

Brown & Joseph Newsletter

Volume 7
April 2009

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Brown & Joseph Announces New Law Firm in Mexico

➤ *Brown & Joseph Press Release. February 26, 2009.*

Brown & Joseph, Ltd. announces the opening of a new law firm in Mexico City. Chris Cappuccilli, CEO says, "Unlike most agencies that forward their claims to outside counsel and hope for the best, Brown & Joseph has hired two attorneys in Mexico and now has an exclusive relationship for our US clients." In the past, collection agencies would forward their claims to outside counsel to get suit requirements and in some cases, the upfront fees charged were cost prohibitive based on the balance size. In other cases, enormous amounts were paid with no recovery. "Simply put, we have relationships with our clients that we have had for many years, and the last thing we want to do is roll the dice, so to speak, with our client's money," Cappuccilli adds.

"With our new office in Mexico City, Brown & Joseph is able to offer the same contingency fees for litigation we charge here in the US," Cappuccilli says. Accounts will be placed directly with Brown & Joseph, Ltd. here in the US. Brown and Joseph will be the liaison between our clients and our law firm in Mexico.

"With the economy getting worse by the day, we are getting more and more requests for litigation outside of the US. We feel very comfortable with the investment we are making for our clients that sell south of the border," Cappuccilli says. Our firm will handle litigation for all of our clients throughout all of Mexico.

Even when times are tough, Brown & Joseph, Ltd. continues to move forward, adding services while always keeping in mind that our clients come first. ☞

The Six Steps to Avoiding Bad Debt

➤ *Written by Kaimierz Layton, account handler and James Bowker, account director, at Aon Trade Credit. "Control Bad Debt." www.smevweb.com. August 22, 2008.*

1) **Communication** - Talk to your customers. The closer you are, the more likely you are to get a true picture. If the first time you pick up the phone is when you have a problem you may end up acting on poor information.

2) **Integration** - It's no good having a good credit control department if you have a renegade sales team. Make sure your sales department understands that the credit controllers are not there to stifle sales and train them on how to use credit control as an additional sales tool. Equally the credit control team needs to make sure they understand the pressures the sales department are inevitably under.

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BROWN & JOSEPH

Foreclosure Tops Complaints to Illinois Attorney General's Office

↳ *St. Louis Business Journal. March 5, 2009.*

Consumer debt complaints, which include foreclosures, were the top complaints facing Illinois consumers in 2008, Attorney General Lisa Madigan said Thursday.

Complaints about mortgage lending, abusive collection agencies, mortgage rescue scams and credit card debt totaled more than 6,700 of the 33,000 complaints that Madigan's office received last year. That's a 28 percent increase in consumer debt complaints compared to 2007.

The growing number of consumers seeking help in dealing with debt, including their home mortgages, reflects the tough economic realities confronting Illinois families," Madigan said.

Identity theft complaints ranked No. 2 in 2008 with 5,600 complaints. ↵

Word Search

Words are up, down, backward and diagonal. Answer key is on page 7.

- Acquisition
- Applicable
- Application
- Call
- Check
- Coffee
- Conquer
- Credit Line
- Elected
- Excel
- Governed
- Hot Cocoa
- Internet
- Mug
- Owe
- Payable
- Payment
- Promise
- Quality
- Reclaim
- Restructure
- Secure
- Support
- Temporary
- Write Off
- Year End

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

Brown & Joseph Announces Growth, Adding 30 New Employees

↳ *by Allison Dinges. March 20, 2009.*

Brown & Joseph, Ltd. announces that it will be adding 30 employees to its headquarters in Rolling Meadows, IL. The new hires will include mostly collectors and some skip tracers. New contracts and new clients, that have not been announced yet, is the contributing factor for the sudden change.

Brown & Joseph employees are excited about the new development, especially in a sinking economy. "We've never grown like this before so fast," says Chris Cappuccilli, CEO. "But with the dedicated staff we

already have, we have built the foundation for such an expansion."

Although Brown & Joseph is ready for the new employees and new clients, one thing remains important: to never forget what got us to this point, our valued clients. "If it wasn't for our current client base, we would not be here today," says Cappuccilli. "Even with the new business, our focus remains the same. We would not be in business if it wasn't for our clients. They are our number one priority. New clients and current clients can expect the same service from us, the kind that goes the extra mile, or even another mile, whatever it takes." ↵

Collectively Speaking

✍ by John Whyte, Brown & Joseph

One of the best resolutions one can have is to become a better listener. The words of Abraham Lincoln are perhaps even more profound today than when first penned: "Better to remain silent and be thought a fool, than to speak out and remove all doubt."

