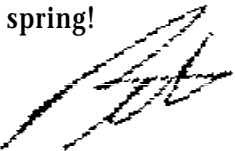


Dear Friends:

In the past few months, I have been struck by the number of accounts we have received that are aged to the point of extreme perishability. Hanging on to old, uncollected accounts is akin to hanging on to a stock that continues to drop in value to the point of worthlessness while you continue to hope that somehow you'll recover your investment. The sooner you place an aging account, the better our chances are to collect it!

Our calendar this spring includes some informative and enjoyable events. The Media Credit Professionals conference will take place on May 21st in North Carolina. Industry pros from several southern states will converge for this intensive workshop, and our own Robin Szabo will speak about the finer points of media credit and collections. Robin will again be a featured speaker at the Broadcast Cable Financial Management Association/Broadcast Cable Credit Association "Super Conference," June 18th through the 21st in Orlando, Florida. Credit fraud is the subject of Robin's speech at this event. And finally, we always happily anticipate the annual Szabo picnic in June, here in Atlanta.

Best wishes for a wonderful spring!



Pete Szabo, President
Szabo Associates, Inc.

Business Bankruptcies on the Rise ... Are You Prepared?

Bankruptcy filings by American consumers and businesses jumped 19% in 2001, reaching a record high of almost a million and a half. The number of bankruptcies filed in the fourth quarter of 2001 was up 18% over the same period the previous year, making it the highest fourth quarter number ever.

While these numbers are sobering, it is important to pay attention to how they break down and why. By far, the majority of new bankruptcies were Chapter 7 filings by consumers suffering from not only a weakened economy but also accumulated debt from the preceding free-spending decade. Additionally, as filings by large corporations continue to make headlines, a cultural change in attitudes toward bankruptcy has occurred, removing much of the shame long associated with it. And finally, as Congress last year came close to approving a more restrictive bankruptcy law that would prevent an individual from holding on to certain assets, many filings took place in anticipation of the change.

Commercial bankruptcies, which of course cause greater concern among credit managers, also need to be regarded with a critical eye, looking beyond the sensational sound bites and headlines to what the numbers actually represent. Bankruptcy filings among publicly traded companies have risen sharply since 1997.

Publicly traded companies filed for bankruptcy at record pace this past year—257 companies, a 46% increase over the year 2000. These corporations brought \$258.5 billion in assets into bankruptcy, which is more than twice the assets of public company filings in the previous year. Leading the pack was Enron's filing in December—the largest in history, with \$63 billion in total pre-bankruptcy assets.

The spectacular rise in public company filings, however, runs counter to the trend since 1997 of generally declining business bankruptcies. Following the 1990-91 recession, filings peaked in 1992 and fell to a cyclical low in 2000. Although business filings in 2001 have increased over the previous year, they are still relatively low compared to past recessionary periods. Even so, the increase should be regarded seriously. We have yet to see how much this recession, fueled by problems among large corporations, will adversely affect small businesses during the next couple of years.

In these uncertain times, credit managers and their staff should make sure they have a clear understanding of bankruptcy proceedings in order to best protect their company's interests if a customer or prospective customer files for bankruptcy.

—continued on page 2

Bankruptcies —

—continued from page 1

The Bankruptcy Code

The United States Bankruptcy Code provides for the development of a plan that allows a debtor, which is unable to pay its creditors, to resolve debts through the division of its assets among its creditors. Bankruptcy proceedings are supervised and litigated in the U.S. Bankruptcy Courts, which are a part of the District Courts of the United States.

The Code governs activities of all parties involved in the case. For example, debtors can voluntarily file for bankruptcy, and creditors can file an involuntary petition against a debtor (see *Collective Wisdom*, September 1996*). After the bankruptcy is filed, creditors generally may not seek to collect their debts outside the proceeding. The debtor is not permitted to transfer property that has been declared subject to proceedings. Additionally, certain pre-proceeding transfers of property, secured interests, and liens may be delayed or invalidated. A trustee may conduct some transactions without notice or hearing if they arise out of the ordinary course of business (see *Collective Wisdom*, March 1995*).

There are two main types of bankruptcy proceedings—one that provides the framework for liquidation and one that provides the framework for rehabilitation.

Liquidation. Under Chapter 7, liquidation, the company stops all operations and goes completely out of business. It is the most common type and is available to both individual and business debtors. An appointed trustee collects the debtor's non-exempt property, sells it, and distributes the proceeds among the creditors. Unsecured

debts that are not reaffirmed are discharged, and the debtor gets a fresh start. Proceeds from the sale of assets are distributed first to secured creditors. Unsecured creditors are then paid on a pro rata basis after administrative expenses and other priority claims, such as taxes, are paid. Third in line are stockholders.

