limits or in any way impairs Seller's rights against the remaining guarantor(s)."

Best Practices, cont'd

- Clearly identify the personal guarantee as such.
 - a. Use clear language identifying any section containing a personal guarantee
 - b. Do not use a combined signature for both a business signature and a personal guarantee
 - i. Courts are unpredictable as to whether to enforce it, and
 - ii. As a result, customers will fight you until the end if they did not believe they were signing as personal guarantors.

Best Practices, cont'd

The commercial nature of the transaction:

- Avoid complaints of violations of the Fair Credit Reporting Act (FCRA), 15 USC 1681, when you pursue a sole proprietorship for collection of a commercial debt.
- Sample language: “Customer agrees and represents that all purchases are for a commercial, business and non-personal purpose.”

Make your terms in a large enough typeface to read.

CREDIT APPLICATION EXAMPLES

Payment: “Customer agrees to pay for goods, services, leased equipment and other items charged to its credit account upon receipt of notice. Payment is late if not received by Seller within 10 days of the invoice date for machine sales or within 30 days of the invoice date for all other charges. If no invoice is issued or received, Customer agrees to pay upon the earlier of the

Payment clause, cont'd

receipt of the monthly statement or within 30 days of delivery of goods, rendering of services or commencement of equipment lease. Charges for goods, services, lease payments, or any other item for which payment is Customer's obligation will be automatically billed to Customer's credit account unless payment has been received by Seller/Supplier at the time of delivery. All amounts charged to the credit account are Customer's responsibility."

Credit Application Examples, cont'd

Default: “Payment shall be made when due. Failure to make a timely payment shall result in a default under the Account Agreement and under any underlying agreement with Seller. A late charge of 1.5% per month of the outstanding balance due will be assessed on the past due balance until it is paid in full. In the event of such a default, Customer agrees to pay Seller for all attorneys’ fees, costs and other collection expenses incurred by Seller in the enforcement of the Account Agreement, whether

Default clause, cont'd

or not suit is commenced. The Account Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, without regard to its conflict of law provisions. **Customer and Seller agree that exclusive jurisdiction and venue for any proceeding at law or in equity will be in the state or federal courts located in Maricopa County, Arizona. CUSTOMER EXPRESSLY WAIVES SOVEREIGN IMMUNITY WITH RESPECT TO ANY DEFAULT HEREUNDER AND OTHER AGREEMENTS WITH SELLER."**

Credit Application Examples, cont'd

Governing Document(s): The Account Agreement governs the credit relationship between Seller and Customer. Customer agrees to be bound exclusively by the Account Agreement and all of the terms and conditions of Seller's underlying sale, lease, service, invoice and other agreements, all of which are intended to be incorporated herein by this reference, including but not limited to Seller's Terms and Conditions of Sales and Service (the "Sales and Services Terms") which are available at www.seller'swebsite/salesserviceterms, and Seller's Terms and Conditions (the "Rental Terms") which are available at www.seller'swebsite/rentalterms or such

Governing Documents, cont'd

other successor websites at which Seller posts its Sales and Service Terms and its Rental Terms from time to time. The Sales and Service Terms and the Rental Terms are collectively referred to herein as the “Terms.” A hard copy of the Terms is available upon written request to terms.conditions@seller'swebsite.com. Customer's issuance of a purchase order, acceptance of goods or services, or rental of equipment from Seller constitutes acceptance of the Account Agreement, the Terms and Seller's other underlying agreements exactly as written.”

Governing Documents, cont'd

Pre-empt competing terms offered by the Customer:

Sample Language: “Regardless of any language to the contrary in the purchase order or other document(s) issued by Customer, Seller rejects additional or different terms proposed by Customer or any attempt by Customer to vary the Account Agreement, the Terms or the terms of any of Seller’s other underlying agreements. Any additions or modifications to the Account Agreement or the Terms shall not be binding on Seller unless they are set forth in a written document executed by a vice president of Seller. Customer acknowledges and agrees that placement of a purchase order creates no burden on the part of Seller to verify its accuracy or validity.”

Your Rights to Recover Attorney Fees

- **Standard Dispute Resolution (lawsuit or arbitration)**
 - Fee provisions in your contract (be aware that a court will normally interpret a unilateral attorney fee recovery provision, i.e., one that only allows you to recover and not your customer, as a bilateral fee recovery provision that allows either you or your customer to recover attorney fees and costs of collection upon prevailing in court)
 - A.R.S. § 12-341.01(A) (“In any contested action arising out of a contract, express or implied, the court may award the successful party reasonable attorney fees”)

Recovery of Attorney Fees, cont'd

- **Claim for Prompt Payment**
 - Civil Prompt Pay Claim (A.R.S. §§ 321129.01(M) / .02(F)) (“the successful party shall be awarded costs and attorney fees in a reasonable amount”)
- **Contractor’s License Bond (A.R.S. § 32-1152(E) – limited to bond amount**

Recovery of Attorney Fees, cont'd

- **Work Stoppage**
 - “Stop Work” notice (A.R.S. §§ 32-1129.04(F)) (“... successful party shall be awarded costs and attorney fees in a reasonable amount
- **Lien, Bond, Stop Notice, and UCC Remedies**
 - Mechanics’ and Materialmen’s Liens

Recovery of Attorney Fees, cont'd

- A.R.S. §§ 33-995(E)(“. . . the court may, at its discretion, award . . . reasonable expenses . . . including attorney fees, other professional services and bond premiums”)
- A.R.S. §§ 33-998(B)) (“In any action to enforce a lien . . . , the court may award . . . reasonable attorney fees
- Stop Notices (A.R.S. §§ 33-1066)(“the prevailing party shall be awarded reasonable attorney fees.”)