Listening better, really hearing the spoken word can give a greater insight to a situation, and, perhaps enable you to solve a problem before it becomes a collection issue.

Listed below are a few outstanding listening suggestions:

1. Stop talking!
2. Listen for the facts and listen for opinions. Know the difference.
3. Put the talker at ease. Judge the content, not the person.
4. Show you are interested in the speaker. Listen to understand rather than to reply.
5. Minimize distractions.
6. Be patient. Allow plenty of time. Do not interrupt.
7. Ask questions and ask for clarifications. Be objective.
8. Use pauses and silences so that you and the speaker may gather your thoughts.
9. Empathize. Put yourself in another's place so you can understand that point of view.
10. Stop talking! You have two ears and one mouth. Listen twice as much as you speak.

Additional points:

- You cannot listen if you are talking!
- He who listens best..... WINS!
- Reread #10 above!

Try these ideas. You have nothing to lose and everything to gain. ✍

3) **Be Realistic** - In these credit-starved times, you need to make sure your budgets and management have realistic targets. Whilst growth is always key to success, taking unnecessary risks is sometimes the key to disaster. Make sure you know your customer ... instead of taking a chance because 'you're sure they'll be fine!' or worse 'you've never had a problem with them before.'

4) **Be Optimistic** - Yes times are bad and yes there is an increase in insolvencies. That doesn't mean though that you need to OVERLY cautious. You may be able to take advantage of competitors that tighten up too much on their credit control procedures. By using the right information you will be able to pick up new business whilst still avoiding bad debt.

5) **Be strict** - It is not uncommon in some sectors for customers to ask for payment extensions or reschedules. There is nothing wrong with a well thought out and fair repayment schedule. However, be wary of customers who constantly ask for extensions or those which ask for extensions for the first time.

6) **Expect the unexpected** - You are never able to see everything coming no matter how hard you try or how experienced you are. You need to make sure you are capable of taking losses, especially if you are working in risky markets. ✍

Lloyd Blankfein, CEO of Goldman Sachs, to the House Financial Services Committee on Wednesday, February 11, 2009: "We have to regain the public's trust and do everything we can to help mend our financial system to restore stability and vitality," and adds that "we are here amidst broad public anger at our industry...Many people believe, and, in many cases, justifiably so - that Wall Street lost sight of its larger public obligations and allowed certain trends and practices to undermine the financial system's stability."



The Disappearing Debtor

➤ <http://www.agencies.bernsteinlaw.com/news/07.htm>

How do businesses shut down only to reopen nearby (or in the same location) under a slightly different name? There are a number of ways that can happen and several things a creditor can do about it. This four-part series, courtesy of Bernstein Law Firm in Pittsburgh, PA, will address many of those issues.

Part 1: Ownership Structure

To fully address the question, we need to first review different forms of ownership of businesses. A business is a sole proprietorship, a partnership, a corporation, a limited liability company or a trust. There is no such thing as “Jo’s Car Repair” other than one of those. If Jo runs this car repair service out of her garage with some tools and a little bit of equipment and Jo has not created any sort of registered entity for it, then she is personally liable for the debts. Here, Jo probably owns the assets of the business, since Jo’s Car Repair has no existence apart from Jo.

If Jo Smith and Fred Jones start a business together and they run it separately from their personal finances, they are probably a partnership, even though they have not registered it anywhere. It is still a distinct entity. In a partnership, the partners are generally liable for the debts of the partnership. They could register the partnership, but the same liability holds true. If they create a Limited Partnership, then the limited partners (having only invested money and not being involved in management) would probably not be liable beyond their investment. There must be at least one general partner in a limited partnership, and the general partner(s) would be liable for the partnership debts. Sometimes property of a partnership is owned in the names of the individual partners, although a partnership can hold title to property.

If they create a corporation, known as Jo’s Car Repair, Inc., they have created another kind of entity, one that is intended to shield the shareholders and officers and directors from personal liability for business debts, so long as they follow the corporate rules. Likewise, with a Limited Liability Company or a Limited Liability Partnership, the members are generally not liable for the debts of the entity. Each of the limited liability entities (corporation, LLC, LLP) have special rules and special purposes and cannot be treated in detail here. Each of these entities can own the business assets.

