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EFFECTIVE CREDIT APPLICATIONS CAN AVOID COSTLY LOSSES

What Credit Managers Need To Know

September 9, 2021 12:00 – 1:00 PM

CMA Credit Management Association

Southwest Business Credit Services

NACM Heartland

NACM Business Credit Services

Credit Applications That Prevent Losses

James B. Reed, Udall Shumway PLC 2020 ©

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Credit Application Basics Making Good Credit Decisions From the Outset

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Credit Application Issues and Enforcement

1. **Identify the purpose of your credit application.**

A. **Describe the nature of your company**.

i. Do you rent out equipment or do you conduct final sales on credit for nonreturnable goods.

ii. Anticipate 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, or UCC-1 rights for fixtures or product for resale that will sit on the customer's shelf until sold.

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Credit Application Issues, cont'd

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

C. **Think bad outcome first** - anticipate defaults on the credit account by all customers.

D. **Use clear terms** that reward credit-worthy customers and scare off the customers likely to pay slowly or default on credit terms.

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Credit Application Issues, cont'd

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

A. **Prioritize** – what do you want your customers to understand the most about their obligations, such as their duty to pay and the penalties if they fail to do so.

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

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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 if you can get them), and current industry licenses, with license type and license number. If customer has a license bond, you want the bond number and the name of surety.

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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 guarantor's spouse.

v. **Primary officers of smaller corporations or LLC members or other owners**. A one or two officer corporation or one or two member limited liability company or partnership optimally should have a personal guarantee with spousal guarantee.

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

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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.

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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.

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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.

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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.

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Credit Application Issues, cont'd

3. Relationship of Credit Applications to Mechanics' and Supplier's Lien Claims and Payment Bond Claims.

a. 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.

b. As a result, all lien and bond claim foreclosure lawsuits begin with a statement of contractual obligation and proof that the credit account is in default.

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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 needing information about identity and credit-worthiness of the company and its principals, common problems are that the credit application does not request the following:

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Common Problems, cont'd

- Forgot to include alternate names of company
  - dba or aka, a tradename or joint venture partner
  - As a result, the name on the invoice doesn't match
- For a sole proprietorship or small LLC or Inc.
  - Social security numbers of principals and date of birth
  - the court needs those for a civil arrest warrant
- Whether personal guarantors have a spouse
- You don't know the bank name and branch location for later garnishments

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Common Problems, cont'd

Credit Application Lacks Essential Contract 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 doesn't state the number of days for timely payment to be made or the interest rate that will apply to unpaid balances.

Legal Terms - The credit application, whether front or back, fails to contain three critical clauses:

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Common Problems, cont'd

- **Venue and jurisdiction**: The credit application is your opportunity to control which court hears the credit account lawsuit and in what state and county.
  - 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.
  - Note: 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**: Don't be silent and forget to choose the state law which the court that hears your lawsuit must apply

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Common Problems, cont'd

- **Forgetting to include an 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.

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Common Problems, cont'd

Personal Guarantees - Two common problems:

- **Not clearly designating the guaranty**

  It's not 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, otherwise the Court may reject the entire clause.
- **Forgetting to require 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.

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Best Practices in Credit Applications

Beyond the minimal information required on a credit application to form an enforceable contract, there 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 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:

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Best Practices, cont'd

Limit 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 you cannot let friendly assurances become 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…

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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 authorized representatives of both parties."

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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.

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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 the customer's monthly purchase.
  - A court could also find in the supplier's favor and either:

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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, followed by the supplier granting those orders – i.e., a contractual offer and acceptance.

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Best Practices, cont'd

The problems:

a) We just put an integration clause into your credit application that may prevent that theory of law from holding in your favor.

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.

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Best Practices, cont'd

- Solution to credit limits becoming a defense by customers to a demand for payment of the credit agreement:
  1) Do not put credit limits on the application; 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.)"

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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."

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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 _____ days of delivery or agreed-upon date of delivery."

Arbitration clauses are undesirable.

- They limit your options, and arbitrators are terrible at enforcing contract terms and waiver provisions. They want to "do the right thing".