Recovery of Attorney Fees, cont'd

○ **Payment Bonds**

- Federal Miller Act (40 U.S.C.A. § 270b)(look to contract or state law)
- Public (A.R.S. § 34-222(B))("The prevailing party . . . shall recover . . . reasonable attorney fees.")
- Private (A.R.S. § 33-1003(B))(". . . payment bond . . . shall be in the amount and form prescribed by [A.R.S. § 34-222(B)].")

THE COSTS OF COURT FOR CONSTRUCTION DEBT COLLECTION AND LIEN AND BOND FORECLOSURES AND STRATEGIC ALTERNATIVES TO CIVIL LAWSUITS

The following are examples of potential attorney fee ranges based on \$250 hourly rates and should not be relied upon in making any specific litigation decisions:

1. STATE COURT STRUCTURE (small claims, superior court arbitrator, superior court judge, court of appeals, state supreme court).
2. FEDERAL COURT STRUCTURE (U.S. District Court, U.S. Court of Appeals, U.S. Supreme Court).

Costs of Litigation, cont'd

3. THE PROCESS AND ITS COSTS

a. The complaint

i. Investigating the complaint and reviewing applicable law - \$750-\$1,500

ii. Drafting the complaint - \$500 - \$1,250

iii. Filing fee for plaintiff - \$320.00.

b. Answering the complaint or a counterclaim (this can be as complicated as an answer and counter-claim/cross-claim for multi-party lien foreclosure)

Costs of Litigation, cont'd

- i. Investigating the complaint and reviewing applicable law - \$750-\$1,500
 - ii. Drafting the answer to the complaint - \$500 - \$750
 - iii. Investigating and drafting any counterclaims or third party interpleader claims - \$750 - \$1,750.
 - iv. Filing fee for appearance as defendant and filing answer - \$320.00.
- c. Serving “Rule 26.1 Disclosure Statements” setting forth the documents, facts, law and witnesses you rely upon to pursue your claim as plaintiff or your defenses or counter-claims as defendants. \$1,500 - \$3,500.

Costs of Litigation, cont'd

d. Written discovery – issuing and answering: \$5,000.00 – \$20,000.00.

i. Motions to compel the production of a document:

1. “Meet and confer” correspondence to try to work out the problem - \$500 – \$5,000.
2. Drafting the motion to compel production - \$1,000 – \$2,500.
3. Responding to a motion to compel production – \$2,500 - \$3,500.
4. Reply in support of a motion to compel production – \$1,500 - \$3,500.
5. Oral argument - \$500 - \$1,000.00.

Costs of Litigation, cont'd

- ii. Conducting and defending depositions.
 - 1. As plaintiff, taking the deposition of the primary fact witnesses:
 - a. Preparation for the deposition - \$1,000 to \$1,500.
 - b. Conducting the deposition - \$750 to \$1,500.
 - c. Transcript for deposition:
 - i. Written/typed transcript - \$750.
 - ii. Videotape of deposition - \$1,000 - \$1,250.
 - iii. Appearance fee of witness and service of subpoena for third party/non-party witnesses (\$100.00)

Costs of Litigation, cont'd

2. As defendant, defending depositions of your client/client's employees.

- a. Preparing to defend deposition - \$500 – \$1,250.
- b. Defending the deposition - \$750 to \$1,500.
- c. Transcript for deposition:
 - i. Written/typed transcript - \$750.
 - ii. Videotape of deposition - \$1,000 - \$1,250.

Costs of Litigation, cont'd

3. Taking an expert witness's deposition
 - a. Hiring your own expert witness to prepare you for the other witness, including your expert reading the other expert's report and producing a written rebuttal report - \$2,500 - \$5,000.
 - b. Preparing for the expert's deposition by reviewing expert's report, industry articles and other questions - \$1,250 - \$2,500.

Costs of Litigation, cont'd

3. Taking an expert witness's deposition

c. Conducting the deposition - \$750 to \$1,750.

d. Transcript for deposition:

i. Written/typed transcript - \$750 - \$1,250.

ii. Videotape of deposition - \$1,000 - \$1,750.

iii. Appearance fee of witness and service of subpoena for third party/non-party witnesses (\$100.00)

iv. Fees for the expert witness – hourly rate of \$125 - \$300: total - \$625 - \$2,100.

