

Dear Friends:

Summer is already in full swing here at Szabo. We kicked off the season in early June with the annual Szabo Summer Picnic at Lake Lanier, with lots of great barbecue, fixin's, and fun.

Our picnic came right on the heels of the Broadcast Cable Financial Management Association conference in May. It's always great to visit San Francisco, but this trip was especially meaningful. Twenty-five years ago, Szabo Associates attended the BCFM conference in San Francisco for the first time, and we've attended every year since then. This year, it was wonderful to mark the "Silver Anniversary" of Szabo's participation in this important conference, and to see so many of our friends there—including some "old timers" like me!

As our fiscal year winds down, we would like once again to thank our many friends and customers for working with us and contributing to another successful year.

Best wishes for a fabulous summer,



Pete Szabo, President
Szabo Associates, Inc.

Leave Nothing to Chance!

Avoid Common Problems with Up-Front Diligence

So many recurring payment problems that we see at Szabo result from vague business agreements that are difficult or impossible to enforce from a credit and collections perspective. A majority of these problems can be avoided with up-front diligence!

If we were to state in one simple sentence how to effectively perform up-front diligence in the area of business agreements, it would be this: **Know with whom you're dealing, and then put the deal in writing.**

Tools of the Trade

In a perfect world, a signed credit application is followed by a signed contract. The credit application's obvious purpose is to help you decide whether or not to extend credit. To that end, ideally, you would want it to include the year that the agency or company was established; its structure (proprietorship, partnership, corporation, or other); number of full-time employees; annual sales; federal tax I.D. number; the principals of the company, their addresses and home phone numbers; bank references; and at least three trade references, preferably including media.

The contract that should follow the approved credit application defines all terms and conditions of the agreement, thereby becoming the primary evidence of what each party has agreed to do. In our real world, however, particularly when second and

sometimes third and fourth parties are involved, waiting for a signed contract can sometimes mean losing a sale. When time constraints preclude getting a signed contract prior to airing or publication, the credit application can become, for credit and collections purposes, a surrogate for the contract and the most important piece of paper you have to support your position and reduce your risk down the road. Because of this reality, the recommendations we will make regarding what should be included in a well-executed business agreement apply not only to contracts but to credit applications as well.

Who's on First?

A critical part of due diligence is determining who is ultimately responsible for payment. Is it an advertising agency, an advertiser, or both? Because the law in the various states is unclear and inconsistent regarding the ability of an advertising agency to bind the advertiser with respect to advertising commitments, you need to determine with whom you have an agreement. If your agreement is with the agency only, without any reference to the advertiser, you may be limited in your recourse to collect from the advertiser, even though the advertisement was for the advertiser's benefit. The advertiser may, in fact,

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Leave Nothing to Chance

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argue that the advertising agency did not have authority to bind them in the first place.

The correct procedure is to get both the advertising agency and the advertiser to sign the agreement. If the advertiser does not sign the agreement, there are two recommended alternatives to help ensure that there is responsibility of payment from either the agency or advertiser. One is to specifically state in the agreement that the advertising agency is unconditionally and primarily liable for all payment due, regardless of whether the advertising agency is paid or reimbursed by the advertiser. If you choose this alternative, make sure that the agency is financially able to assume this obligation whether or not it is reimbursed by the advertiser. The second alternative is to require an “agency recognition form,” written confirmation from the advertiser that the agency is authorized to negotiate and enter into a binding contract on the advertiser’s behalf. It should also state that, if the advertiser entrusts the agent with funds with which to pay you, the advertiser will remain liable in the event of non-payment by the agency. Such a statement supports a “joint and several” liability position, which holds that both the agency and the advertiser are “jointly and severally obligated” to pay until the obligation is met. As you know, Szabo Associates has long endorsed joint and several liability because we believe it offers media the best protection if either the agency or advertiser fails to pay.

Once you know the party or parties with whom you’re

entering the business agreement (agency, advertiser, or both), find out exactly what those entities are. If it is a **corporation**, the corporation is liable for debts except in cases of fraud, although you could file a lawsuit to pierce the corporate veil and hold the principals personally liable. If it is a **general partnership**, the partners are jointly and severally liable for the actions of the partnership. In **limited partnerships**, the general partners—not the limited partners—are liable for the actions of the partnership. Sometimes you will find that the general partner is a corporation. A **limited liability company** has managing partners similar to officers of a corporation, and from a liability standpoint, the limited liability company should be viewed in the same way as if you were dealing with a corporation.

Another essential part of knowing with whom you’re doing business is ensuring that the individuals representing the parties to the contract have the authority to bind their companies. The individuals should clearly indicate in the agreement the legal capacity in which they are signing. Generally, you also should obtain specific written confirmation with respect to the person’s authority to bind the legal entity if the individual’s position is “lower” than an officer of the company.

What’s Being Agreed Upon?

In any business agreement, each party must gain something. Simply stated, you agree to air or publish an advertisement in exchange for the advertiser/advertising agency’s promise to pay. You must, of

collector’s corner

“Collector’s Corner” is our readers’ forum for suggestions, comments, and idea swapping. If you have information to share or input on how our newsletter can better serve you, please write or call. We want to hear from you!

