

# Brown & Joseph Newsletter

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## Once a Collection Goes “Legal”: A Short Series for Creditors

➤ <http://www.agencies.bernsteinlaw.com/news.htm>

**M**any collection or credit managers spend a great deal of time preventing collection problems, whether in the granting process or the in-house collection phase. More experienced personnel understand what happens when an account can't be collected or adjusted in-house and has to be placed with an outside agency. Most managers have had experience with collection agencies and have some sense how that process works. The more experienced managers have systems and relationship set up so their team knows exactly when an account gets placed and how that happens.

Fewer know the ins and outs of what happens after the agency makes its efforts, but can't collect or settle the account. This short series will cover the legal placement and litigation process for a typical collection claim for goods sold and delivered.

### Part 1: What Causes it to “go legal?”

**W**hen an account is placed with a collection agency, the client usually gives the agency authority to place it with a lawyer if the agency believes this move would assist in the collection. As a result this step often requires the agency to pay the lawyer a percentage of the collection, which reduced the fee the agency will earn. The incentive, therefore, exists for the agency to do what it can to collect without legal placement. The better agencies understand that the legal service is part of the “full service package” that agencies provide and realize it goes with the territory. The agency may not make as much money on the legal accounts and, in fact, may lose money. But they understand the idea that the client wants to have its needs serviced and that the agency can be the team leader that gets it done.

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## Brown & Joseph Opens Shop in Indonesia

➤ <http://www.ccrmag.net/article.html?id=200804140N1MXI96&from=creditandcollectionnews>

**T**he Brown & Joseph Companies, an accounts receivable management firm based in Schaumburg, Ill., has opened a branch in Jakarta, Indonesia, CEO Chris Cappuccilli announced Monday in a news release.

Headed by Carlo Lang, based in Jakarta, “our new location is yet another indicator that Brown & Joseph is continuing to grow, nationally and internationally,” he said, adding that the company has been “receiving more and more debt owed by American companies to overseas creditors.”

Brown & Joseph continues to increase revenue recovery on primary and secondary placements, which has substantially reduced litigation costs and contingency fees for its clients. The firm is also continuing to expand its bankruptcy services division, assisting both Chapter 7 Trustees and debtor estates on a contingency fee basis. ☞



**BROWN & JOSEPH**

## Word Search

*Words are up, down, backward and diagonal.*

*Answer key is on page 6.*

Agency	OpenAccess
Bankrupt	Outlook
Beach	Receipt
Billing	Retirement
Calendar	Revenue
Charge-Off	Ruler
Confirmation	Staff
Credit Manager	Stapler
Desktop	Statement
Export	Success
Hardcopy	Summer
Human Resources	Sunny
Management	Trustee
Monitor	Webinar
Office	Window

W I N D O W H A C S S T A T E M E N T G  
L J M B O E U V Q O A F R Q W A S B O K  
A T A Z F B I T R U U C A L E N D A R C  
H C O N F I R M A T I O N P I F X N T R  
S H K M I N E N E L E P V N Q E Y K O E  
J A U E C A C D Y O O O A G R F W R Z D  
F R H M E R E X P O R T L D F I S U A I  
H E U G A Z T B Y K W B E A C H Y P U T  
A O E M A N A G E M E N T R O X E T L M  
R F I O I V R F W B N S T R U S T E E A  
D F A N J B X E E P X I X N Y S U A K N  
C D W I V O D E S K T O P U C E M O F A  
O J Q T C E B E X O S C D I Q C J E U G  
P U F O P I U Y W Z U P R M D C U C N E  
Y E M R U N D B Q I N R E A S U M M E R  
C L A G E N C Y R O N G C P O S I R U B  
M H K V E D I V L H Y I E E J P L U G T  
O P E N A C C E S S O S I I S G S L Z O  
Z R E T I R E M E N T O P U A H O E A M  
K U N B I L L I N G T S T A P L E R K R

*Once a Collection Goes “Legal” continued...*

Many things can cause the client or the agency to place the claim with a lawyer. First, it could be an account that has a security interest or a lien right that needs to be enforced by a lawyer. There may be a particular contract issue or defense that needs legal help to resolve. The agency’s collection efforts may not raise the “threshold of pain” high enough to get the debtor to pay and they may need to call in reinforcements. Perhaps the client has done everything reasonable (or the customer has done something unreasonable) and the client wants immediate suit. These are all reasons that might get the agency to place the account with a lawyer.