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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 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."

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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."

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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 limit the liability of the personal guarantors.

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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

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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 the 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 guarantors limits or in any way impairs Seller's rights against the remaining guarantor(s)."

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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. You do not have leverage during workouts if the customer or their lawyer doesn't believe you can enforce the guarantee.

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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.

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CREDIT APPLICATION EXAMPLES

Payment: "Customer agrees to pay for all goods, services, leased equipment and other items charged to its credit account upon receipt of an invoice or other notice that payment is due. Payment is late if not received by Seller within 30 days of the invoice date for all charges. If no invoice is issued or received, Customer agrees to pay upon the earlier of receipt of the monthly statement or within 30 days of delivery of goods, rendering of

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Payment clause, cont'd

services or commencement of equipment lease. Charges for goods, services, lease payments or any other items which are Customer's obligation will be automatically billed to Customer's credit account, unless payment has been received by Seller at the time of delivery. All amounts charged to the credit account are Customer's responsibility."

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Credit Application Examples, cont'd

Default: "Payment is required to be made when due. Failure to make a timely payment constitutes a default upon the Credit Account terms and upon any related credit agreement with Seller, including any security agreements. A late charge of 1.5% per month of the outstanding balance due will be assessed on the past due balance until paid in full."

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Credit Application Examples, cont'd

Attorney Fees and Collections Costs upon default: "In the event of default, Customer agrees to pay Seller for all attorney fees, costs and other collection expenses incurred by Seller while enforcing and collecting the balance in default under the Account Agreement, whether or not Seller files suit to collect."

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Default clause, cont'd

Venue and Jurisdiction upon default: "The Account Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, without regard to state 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 waives the protections, jurisdiction, and venue arising from sovereign immunity with respect to any default by Customer on balances due Seller."

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Credit Application Examples, cont'd

"**Governing Document(s) and Incorporation of all other terms and conditions:** This Credit Account Agreement controls over all credit documents and obligations between Seller and Customer, including Customer's purchase orders. Customer agrees that the terms and conditions of this Credit Account Agreement are supplemented by Seller's underlying invoices, sale or lease agreement, service agreement(s), and other agreements issued by Seller, all of which are incorporated herein by this reference. This includes but is not limited to Seller's Terms and Conditions set forth at www.seller.com/creditterms."

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Governing Documents, cont'd

"Printed copies of Seller's Terms and Conditions are available upon written request to creditinfor@seller.com. Customer's acceptance of materials, equipment, or services, or rental of equipment from Seller constitutes acceptance of Seller's terms and conditions as stated in the Account Agreement, per the express language of those terms made available herein."

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Governing Documents, cont'd

"All terms in any documents issued or supplied by Customer, including purchase orders, containing additional or contrary terms and conditions are rejected by Seller. No attempt by Customer to vary the Credit Account Agreement issued by Seller, or the terms of any of other underlying agreements issued by Seller, such as security agreements, will be considered valid. Any additions or modifications to the Credit Account Agreement and terms contained therein shall not be binding unless set forth in writing and signed by an authorized representative of Seller."

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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")

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Recover Attorney Fees, cont'd

- **Claim for Prompt Payment**
  - Civil Prompt Pay Claim (A.R.S. § 32-1183(J)) ("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**

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Recover Attorney Fees, cont'd

- **Work Stoppage**
  - o "Stop Work" notice (A.R.S. § 32-1185(F))
    (". . . successful party shall be awarded costs and attorney fees in a reasonable amount
- **Lien, Bond, Stop Notice, and UCC Remedies**
  - o Mechanics' and Materialmen's Liens

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Recover 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

o Stop Notices (A.R.S. § 33-1066)("the prevailing party shall be awarded reasonable attorney fees.")

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Recover Attorney Fees, cont'd

o **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)].")

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

The following are examples of attorney fee ranges based on $250 hourly rates and should not be replied upon in making 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 (federal district court, circuit court of appeals, U.S. Supreme Court).

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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)

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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.

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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.

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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)

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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Costs of Litigation, cont'd

WHICH LEADS US TO……..

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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

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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.

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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.

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