In some states, business trusts are created to hold property and operate businesses. They act very much like the other limited liability entities. If you have a situation with a trust as a customer or debtor, please consult your counsel as to the consequences.

Even though the business entities can own the business assets, there could be other holders (partners, shareholders) who could individually own the assets. This becomes important when the assets turn up somewhere else. If your customer (e.g. the corporation) doesn’t own the equipment, it is not available to service your debt later, no matter whose hands it is in.

Part 2: Debt Structure

How your debt is created is very important in an analysis of your rights when your customer disappears one day and reappears in a different form the next.

Most credit is open account, which is another way of saying “unsecured.” It is created by a sale of goods or services on credit, with the customer promising to pay later. If the customer doesn’t pay, there is simply a right to sue, but usually no right to get the goods or services back. In order to have some greater right, the debt must either be in a special class (e.g. construction) or must be created with special rights (e.g. secured). A secured debt is one for which the creditor has rights (a lien) to recover specific property.

If the creditor has a security interest in the assets of Jo’s Car Repair, Inc., there is a much greater likelihood that the creditor can follow the secured property whether it turns up the next day at Jo’s Garage, Inc. Sometimes, depending upon the business the customer is in, the customer may have the right to see secured inventory in the ordinary course of business, free and clear of the security interest.

The creation of a security interest is relatively easy when the account is set up, even if you are selling services that, of course, disappear after the sale. Consider

Continued on page 5...

“The Disappearing Debtor” continued from page 4...

taking a lien on other assets of the customer (equipment, inventory, real property). Since there are specific rules on how to create a security interest, it is important that you follow the right steps to make your lien effective. Once created, it is also important that you inspect your secured property occasionally. After all, if you never do an inventory check, it is more likely the inventory will not be around when you really need it.

Part 3: Fraudulent Transfers

When we talk about a fraudulent transfer, we generally do not mean a “criminal fraud.” Usually, a fraudulent transfer occurs when a debtor intends to hinder, delay, or defraud a creditor, or transfers property under certain conditions to another person without receiving reasonably equivalent value in return. The classic case is the fellow who transfers his car to his cousin for \$1.00 (or no consideration at all), thinking he will be able to avoid his creditors. Most of us know that such a transfer can be avoided (reversed) if attacked within the appropriate Statute of Limitations.

Other examples of fraudulent transfer include transfers of business inventory or assets to a third person (even if that is a corporation “owned” by the original debtor) or even that “sale” of assets for less than their fair value. If the business doesn’t have any creditors, then there are probably no fraudulent transfers. In other words, this generally only works if the customer is in debt when the transfer is made. Although they are not our topic here, even seemingly innocent transfers can be fraudulent (and be avoided by creditors). If a couple transfers property into a trust for the benefit of their children while they are indebted, there are circumstances where creditors may be able to get to the money in the trust, since it was transferred without receiving equivalent value in return.

The concept of fraudulent transfers also is found in many bankruptcy situations, where the Trustee (or the Official Creditors’ Committee in the Chapter 11) can invoke the law of fraudulent transfers to recover assets for the benefit of the Estate.

Part 4: Conclusion: What Creditors Can Do

Sometimes, there is nothing creditors can do, practically. There are remedies, which we will discuss here, but the cost may not be reasonable for an individual creditor to undertake.

When your customer (debtor) closes down and reappears a few hours, days or weeks later in a slightly different form, move fast. While there may be a two-year (or longer) Statute of Limitations on fraudulent transfers in many states, there is a practical limitation. If your debtor is a “bad guy,” there is a good chance that this new business may disappear and reappear in yet another form. The longer it goes, the harder it gets. If there are actual assets of the customer in the hands of the new business, it is easier to trace.

**Have
a credit policy
that is effective enough
to learn of these sorts of
transfers promptly.**

If time allows the business to sell the inventory and buy new or turn over the customer list or something like that, it becomes more difficult. Assuming cost is not an issue, get immediately to your counsel to review the situation. There are options. The simplest thing may be to sue the customer and get a judgment. Once you obtain a judgment, you may be able to attach or levy upon assets in the new entity on the theory that they still belong to the old entity. Of course, if they are both sole proprietorships of contain the same partners, it is pretty much a “no-brainer.” If ownership is not identical, it may take some work, but you should be getting someone’s attention by the action.

