

E~Credit News

June 2018

The Business Credit
Management Association
Wisconsin

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Credit Ontario's Construction Lien Act

The Credit Research Foundation is pleased to offer our membership this educational brief from CRF Platinum Partner, NCS. The brief offers a high-level overview of recommended improvements to Ontario's Construction Lien Act, which has been under review since February 2015. Critical components of the Act include dates for the preservation & perfection of liens, surety bonds and prompt payment.

Many thanks to our contributing author Nancy Kennerly, NCS Executive Director!

Click [here](#) for the more details.



International Credit Executives Group

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"CASE STUDIES ROUNDTABLES" ICE SESSION JULY 19, 2018

Case Studies Roundtables in the morning and a tour of the new Johnsonville Sausage manufacturing facility near Sheboygan, WI. We are looking for participants to submit cases to "solve" and get everyone involved in the resolution! The tour after lunch will be amazing. An authentic "Johnsonville Sausage Lunch" will be served. Three guesses what's on the menu!

We're working on final details. If you want to receive an invitation once the meeting announcement is ready, please contact [Dianna](#).



GRIEF RELIEF XXVII



GRIEF RELIEF XXVII GOLF OUTING AUGUST 24, 2018 | 9:00 AM - 3:30PM

RESERVE EARLY & let us know if you have a four-some in mind! In the past, our Members & Partners have been very generous by donating prizes and sponsoring events! Golfers appreciate your generosity. Can we count on you in 2018?

RESERVE BY AUGUST 15. Due to our commitment to the course & caterer, no cancellation credit or refunds will be accepted after 8/17/18. Substitutions allowed. You'll take on 2017 CHAMPS: Team PNC BANK: Augie Barkow, Joe Bitter, Jim Fossett and Adam Mannatter.

CLICK [HERE](#) FOR THE MEETING ANNOUNCEMENT AND MORE DETAILS.

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MEMBER NEWS:

If you have something you would like us to announce please
send an email to
admin@wcacredit.org,
Subject line: Member News



Breathe and Back Away - Tools to Help You Cope With Stress

There is no denying it--credit and collection is a stressful business. There is pressure to improve customer relations and there is pressure to collect delinquent accounts. Sometimes the pressures make you feel as though you could explode.

Your day-to-day tasks are stressful, but that does not mean you have to let the pressures get you down. Dealing with stress is often a matter of control. A sense of control can be the most important tool you have to cope with the stress you face each and every day. Here are some tools you can use to help handle stressful situations and minimize your own physical and emotional distress:

- ◆ **Avoid dependence on nicotine, sugar, salt, and caffeine.** All of these chemicals increase stress in your body, making it easier for outside pressures to affect you.
- ◆ **Breathe deeply.** Breathing slowly and deeply (from your stomach) increases your oxygen level and helps you relax. Give it a try. Take one or two deep breaths right now and see if it doesn't make you feel a little better.
- ◆ **Relax.** Take about 30 seconds to relax in your chair and let your muscles go loose and limp. Start at your feet and imagine your body relaxing slowly up to your head. This takes only a moment of your time, and yet you will be surprised how the tensions release as you relax. Do this many times during the day--after particularly stressful calls, before making a call to a difficult customer, etc.--and you will feel an increased sense of control.
- ◆ **Learn to manage your time more effectively.** Sit down at the end of each workday and plan your next day. Arrange to tackle the most difficult work when you are at your best and brightest. Some people do their best work in the morning. For others, the afternoon hours are more productive. Plan your day accordingly. Set goals and check them off as you meet them. The sense of satisfaction you will get from completing your "to do" list will help you avoid stress.
- ◆ **Back away from your job for a moment.** Take a temporary break from a particularly stressful situation. Get up and take a walk, but don't take your problems with you. The idea is to focus on something else for a moment--look out the window, look at a newspaper or journal, or get a drink of water. When you feel calm, you are ready to face the problem once more.
- ◆ **Think in fast-forward.** When faced with a difficult situation, look to the future and visualize successfully solving the problem or completing the task.
- ◆ **Juggle calls.** If your company has a policy of calling good accounts and thanking them for their prompt payment, intersperse collection calls with these more enjoyable customer contacts.
- ◆ **Be firm.** A positive, firm attitude toward collection calls will help you deal with stress. After all, your company's ability to pay its bills on time and maintain its credit rating depends on its customers. They have to follow through on their commitments by paying in a timely manner. Your company has a right to collect past-due debts. Of course, it is important to maintain good relations whenever possible. Working with customers to come up with fair payment arrangements can be a positive experience that will also reduce stress.

Stress is an inevitable part of your job, but it doesn't have to bring you down or wear you out. The key is control. Learn to control your body's response to stress through relaxation and organization. Learn to cope with this inevitable part of your job, and you will be more productive and better satisfied with your work.

Can Bank Avoid Paying on Letter of Credit Based on This Technicality?