Clients also must recognize that not every uncollected account justifies placement with a lawyer. Yes, placement with a lawyer does not necessarily mean a lawsuit, but if the claim is of a certain size and the debtor is of a certain frame of mind, the agency (and probably the client) can tell it will not be collected without a suit. And the agency and client know that claims of certain size will never justify a lawsuit on a typical contingent fee basis. In many of those cases, even the court costs will be too much to risk on the claim. Those claims should never “go legal,” at least not without a clear understanding what is expected, and what the fee and cost expenses will be.

## Part 2: How is the lawyer chosen?

Choosing the lawyer is an art and a science. Most experienced agency personnel have relationships (or at least familiarity) with creditors’ rights lawyers in most major metropolitan areas. If they’ve been in the business any length of time, the agency person has had to find (and evaluate) lawyers for clients in the past. Agencies choose lawyers (and give them repeat business), because the lawyers are “good.” But how do they find the lawyers in the first place and what defines them as “good”?

A recent survey of those choosing lawyers to enforce commercial obligations found that most clients look for lawyers who know the industry and who are known in the industry. That stands to reason. Agencies, on behalf of clients, want lawyers who know what they are doing and who are players in the field.

In the first instance, an agency will look to recommendations from people they trust. Clients, other agencies, other lawyers and commercial Law Lists, are all regular sources of referrals for agencies. These recommendations will generally cover important issues that affect the recovery rates and the cost, such as:

*Continued on next page...*

*Once a Collection Goes "Legal" continued...*

- Is the lawyer effective at collecting?
- Does she have experience?
- Is he cost-effective and does he provide good value?
- Does she cover a wide geographic area, but still effective as a "local" lawyer?
- Is he board-certified in creditors' rights?
- Is she listed on recognized Law Lists?
- Does he act (and report) promptly?

Agencies will then overlay their own particular philosophies on the process:

- Some want competition among multiple lawyers in the same geography.
- Some look for the best service, not just the best price.
- Others want new lawyers who are "hungry."
- Others want lawyers who are active in the Commercial Law League of America (CLLA) and International Assn. of Commercial Collectors (IACC).

Lawyers who concentrate in collections make their availability known to agencies in many ways. They purchase listings in Law Lists, attend industry trade group meetings, and obtain (and advertise) their board-certification and specialization in creditors' rights. Lawyers will advertise directly to the agencies and often visit the agencies to get better acquainted with the personnel. Since agencies will typically place claims for many clients with the same lawyers, the lawyers recognize strong agency relationships as a steady source of business and they market for that. Lawyers recognize that agencies and lawyers are part of the collections team that serves the credit needs of businesses.

Some clients remember their good (or not so good) experiences with creditors' rights lawyers on other accounts and make specific requests of the agency when the time comes for legal placement. As the client, the creditor should always have the right to choose (or approve) the agencies' choice.

### **Part 3: What Happens During the First Few Days After Placement?**

Time is money. Strike while the iron is hot. The

early bird gets the worm. He who hesitates is lost.

There's a pattern. The better creditors' rights lawyers understand the pattern. Within the first day or two, there should be an analysis done of the claim and the proper strategy to use. A claim with lien or reclamation rights should be acted on immediately. These rights can disappear if not exercised by a specific deadline. All claims require a certain amount of identification, background and asset investigation. The amount of information that is available to the lawyer from the client and the agency will, in part, determine how quickly the lawyer can act.

The lawyer should let the agency know of his receipt of the claim in the first day or two and should let the agency know when they can expect the first substantive report. Telling the agency a specific date or number of days (and keeping to that!) saves everyone the time and money spent in asking for reports. If the lawyer says the agency will have a report in 30 days, the lawyer should report in 25 days. Actually, most agencies will add a few days to the dating just to avoid having to handle the file twice.

In the first few days, the lawyer should do the background investigation, check other experience with this debtor, and, unless there are exigent circumstances requiring immediate action, contact the debtor either by phone or mail to make a demand. During this time, the lawyer also reviews all of the information provided by the client and the agency. At this point, more is better. Most creditors' rights lawyers would like to see a package with all contracts, correspondence, notes and invoices right at the start. That makes them more knowledgeable when they talk to the debtor and more likely to be able to meet objections and claims.

### **Part 4: What Communication Should the Client Expect?**

The short answer is that the client should expect to be kept adequately informed of steps and progress, as well as risks. The longer answer depends on the agreement with the agency as to frequency and method of reporting. Generally speaking, the client wants the agency to be the agent or the buffer for information from the lawyers. Agencies prefer that lawyers communicate with the agency so they can make sure the information is appropriate and meaningful for the client.