Another option is to sue the new entity to recover the fraudulent transfer. This is an action directly against the current owner of the assets. In that action, one goal is to have the Court order the transferee to return the property to the customer. Another is to end up with a judgment against the new entity (which now presumably has assets). Once obtained, that judgment can be collected from the business.

A third way of approaching it would be to get together the necessary number of creditors to file an Involuntary Bankruptcy against the customer. Once an Order for Relief is entered and a Trustee appointed, the Trustee should be able to be convinced to use his powers to go after the property in the hands of the new business. While this may be more powerful and, thus, more effective, it is an action on behalf of all creditors, not just those bringing the Petition. The benefits, after expenses, are shared by all creditors.

Whatever the remedy you choose, it is far easier if you, the creditor, are diligent and watchful over your customers. Have a credit policy that is effective enough to learn of these sorts of transfers promptly. It does little good to learn about them six months or a year after they occur. At that point the horse is not only out of the barn, but has left the pasture! 🐾

Stocks: Bracing for More Bankruptcies

↳ *Steverman, Ben. BusinessWeek. January 19, 2009.*

When it comes to corporate bankruptcies, last year was ominously quiet outside the financial sector. Get ready for the storm. In the first couple weeks of 2009, chemical company LyondellBasell on January 6 filed for bankruptcy reorganization, followed by another chemical maker, Tronox, on January 11. Telecom equipment provider Nortel Networks also sought protection from its creditors with a bankruptcy filing on January 15.

Some bankrupt companies are being forced to take the next step as the funding needed to reorganize their businesses proves difficult, if not impossible, to come by. Circuit City filed for bankruptcy last year, but on January 16 the electronics retailer said it would liquidate all 567 of its U.S. stores.

NOT BAD - YET

According to BankruptcyData.com, 136 public companies filed for bankruptcy in 2008. That's more than in recent years, but - despite more than a year of a U.S. recession and worldwide credit crisis - the tally is only the sixth worst in the past decade.

Edward Altman, a leading expert on bankruptcy who is a professor at the New York University Stern School of Business, estimates the 2008 default rate - a measure that includes both bankruptcies and other credit troubles at corporations - was 4.5%, just one point higher than the historic average.

COMES THE DELUGE

By contrast, Altman expects the default rate to jump to the double digits in 2009 and 2010. Other bankruptcy experts agree that bankruptcy filings are set to skyrocket. Bankruptcies often have delayed reaction to economic and financial difficulties.

Many troubled firms continue to subsist on easy credit terms obtained before the credit crisis began. "There have been a lot of companies hanging on by their nails," says Greg Segall of Versa Capital Management, a private equity firm specializing in distressed investing.

Now, says Michael Shinnick, a portfolio manager, at Wasatch - 1st Source Long / Short Fund (FMLSX), "We've seen a very abrupt pendulum shift from abundant liquidity to tight [liquidity]." Some firms can't find lenders, while others must pay high interest rates to get financing.

AFTERSHOCKS

Segall likens the credit crisis to an earthquake. The crisis may end and the ground may stop shaking. But, he says, "All the damage that was done by the earthquake is going to be discovered for months and years to come."

The prospect of a spike in corporate bankruptcies should worry investors. In a corporate bankruptcy, equity

shareholders are last in line to get their money back. Even if a business does survive, most equity stakes are completely wiped out.

Thus the heightened bankruptcy threat is changing investors' calculus, Altman says. "Usually stock [investors] are much more interested in the upside," he says. "Now, I think you need to be much more concerned about the downside."

NEXT: THE RETAILERS?

Al Francesco, a director at consulting and accounting firm CBIZ Mahoney Cohen (CBZ) who handles bankruptcies and business restructuring, expects more retailer bankruptcies soon. A bad holiday season put many retail chains on shaky footing, he says, but there will be a slight lag before bankruptcy filings, as bills for holiday merchandise come due in January and February.

In a downturn, capital-intensive industries - such as chemical makers - are also vulnerable to a serious weakening in their financial condition. Sales can drop steeply in these cyclical industries, even as the companies are stuck with high debt loans to pay for expensive, and now underused, equipment. Energy and shipping companies are also exposed to this phenomenon now that, respectively, fuel prices have dropped and global trade has slowed, says Eric Mintz, a portfolio manager at Eagle Asset Management.