The Scenario:

The sale of \$50,000 in machine parts by Johnson Industries to Fielding Enterprises was secured by an irrevocable letter of credit issued by the First State Bank. The letter of credit is read as follows:

"First State hereby agrees to accept and pay at maturity any draft on us at First State within 60 days of this date by the beneficiary (Johnson Industries) for the account party (Fielding Enterprises) to the aggregate amount of \$50,000 and negotiated through First State Bank. One negotiable bill of lading must be forwarded directly to the First State Bank immediately by the bank negotiating the documents. Remaining documents must accompany the drafts."

The goods were delivered to Fielding Enterprises and Johnson Industries received invoices and non-negotiable bills of lading that CFO Pete Johnson attached to a demand letter and sent by certified mail to the bank. The demand letter stated as follows:

"This letter will serve as our draft on your bank for the letter of credit drawn for the account party. Please make your cashier's check payable to the beneficiary. The invoices and bills of lading are attached."

But the bank refused to pay.

"Look at the letter," a First State officer, told Pete. "It specifically requires negotiable bills of lading. You didn't provide them."

"Get real!" barked Pete. "Just last month, we submitted almost identical drafts on letters of credit containing the same compliance terms, and you didn't have any trouble with those. What are you doing--changing the rules in the middle of the game?"

But the bank stuck to its guns and refused to pay. Can Pete enforce the letter of credit based on the prior course of dealing?

Make your decision, and then look below for the answer and our analysis!

The Impact of Margins on Credit Decisions

How much does customer account profitability figure in to the credit decision-making process? "It certainly should be a critical factor," notes a savvy credit exec we spoke with, "but hardly the only factor."

"We have access on line to the overall account profitability, and to the profit margin on an individual order that might be up for review. If the decision about whether or not to release the order is a close one, I normally look at the profit margin on the order. In theory, the larger the margin the more credit risk I should be willing to take. In reality, I am expected to manage and control credit risk and credit delinquencies irrespective of the order's profit margin.

"If I take an order into my boss to discuss the pros and cons of releasing the order I always know the margin on that order. However, whether you stand to make 2% or 20% on an order, you only earn the profit if you are paid for the invoice--therefore profit on a sale is minor consideration when compared to the question of whether or not we will ever be paid by the customer or applicant."

But if you think about it – for very high margin customers, you ought to be taking much more risk than for low margin customers. The benefits of the sale are much higher; and the consequences of a loss much lower.

The Answer: Can Bank Avoid Paying on Letter of Credit Based on This Technicality?

Answer and Analysis

Pete may win, but he could face a battle in court.

A letter of credit involves three parties:

- An issuer who agrees to pay conforming drafts presented under the letter of credit.
- An account party who orders the letter of credit and dictates its terms.

A beneficiary to whom the letter of credit is issued and who can collect monies under the letter of credit by presenting drafts and making proper demands on the issuer.

A letter of credit thus involves three relationships: one between the issuer and the account party, a second between the issuer and beneficiary, and a third between the account party and beneficiary. This third relationship, of course, constitutes the underlying business deal-giving rise to the issuance of the letter of credit. The result is that the credit of the issuer--which is preferred by the beneficiary--is substituted for the credit of the account party.

The relationship between an issuer of the letter of credit and the beneficiary is purely statutory. Once the letter of credit is issued, the issuer becomes statutorily obligated to honor any draft drawn by the beneficiary that complies with the terms of the credit. The issuer has no discretion in determining whether the beneficiary has meet the requirements of the underlying contract.

The commercial vitality of the letters of credit is grounded on the issuer's lack of control over the underlying business transaction. The issuer merely writes a letter of credit pursuant to the instructions of its credit-worthy account party and pays on it when proper demand is made, all without investigating anything other than the documents presented. The duty of the bank is ministerial, confined to checking the presented documents carefully against the letter of credit. This has come to be known as the "independence principle" because of the independence of the letter of credit from the underlying business transaction. The issuing bank looks solely at the letter and the documentation the beneficiary presents to determine whether it meets the requirements of the letter.

The majority of jurisdictions have adopted a rule requiring strict compliance with the letter of credit when presenting documents for payment. Some courts have adopted a substantial compliance standard, but this would place issuing banks in uncertain positions with respect to their obligations. The majority of the jurisdictions thus primarily hold with strict compliance with the terms of the letter of credit as a standard to be used by the issuer in determining whether to honor a draft on a letter of credit.

In the situation at hand, the beneficiary argued that the terms of the letter of credit were impossible to fulfill because no negotiable bills of lading were generated in the underlying transaction. The court acknowledged this inability to generate negotiable bills of lading but at the same time stated that the beneficiary assumed the risk that it would not be able to collect from the bank if it did not present the documents in precise compliance with the letter of credit requirements. This is the basic reason why the beneficiary is always allowed the opportunity to examine the letter of credit and at that time either accept or reject the letter of credit.