Creditors must file a claim with the court in order to have a chance of getting paid. Proof of Claims must be filed within 90 days after the first date set for the first meeting of creditors ("341 meeting"). If this meeting is continued, the deadline will not be extended. Unfortunately, unsecured creditors usually get little, if any, payment under Chapter 7. A Chapter 7 might be converted to Chapter 11 if the court determines that reorganization may result in a higher payout, but this rarely happens. Also, if the Chapter 7 is involuntary, the debtor can convert it.

Rehabilitation. Chapter 11 involves rehabilitation and allows the debtor to use future earnings to pay off creditors. Available to both consumer and business debtors, Chapter 11 is designed to "reorganize" a business or an individual's finances through a court-approved plan. We will focus on the business application.

Chapter 11 gives a business a chance to become profitable again. The management continues to run the day-to-day business operations, but the bankruptcy court must approve significant business decisions. The court sends notices to all known creditors and schedules a 341 meeting. One or more committees can be appointed to represent the interests of creditors and stockholders in working with the company on a reorganization plan. The plan must be accepted by the creditors, bondholders, and stockholders, and confirmed by the court, which can override rejection by creditors and stockholders if it

finds that the plan treats them fairly. Plan confirmation can take a few months or a few years. The Plan of Reorganization allows the debtor to be in possession of its assets ("debtor-in-possession" or "DIP"), although the court, after the 341 meeting, may appoint a trustee approved by the creditors to oversee the debtor's operations and proceedings.

While the plan is being developed, the court processes all claims by unsecured creditors. Although Chapter 11 no longer requires that the creditor file a Proof of Claim if the creditor recognizes its claim (listed in an indisputable amount on the schedule of liabilities filed by the debtor), it is always a good idea to file a Proof of Claim. The court determines the filing deadline. The debtor may file an action to remove or reduce a claim, in which case the creditor must file an objection to the debtor's motion, along with supporting documents.

The Bankruptcy Reform Act of 1994 permits an accelerated Chapter 11 for business debtors with less than \$2,000,000 in debt. The court may order that no creditors' committee be appointed. While this reduces expenses, it might also reduce the ability of creditors to materially influence the case. The Act also simplifies the disclosure statement and plan confirmation processes.

Dealing with the Chapter 11 Debtor

Should you extend credit to a Chapter 11 debtor? Perhaps, but only if you feel assured that the debtor can pay the bill out of its available cash flow and that if things go badly, the debtor has enough equities in assets to pay your claim (see *Collective Wisdom*, March 1990*). Since court orders can vary regarding the terms upon

which purchases may be made, and because the debtor's assets may be encumbered, you must familiarize yourself with the legal aspects of each case before extending credit. This information is available from the creditors' committee or counsel, or can be found in the court records in the clerk's office. Another source may be the Web (see below). If all is in order, you choose to extend credit, and the debtor then fails to pay, your "post-petition" claim will take priority over "pre-petition" claims. Of course, this "priority" position does not ensure that you will definitely get paid. The only way to eliminate risk is to require payment in advance.

And what if you and your customer have an agreement and the customer later files for Chapter 11? In a contractual relationship, all parties to the contract are responsible for performing the obligations of the contract. In simple terms, this usually means that the advertiser or agency must pay you a defined amount and according

to a defined schedule, and you (media) must provide the time or space according to a defined schedule.

The Bankruptcy Code permits the debtor-in-possession or trustee to reject certain "executory contracts," which includes all contracts where there are material duties remaining to be performed on both sides. If the debtor has already defaulted, the DIP or trustee cannot assume the contract unless there is "prompt cure." In other words, you must either receive compensation or be provided adequate assurance that you will be compensated promptly for the default. The law also requires the DIP or trustee to provide adequate assurance of future performance of the contract. This provides some protection to the non-debtor party by preventing assignment of the contract to a party that will be unable to meet the contractual obligations. The court determines what these "assurances" will be. Once the contract is assumed and assigned according to the court order, the debtor estate is released from its contractual oblig-

ations for any future breach, and the assignee assumes this responsibility.