WIDER REPERCUSSIONS

However, with the U.S. battling its nastiest recession in at least a generation, the bankruptcy threat isn't limited to a few troubled areas of the economy. Experts predict bankruptcy filings will come from all corners of the stock market.

A company's debt level - and whether the business has enough cash flow to cover debt payments - is a crucial factor. But especially these days, investor's should "look at debt maturities, when [loans are] coming due,"

Shinnick says. A company that must pay off or renegotiate a mound of debt in 2009 could be hit hard by the tougher credit markets. Another company's balance sheet might also show a large debt load, but if that debt is not due for several years, the company may stay out of bankruptcy court for longer.

WEEDING OUT THE WEAKLINGS

Investors can look for companies that can take advantage of their competitors' bankruptcies. Mintz cites Best Buy (BBY) as a retailer that should benefit from rival Circuit City's liquidation. The problem, though, is that bankruptcies ratchet up the economic pain for everyone. The Circuit City liquidation puts more than 30,000 people out of work.

Bankruptcies have a ripple effect up and down the supply chain in afflicted industries. For instance, Segall warns that many suppliers could be hurt by retailer bankruptcies. Once it gets going, the bankruptcy trend - and all the investor and employee pain it represents - could prove one of the nastier features of the current downturn. ↩

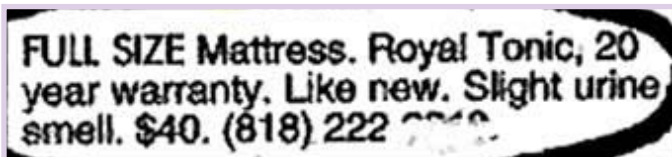
**Once
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We Fix it All, Except This Pesky Bell

↳ *"The Marketing Report." February 11, 2009:5.*

Marketers create signs and slogans to help people. But occasionally the words can come out wrong. Here are a few signs that left the writer red in the face:

- A sign in a second-hand shop said: "We exchange anything - bikes, jewelry, etc. Why not bring your wife by and get a wonderful bargain."
- On a repair shop door: "We repair anything (Please knock hard. The bell doesn't work)."
- On a restroom door: "Toilet out of order. Please use the floor below." 🚽



Did you know...

- ↳ The United Nations organization was founded in 1945.
- ↳ Joseph Niepce developed the world's first photographic image in 1827.
- ↳ Count Alessandro Volta invented the first battery in the 18th century.
- ↳ In 1894, Thomas Edison and W K L Dickson introduced the first film camera.
- ↳ Manhattan traffic crawls at an average of 6.2 miles an hour on midtown city streets.
- ↳ Sails were first used by the Phoenicians around 2000 BC.
- ↳ Earth is not round; it is slightly pear-shaped. The North Pole radius is 44mm longer than the South Pole radius.
- ↳ There is zero gravity at the center of earth.
- ↳ There is no record of a person being killed by a meteorite but animals are occasionally hit.
- ↳ 75% of wild birds die before they are 6 months old.
- ↳ There are 701 types of pure breed dogs.

Words of Wisdom

"The world is changing very fast. Big will not beat small anymore. It will be the fast beating the slow." - Rupert Murdoch

"The more you say, the less people remember." - Francois Fenelon.

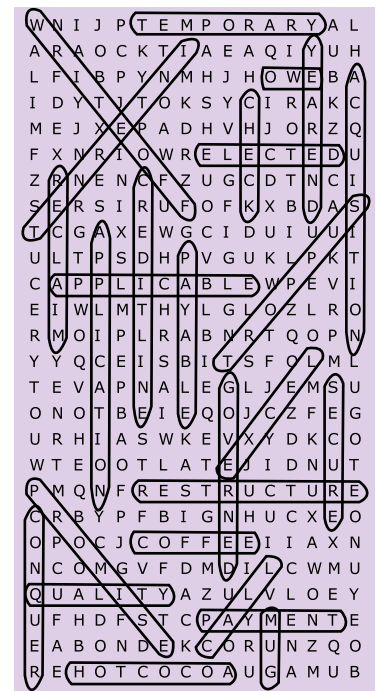
"The most successful people are those who are good at plan B" - James Yorke.

"If you wait for opportunities to occur, you will be one of the crowd." - Edward de Bono

"Play by the rules, but be ferocious." - Phil Knight

"You have brains in your head. You have feet in your shoes. You can steer yourself any direction you choose." Theodor Seuss Geisel

Answer Key



Published by Brown & Joseph

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