If the letter of credit requires documentation that cannot be generated, the beneficiary should not ship the goods until he or she receives a proper letter of credit. An impossibility of performance does not excuse strict compliance with the letter of credit. Furthermore the court in this instance stated if a beneficiary negligently inspects the letter of credit and fails to discover that the requirements are impossible for him to satisfy, then the beneficiary would not be able to collect under the letter of credit.

Prior Course of Dealing

With the regard to the question of the prior course of dealing, where the bank had honored prior letters of credit without requiring negotiable bills of lading, the court seemed to deviate from its posture of strict compliance. The

The Answer: Can Bank Avoid Paying on Letter of Credit Based on This Technicality? (continued)

question of estoppel must be considered. When the bank assumed a position totally inconsistent with its prior actions by demanding strict compliance on one draft and not demanding strict compliance on another draft, a question of fact arose that had to go to trial. The court seemed to indicate that if the bank was going to demand strict compliance on this particular letter of credit, it should have notified the beneficiary that this time it wanted strict compliance whereas in the prior instance it was willing to accept a non-negotiable bill of lading.

The question of whether the beneficiary detrimentally relied on the bank's previous conduct seems to be a valid defense. The theory of equitable estoppel is the result of the voluntary conduct of a party, whereby he is absolutely precluded from asserting rights that might have otherwise existed, as against the party who, in good faith, relied on such conduct and has thereby been led to change his position to his detriment. The theory holds a person to a representation made or a position assumed, where otherwise inequitable consequences would result to another whom, having a right to do so under the circumstances, has in good faith relied on them.

Unfortunately, the theory of equitable estoppel in this particular case flies into the face of strict compliance. Whether other courts would allow the defense of equitable estoppel to be asserted is questionable since the majority of the courts that talk in terms of strict compliance really mean strict compliance. The moral of the story is very simple:

1. **Be certain that you read the letter of credit carefully.**
2. **Be certain that you are able to comply with its requirements.**
3. **Ignore any past dealings that you may have had with the issuer of the letter of credit.**

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Lisa Has Retired

After 23+ years Lisa Schroeter from our team is retiring. Lisa worked with clients in the credit reporting area, data file processing and collection trust accounting and more. All of us at the Business Credit Management Assn (BCMA) wish Lisa a wonderful retirement and happy days going forward.

BCMA is currently shifting Lisa's responsibilities to other team members and we've hired Patricia Hughes who will join us here in the office. As more details are finalized, we'll advise member clients who will be the main contacts for the responsibilities Lisa is passing on to staff members.

TSYS Merchant SolutionsSM (Partners)

Need credit card payment solutions for your business? Whether large or small, TSYS has the customized solutions to fit your business needs. BCMA partners with TSYS because they are focused on creating more value in our client relationships than ever before, and their voice has emerged as one of the most trusted in the payments industry. This true spirit of partnership, and the accompanying understanding that our success is determined by our clients' success, infuse everything we do. Whether you're LOOKING TO BEGIN ACCEPTING CREDIT CARDS, or LOOKING TO LOWER YOUR

CREDIT CARD SURCHARGE FEES...TSYS will help. Contact the Association at 262.827.2880. We'll put you in touch with a representative that will assist you. TSYS was named to Ethisphere's 2013 World's Most Ethical Companies List!

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GOT AN IDEA?

Would you like to contribute to the BCMA Newsletter? The most important part is your idea. We can handle the polishing. Just write to us at BCMAEditor@CreditToday.net with your idea!



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UPCOMING INDUSTRY CREDIT GROUP MEETINGS

JUNE 08, 2018

Iowa Plumbing Heating Electrical & Construction Industry Credit Group
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Brookfield, WI

JUNE 12, 2018

Fine Paper/Graphic Arts Industry Credit Group

Teleconference Call
Regional Paper & Packaging Industry Credit Group

Book of Reports Only

JUNE 13, 2018

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Brookfield, WI

JUNE 14, 2018

Metals & Industrial Suppliers Credit Group
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JUNE 15, 2018

IL Fine Paper Industry Credit Group
Oakbrook, IL



JUNE 18, 2018

Western Electrical Suppliers Industry Credit Group

Book of Reports Only

JUNE 19, 2018

Building & Construction Materials Credit Group
Milwaukee, WI

JUNE 20, 2018

Minnesota Electrical Product Suppliers Group
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JUNE 21, 2018

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Appleton, WI

JUNE 26, 2018

WI/IL HVAC Industry Credit Group
Rockford, IL

JUNE 27, 2018

Food Service Supply Hospitality Industry Credit Group
Brookfield, WI



2018 Educational Events

This year, The Credit Professional's Conference & Expo is being held at the Hilton Garden Inn on September 18, 2018. Back by popular demand, our opening General Session speaker is Bruce Christopher.

CHECK OUT OUR [CALENDAR](#) FOR MORE UPCOMING EVENTS.
YOU CAN TRUST THE ASSOCIATION TO ASSIST IN [RECOVERY](#) FROM YOUR DEBTORS ANYWHERE
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