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*Once a Collection Goes "Legal"*  
*continued...*

One of the many benefits collection agencies can provide is help in the management of account portfolios. If the agency has a large number of accounts for the client, there may be economies that can be achieved by setting up reporting and authorization systems in advance. As to reporting, perhaps the client wants an extensive report each month on all accounts. Otherwise, the client may want an individual report on each account monthly. It may be better to have individual reports when important activity occurs, trusting the agency to move the matter along. Some clients may provide settlement and suit authority in advance, allowing the agency to really manage the accounts. Some agencies will provide clients with real time access the agency's database to allow the client to monitor accounts without the need for the agency to generate any reports. Technology has created complete flexibility to fit any organizational needs.

On the other hand, the agency and the lawyers should have an understanding as to what communication is expected (and necessary) to meet the needs of the client. Reports from lawyers may need to be more detailed so the agency can manage that information into its communication system with the client. Whether the agency prefers that report to come by mail, fax, email or on-line is a matter of preference and agreement. Most creditors' rights firm these days can provide whatever method and form is needed by the agency.

At certain times, the telephone trumps all other methods of communication. While email may reach the account manager at the beach, live discussions may be better when there are trial preparations or detailed settlement issues that need to be reviewed.

Unless the account has been legally sold (assigned) to the agency, the creditor is the client of the lawyer and the lawyer is always free to communicate with the client (rather than its agency). However, this direct communication often short-circuits the established communication patterns and care should be taken (by the client or the lawyer) to bring the agency up to date.

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## Collectively Speaking

✍ *written by John Whyte*

Our economic future is never certain. We have heard of the possibility of a 'downturn', 'market adjustment' or even a slight 'recession'. In times like this it is essential to be able to review and identify problem or slow-paying accounts. A customer's ability to pay rapidly decreases in this environment.

One of the most important statistics which contributes to the chance of collecting past due accounts is the age of the account when submitted. Collection procedures should be done in a timely manner with regular follow ups (10, 30, 45 days, etc.). Reminders, statements, past due notices and telephone calls are essential internal methods to be used. Direct these contacts to the person with authority to initiate payment. Keep contacts short. Be firm, yet personable. If there are disputes they should surface quickly. Handle them quickly and accurately and put any and all arrangements, payment schedules (including late fees, and/or interest charges) in writing. Remember, in good economic times, after 90 days, you lose 10% on any unpaid balance. ✍

## Corporate Defaults on Upswing as Debt Comes Due

⇒ *Krantz, Matt. "Corporate defaults on upswing as debt comes due." USA TODAY. May 9, 2008.*

Companies counting on consumers spending like there's no tomorrow are finding tomorrow may not be as bright as they'd hoped.

Corporate defaults, including the owner of the Tropicana casinos this week, are reaching levels not seen in years as companies struggle with a fickle bond market and nervous consumers.

Already this year, 27 U.S. companies have defaulted on their debt, according to Standard & Poor's, exceeding the 16 companies that defaulted in all of 2007. Many of these companies, including Tropicana Entertainment, have already filed for bankruptcy protection.

Bankruptcy experts say the uptick in defaults is just beginning, because massive amounts of debt will come due at a much faster pace in about a year.

"The flood hasn't come yet, but the leading wave of the flood is in sight," says Martin Zohn, head of the bankruptcy practice at law firm Proskauer Rose.

A rise in defaults puts even more pressure on an already weak economy by making lenders skittish and threatening jobs as companies are forced to scale back. Struggling companies are getting pushed over the edge due to:

- **Serious lack of money to borrow.** Companies that don't have stellar credit ratings are still struggling to raise money, says Mariarosa Verde, managing director at Fitch Ratings. Average B-rated companies, if able to borrow at all, are paying 11% interest rates, she says, up from 8.25% a year ago.

- **Debt coming due.** Just as consumers with adjustable-rate mortgages suffered as their interest rates reset, so are companies as their debt matures, says Diane Vazza of S&P. More than \$22 billion of debt issued by companies with lower credit ratings comes due the next three quarters, meaning they'll have to borrow amid a hostile debt market. Next year, companies with lower credit ratings see \$40 billion in debt come due, Vazza says, and the amount will be double that each year through 2014.