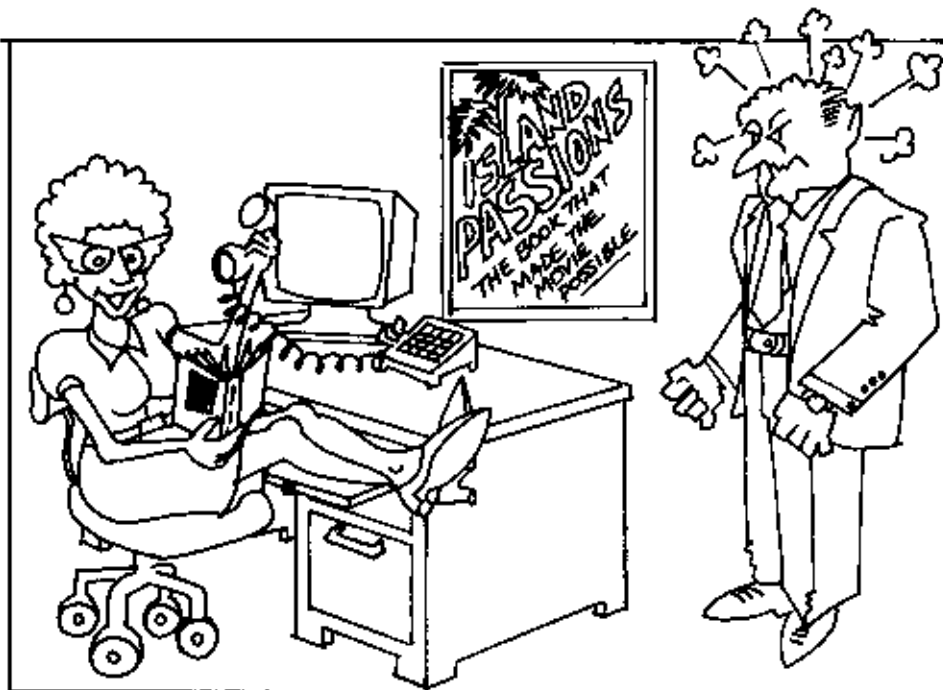
You (media) have no power to reject the executory contract. You may have the right to discontinue providing service if the DIP is not performing and has not assumed the contract; however, you cannot terminate the contract itself except by court order.

The bankruptcy law regarding executory contracts is extremely complex, and this discourse is intended only to provide a general understanding of the topic. If you are involved in a situation involving executory contracts, we strongly recommend that you engage the services of a bankruptcy attorney.

Online Resources

There are numerous and excellent online resources that can help you with bankruptcy-related issues. Here are few good ones: ABI World (www.abiworld.org), maintained by the American Bankruptcy Institute, is one of the most comprehensive sites available. The Legal Information Institute at Cornell (www.law.cornell.edu) provides in-depth information about the Bankruptcy Code. For information on specific cases, try BankruptcyData.com (www.bankruptcydata.com), which provides access to thousands of business bankruptcies from more than 80 federal bankruptcy districts and also has a useful glossary of bankruptcy terms. MegaLaw (www.megalaw.com) provides links (listed by state) to U.S. Bankruptcy Courts. ♦

*All past articles of Collective Wisdom are available on the Szabo Web site, www.szabo.com



"HOW CAN I POSSIBLY KNOW WHAT HAPPENS IN CHAPTER 11? THE PHONE'S BEEN RINGING SO DARNED MUCH I'VE ONLY GOTTEN THROUGH CHAPTER 4!"

The Szabo Difference: Training for the Tough Ones

Any collection service can help you with the easy collections. The test comes when the going gets tough. From the first time a debtor delays payment right up to and including bankruptcy, you need a collection service that's experienced and prepared for tough times.

At Szabo Associates, our representatives have the training, experience, and support it takes to deal with the toughest collections. Sometimes we're able to make a collection where every other alternative has failed.

When payments get tough to collect, you're almost always competing with other creditors for a debtor's earliest payment. Szabo people are trained and

experienced to help you win that competition. We use powerful techniques of negotiation and persuasion. Our people have a reputation for dogged determination. And we understand your business better than most collection services.

Our practice of communicating with past-due debtors by telephone instead of by mail allows us not only to recover debts more quickly, it also allows our representatives to look for and recognize the red flags of potential bankruptcy. These can be as subtle as a debtor's "tone of voice."

Quick and proper recovery under these circumstances is essential, because payments within 90 days of bankruptcy generally fall under the "void-

able preferences" ruling and must be returned to the bankruptcy court.

To avoid this, your Szabo representative has easy access to valuable information from our own library of court rulings and laws, in-house paralegals, and a nationwide network of attorneys specializing in bankruptcy law.

In the event of bankruptcy, it's reassuring to know that Szabo people have in-depth experience in this area, even in some cases serving on bankruptcy committees. Of course, no one wants a debt to go this far. But if it does, it pays to have a collection service that's prepared for it. ♦



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