

## **Case Scenario – Change in Terms & Late Fee Charges**

A company in Wisconsin cannot find a signed credit application for a customer that is paying late. As part of their business relationship, the company periodically sends rebate checks to this customer. The company would like to charge a late fee to this customer and is also considering deducting the past due amounts from the customer's rebate check. What should the company do to put themselves in the best position with regard to this late paying customer?

With regard to the company in the above case scenario, the best way strategy is to set new terms with a new credit agreement. If it is not politically feasible to have the customer sign a new credit agreement, a unilateral Notice of Change of Terms should be sent stating that the new policy of the company is to charge a late fee and/or interest on accounts over 30 days, or whatever the specific terms are. This Notice should clear up this issue with respect to future accounts receivable. A new signed credit agreement or, in the alternative, a Notice of Change of Terms should take care of the rebate issue as it applies to future accounts receivable provided that the right to withhold funds from the rebate checks is stated clearly.

There may be some document, letter, notice, email, etc., that the Company could rely upon to claim that they have a right to charge interest and/or late fees on current accounts receivable. This writing would have to come in time prior to when the credit was extended. If the Company cannot find such a writing, charging a late fee etc., on past due accounts can be problematic. The Company can take a position that they have the right to charge interest based upon the actual terms set forth with the customer even if they cannot locate a writing that supports this position.

It is difficult to argue, however, that a change of terms after credit has been extended would hold up in court. Similarly, with regard to deducting from the rebate, the creditor may want to try this tactic knowing that the position might be difficult to uphold in court if pressed.

This aggressive approach should help put the Company in the best possible situation with regard to the late paying customer as long as this matter is not a consumer transaction and so as to be subject to different and higher level regulation.

Courtesy: John Schrager, The Law Firm of Wagner Falconer & Judd LTD ~ March 21, 2005