**Bankruptcy experts  
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beginning...**

- **Full-out assault on the consumer.** A poisonous blend of high gas prices and low confidence is forcing retailers and consumer companies already on the brink into default, Zohn says.

- **Poor lending standards haunting lenders.** Banks and investors were so willing to lend until early 2007, they did it with no strings attached. Now, lenders can only watch as teetering companies that are likely to default keep burning through cash. "There used to be stops in the system," Zohn says.

That's why defaults are expected to get worse. More than 1.4% of junk bond issuers have defaulted in March, S&P says. By March 2009, that rate will soar to 4.7%, which is higher than the 4.4% average, Vazza says. "There's going to be a strong demand for bankruptcy services," says Penn Nicholson, partner at law firm Powell Goldstein. ↩

*For bankruptcy related issues, Brown & Joseph can help. Contact Steve Gelsosomo by phone 888-829-9997 ext. 202 or via email [sgelsosomo@brownandjoseph.com](mailto:sgelsosomo@brownandjoseph.com).*

### The Higher the Price, the Better it Tastes What a Buyer Pays Really Does Affect How Much He Enjoys It

⇒ *"The higher the price, the better it tastes." The Marketing Report. March 3, 2008: 1.*

“**Y**ou get what you pay for” may not be true, but apparently the human mind has a funny way of making it true. At least that's the case when it comes to wine buyers, say Stanford Business School researchers.

#### Same wine, but different results

When asked to taste test a \$5 bottle of wine and a \$45 bottle, the testers enjoyed the expensive bottle of wine more. The problem: Both wines were the same wine. Turns out there is a medical reason for the results.

When told the wine is more expensive, the tester expects it to be better and MRIs show that the part of the brain that experiences pleasure becomes more active.

For marketers, that means a price change can actually change the experience the buyer ultimately has.

*Source: [www.gsb.stanford.edu/news/research/baba\\_wine.html](http://www.gsb.stanford.edu/news/research/baba_wine.html) ↩*

## Eye Catching Classifieds

➤ “Lighter side: Can you top these ads?” *The Marketing Report*, March 3, 2008: 5.

**W**riting ads that catch the eye is an art form. You might learn something from these newspaper classified ads:

- Free, 1 can of pork & beans with purchase of 3 BR, 2 bath house.
- Snow blower for sale. Only used on snowy days.
- Georgia peaches. California grown. 89¢ a pound.
- Free puppies: 1/2 Cocker Spaniel, 1/2 neighbor's sneaky dog.
- Amana washer - \$100. Owned by clean bachelor who seldom washed.



## Did you know...

- The system of democracy was introduced 2500 years ago in Athens, Greece.
- Music was sent down a telephone line for the first time in 1876, the year the phone was invented.
- Traffic lights were used before the advent of the motorcar.
- The Egyptians created the first organized navy in 2300 BC.
- The ozone layer averages about 3 millimeters (1/8 inch) thick.
- A diamond will break if you hit it with a hammer.
- The world's smallest dog is the Chihuahua, which means “tiny dog in the sky.”
- The heart of a blue whale is the size of a small car and the tongue is as long as an elephant.

## Words of Wisdom

“Successful people keep moving. They make mistakes, but they don’t quit.” - Conrad Hilton

“Shoot for the moon. Even if you miss, you’ll land among the stars.” - Les Brown

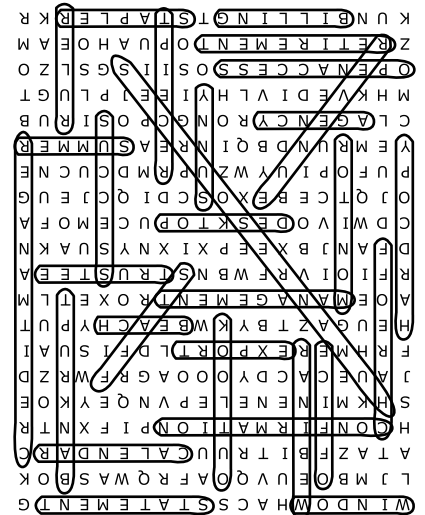
“You can never be comfortable with your success, you’ve got to be paranoid you’re going to lose it.” - Lou Gerstner

“He who cannot forgive breaks the bridge over which he himself must pass.” George Herbert

“You accomplish victory step by step, not leaps and bounds.” - Lyn St. James

“Forgive your enemies, but never forget their names.” John F. Kennedy

## Answer Key



Published by Brown & Joseph

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