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Leaving Money On The Table

What you can do proactively to make it easier to collect the money you've earned.

Rendigs represents many contractors and small businesses on all sorts of matters, but certainly disputes about money come up more frequently than anything else. Either our clients do not believe they owe money to a claimant or someone owes them money. Of course, the actual disputes are always more complicated than I could describe in this article but we routinely counsel our clients to help make sure they get paid on every job and avoid claims for non-payment. Here are ten items to think about that might help you too:

- 1. If you fail to plan you can plan to fail.** All businesses need a credit policy that sets forth policies and procedures for lending money and collecting money. Every business needs a written plan for accepting new clients and a written plan for collecting money when payments are late. When they follow the plan, our clients are able to avoid many collections problems that they previously encountered.
- 2. You know what assuming makes...** Don't make this mistake when it comes to checking references. Most small business owners get too excited at the prospect of getting new business (or fear losing new business) that they do not take time to ask new clients to fill out credit applications or new-client intake forms. It is very frustrating when a prospective customer accepts your goods and services but fails to pay and all you are left with is a headache.
- 3. Act early before it gets awkward.** Many small businesses avoid talking about collecting money or doing anything about collecting money until the dispute has escalated. You'll have better luck getting paid, especially before others do, if you pick up the phone and make a friendly reminder call whenever a payment is late.
- 4. You're not a bank.** Well, maybe some of you readers are, but let's go on the assumption that you're not in the business of lending money. If you bill "Net-30" just because the people before you did, please stop. You are selling on credit and you will make more money if you require payment on delivery.
- 5. The dreaded "I never agreed to that!"** Many disputes can be avoided with well-drafted, mutually signed contracts that clearly define the scope of the work, price, and other terms. Give them to your customers and insist on getting them from your vendors to protect yourself whenever buying or selling goods or services.
- 6. No one actually reads the fine print.** Of course that's not true. You do (or should) read the fine print on the contracts you sign. At the very least call us and we'll read and summarize it for you. Ignoring the terms in fine print won't make them go away, so you're better off knowing what you're signing.

Do you have terms and conditions on *your* form contracts? If you include such things as the recovery of interest and attorneys fees on commercial transactions you can greatly reduce your risk of not getting paid or of having to pay attorneys to recover your money. Conversely, if you limit consequential and other damages, you can minimize your risk to exorbitant claims when defending legitimate disputes.

7. The fortresses that are LLCs. Operating as an LLC is a great way to protect your personal assets but you need to follow some corporate formalities and avoid co-mingling assets. If you are making a claim against an LLC and it is out of business, your chances of getting paid are slim. When dealing with new companies or companies that have been set up solely to do a short-term project, it is important to try and get personal guarantees, security interests to guarantee payment, require payment on delivery, or require surety or performance bonds, if possible.

8. Try positive reinforcement instead. If you have been billing Net-30, do your invoices include penalties for late payment? Many businesses ask for interest or fees if payment is not received within 30 days from delivery. Customers infrequently pay these late fees and often get angry if you ask for them. Instead, try offering a small discount for prompt payment within 10-15 days and you'll be amazed at how hard your customers will work to meet your deadline just to get a small discount.

9. Bankruptcy Issues: Do not pass Go. Do not collect \$200.

Do you know when your customer is about to file bankruptcy? Do you know what to do if they file bankruptcy? Do you have procedures in place to protect your company? All too often a customer will start making delinquent payments. Then, on the eve of filing bankruptcy, they pay part of their bill and place a huge order. Besides the risk that you'll never get paid for the huge order, the Trustee might be able to sue you to recover the last payment made as a "preferential transfer". Such an action can sneak up on you too because the Trustee has up to two years to make this claim after the filing of the bankruptcy. Your credit policies and procedures can help you avoid these consequences if you take precautions to document contemporaneous exchanges for new value or only accept payments in the ordinary course of business. In other words, this means that if a business must have credit, maintain consistency. Consider accepting automatic debit payments or credit card payments on a regular schedule.

10. Are you afraid to file a mechanic's lien or to perfect a security interest in inventory or fixtures? Don't be. Many clients do not file liens or perfect security interests because they fear that they will upset their customers or they do not understand how these tools work. Filing liens and perfecting security interests should be just another routine part of what you do.

Many of these ideas can be implemented at little to no cost and the savings by doing so will far exceed the time, expense, and frustration of future litigation.



Mike Chapman divides his time between civil litigation and regulatory compliance/transactional matters throughout Indiana, Kentucky, and Ohio. Mike strives to provide the highest quality defense that is cost-effective and result-oriented. His over-arching goal of each matter is to collaborate with the client to identify and achieve the best, cost-effective solution for their particular circumstance – even if this means going to trial.