Question: What is an Assignment for the Benefit of Creditors? Why would the debtor not simply file bankruptcy?

L.T., Boston, MA

Answer: An Assignment for the Benefit of Creditors is a common law means of concluding the affairs of an insolvent debtor as an alternative to the Chapter 7 bankruptcy procedure. To generalize, the debtor will sign a document which effectively transfers to an assignee all of the assets of the debtor. The assignee is to be someone unaffiliated with the debtor. If the assignment process is a result of the negotiations between creditors and the debtor, the creditors should choose the assignee. In most situations, the creditors are notified of the procedure for filing claims and should do so as promptly as possible. Once the assignee has concluded the process of liquidating the company, distribution to creditors is based on a pro-rata payment.

The debtor may choose this approach to liquidating the company to avoid the time and expense involved with a bankruptcy proceeding. It can be an effective and significant method to provide for a prompt distribution to creditors.

course, air or publish the advertisement in a manner that complies with the contract specifications in terms of quality time, repetition, etc. If you do not perform in accordance with the specifications of the contract, the advertising agency or advertiser will have grounds to claim damages for breach of contract or possibly even void the agreement altogether.

Before an agreement is written and signed, all principals should have already agreed upon all the essential terms of the deal. Anything that is not clear needs to be clarified, and anything that is not agreed upon needs to be taken back to the negotiating table.

All aspects of the business agreement, including price, terms of payment, nature of advertisement to be run, party responsible for costs, timing of airing or publication of advertising, etc., should be clearly specified in writing. You don't want to argue or litigate later over verbal statements regarding a significant term or condi-

tion that was omitted from the written agreement. Additionally, if the argument ends up taking place in court, the court may refuse to enforce the contract at all if the terms and conditions are sufficiently lacking or ambiguous.

Give Teeth to Personal Guarantees

Written personal guarantees can be valuable in borderline cases in which you would like to extend credit, but they must be carefully executed to hold up in court. A personal guarantee should be a separate document referencing what is guaranteed, and the following should be true: 1) The guarantor has sufficient assets to cover the debt. 2) The signature shows that the party is signing personally. 3) The word "President" or other title does not appear after the name, and a company name does not appear directly above the signature. 4) The name of the account being guaranteed matches the account to be shown on your books. 5) The

guarantee is binding on the "heirs, executors and administrators." 6) The guarantee shows clearly that it truly is a guarantee.

Notification

Send copies of everything—confirmation orders, agreements (don't forget to copy the back side!)—to all parties involved in the transaction. Copying both the advertising agency and the advertiser with documents helps substantiate the agency/advertiser relationship should it ever become an issue in a court of law. If you have follow-up conversations with the customer regarding any aspect of the terms of the agreement, confirm these in writing also. The arguments most commonly raised in court by defense attorneys should be effectively disarmed by written evidence of your agreement—including your joint and several liability position—and communications. And of course, by establishing a well-documented joint and several liability position, you can significantly reduce the number of cases that require third party collection efforts or litigation.

In Conclusion

Of course, even the most thorough up-front diligence will not always forestall disaster or even dissuade some customers from attempting to renege on their commitments. You will find, however, that if you consistently gather sufficient pertinent information on your customer, receive the proper authorization for your services, and get your terms in writing, that your collections efforts will become much more pleasant and effective! And as any seasoned credit manager knows, up-front diligence might just save your neck in court, or even better, it might save you the trouble of having to show up at all. ♦



"YOU SAID TO PUT EVERYTHING IMPORTANT IN WRITING. HOW WAS I SUPPOSED TO KNOW YOU MEANT CUSTOMER CONTRACTS?"

The Szabo Difference: Global Collections

For most companies, international business has become a fact of life. Unfortunately, so has questionable credit.

Slow payment in pesos or pounds is just as serious as slow payment in dollars.

So for decades, while American companies have been building global sales, Szabo has been building global collection skills.

Today, you can collect slow payments internationally the same way you collect them domestically. Call your Szabo representative. Give us all the particulars. We'll do the job professionally, confidentially, and on a contingency basis. We've handled collections on every continent, in dozens of countries.

We sort out the complexities of international collections, so you don't have to. Our people

handle the debtor contact directly by phone, the same way we do in the U.S.

Our international collections experts are trained and experienced in dealing with each country's special collections requirements—language, laws, customs, banking and government regulations, and exchange rates.

If legal action becomes necessary, we can call on proven attorneys and other legal resources with special expertise in legal systems abroad.

Finally, you'll get the same comprehensive reports you'd get on domestic accounts—monthly status of each account, corporate management summaries, and special reports.

If you have any questions about international credit policies or collections, just ask. Szabo operates an extensive Global

Credit Information Network, with access to sources to answer the most obscure credit-related questions. If we don't have the answer, we'll find it. ♦

CALENDAR OF EVENTS

June 28-July 1
CABLETELEVISION
ADVERTISING BUREAU
Hyatt Regency
Chicago, Illinois

September 17-20
NATIONAL ASSOCIATION
OF BROADCASTERS
RADIO SHOW
New Orleans
Convention Center
New Orleans, Louisiana



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