Costs of Litigation, cont'd

4. Defending your expert's deposition.
 - a. Meeting with your expert witness.
 - i. Your fees - \$500 - \$1,000.
 - ii. Your expert's fees - \$250 - \$1,200.
 - b. Preparing for the expert's deposition by reviewing expert's report, industry articles and any rebuttal report by the other side's expert - \$500 - \$1,500.
 - c. Defending the expert's deposition - \$750 to \$1,750.
 - d. Transcript for expert's deposition:
 - i. Written/typed transcript - \$750 - \$1,250.
 - ii. Videotape of deposition - \$1,000 - \$1,750.

Costs of Litigation, cont'd

e. **Motions for summary judgment**

1. Movant's motion Legal research - \$1,250 - \$3,750.
 - a. Pull exhibits and deposition transcript records - \$1,250 – \$7,500
 - b. Draft the motion, including the statement of facts and any affidavits - \$1,500 - \$7,500.
2. Respondent's memorandum and potential cross-motion for summary judgment.
 - a. Legal research - \$1,250 - \$3,750.
 - b. Pull exhibits and deposition transcript records - \$1,250 – \$7,500
 - c. Draft the response and cross-motion, including the statement of facts and any affidavits - \$1,500 - \$7,500.

Costs of Litigation, cont'd

3. Movant's reply and response to any cross-motion
 - a. Legal research - \$1,250 - \$3,750.
 - b. Pull exhibits and deposition transcript records - \$1,250 – \$3,750
 - c. Draft the reply and response to any cross-motion, including the statement of facts and any affidavits - \$1,500 - \$3,750.
4. Respondent's reply in support of any cross-motion
 - a. Legal research - \$1,250 - \$1,750.
 - b. Pull exhibits and deposition transcript records - \$1,250 – \$2,500
 - c. Draft the reply in support of cross-motion, including the statement of facts and any affidavits - \$1,500 - \$3,750.

Costs of Litigation, cont'd

f. Status conferences with the court.

i. Early case conferences

1. Attendance - \$500.00

2. Preparation of proposed schedules - \$500.00

ii. Pre-trial management conference

1. Attendance - \$750.00

2. Preparation of status report - \$1,250.00.

Costs of Litigation, cont'd

g. Pre-trial preparation.

i. Preparation of exhibits

1. Paralegal time - \$1,500.00 - \$3,750.

2. Attorney time - \$5,000.00 - \$15,000.00

ii. Pretrial memorandum - \$2,500.00

iii. Motions in *limine* (to exclude evidence)

1. Filing motions - \$1,500 - \$4,500.

2. Responding to motions - \$2,500 - \$5,000.

Costs of Litigation, cont'd

g. Pre-trial preparation.

iv. Jury instructions

1. Research additional case law for footnotes establishing appropriateness of contested jury instructions - \$1,250 - \$2,500.
2. Draft nonuniform jury instructions and negotiate with opposition - \$250.00 – \$1,250.00.
3. Presentation to court of competing jury instructions and oral argument - \$1,250 – \$3,000.

Costs of Litigation, cont'd

v. Prepare Trial Witnesses.

1. Prepare your own witnesses - \$1,500 - \$4,500.

2. Draft questions for direct examination of your own witnesses - \$2,750 - \$10,000.

3. Draft questions for adverse witnesses - \$1,500 – 3,500.

vi. Conduct trial – two attorneys and one paralegal, plus two hours end of day work to prepare for next day - \$6,750 per day.

vii. Post-trial memoranda.

1. Initial post-trial memoranda - \$2,500 - \$7,500.

2. Reply to opposition post-trial memoranda - \$3,500.

Costs of Litigation, cont'd

4. Post-judgment collection and defense of judgment.
 - a. Conducting asset searches and judgment debtor examination(s) - \$2,750.
 - b. Garnishments and writs of attachment
 - i. Initial filings of garnishments - \$500 - \$1,500.
 - ii. Filing objections to judgment debtor's objection to the garnishment, and conduct hearings and oral argument - \$1,750.00 - \$2,500.00.

Costs of Litigation, cont'd

WHICH LEADS US TO.....

Costs of Litigation, cont'd

5. ALTERNATIVES TO COURT.

a. Effective pre-litigation workout efforts.

i. The credit representative does the following.

1. Uses preliminary notices for state Little Miller Act public projects and for any lienable projects
2. Watches the aging and compares it to expected monthly purchase levels
3. Contacts the customer by phone and email when agings are beyond the norm or company standards

Costs of Litigation, cont'd

4. When the customer is nonresponsive, emails with the collections attorney copied, who “replies all” as to his readiness to assist.
5. If still no response, turns it over to collections attorney, who emails a letter and copies the credit representative and also makes followup calls in the wake of the email.
6. Attorney gets response hopefully and either gives back the communications to the credit rep. or gets signatures on a payment plan.

Costs of Litigation, cont'd

b. Promissory note with payment plan with stipulation to judgment in the event of default.

c. Security agreement for real property, fixtures, receivables and other assets.

d. UCC-1 statement for fixtures, equipment and receivables.

ABOUT THE PRESENTER

