All Things Credit. All Things Legal

Using Credit Leadership in the Legal Process to Improve Your Bottom Line

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All credit professionals stand at the crossroads of business decisions and legal dilemmas. As such, credit professionals have a tremendous opportunity to lead and influence successful outcomes—in credit choices, in the legal process and in business in general. Credit managers have the power to use business and legal systems to curtail developing problems and to improve results, and ultimately their company's bottom line.

Know Thyself (or At Least Your Contracts)

According to Socrates, "To know thyself is the beginning of wisdom." Credit professionals should start this process in their business by becoming familiar with their company contracts, terms and contracting procedures.

Gather up all applicable contract forms—from credit applications, guarantee agreements, purchase orders and invoices to master service agreements. Then, *read*. If you do not understand the terms, ask for guidance from legal support, which may include in-house or external counsel.

Investigate how your company enters into contractual arrangements with customers. The process, whether formal or informal, is important to understanding how certain terms end up in an agreement or what terms might control in any given situation. It is equally important to know if your company does not have a contractual process or procedure.

The more you know, the more you will understand the business and legal context of how your company operates, and the better equipped you will be to lead your team to a successful outcome.

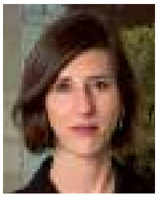
Look for Ways to Mitigate Risk

Figure out how your company's credit application and personal guarantee agreements fit into the contractual relationship developed with customers. Determine when and if personal guarantee agreements are requested or required, and if not, why not.

Look for holes in implementation of your company's contractual procedures. Are credit applications filled out completely and correctly? Are contracts being signed? Are invoices going out on a regular and timely basis? Are terms in the various contracting documents consistent? Does your company have notice and lien procedures? Are they in compliance with the law? Is the sales team educated and involved in the contracting *and credit process?* When was the last time company agreements were reviewed and updated?

Assess integration of the contracts with the credit and collection process, including assessment of credit risk and management of accounts. Follow up with your legal team to identify issues you may be observing on the ground.

Identifying where procedures are lacking or where they could be improved is essential to risk mitigation. Take the lead on assisting with mitigating risk, which is at the core of managing credit. Ask questions, identify potential problems, and work with your legal team to devise risk mitigation



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solutions, particularly where credit and legal risk overlap.

Know Your Customer

Credit managers need not wax philosophical about customer knowledge. They know it, live it and lead by it.

As such, use the introductory sales and setup process to gather as much information as you can about your prospective customers. Credit applications are great tools for information gathering, if they are completed correctly. Spot-check and confirm information provided by your prospective customers. Use available public information to check them out, including running companies through applicable Secretary of State corporate databases to determine if they are in good standing, have tax forfeitures or a complex structure involving incorporated members, directors, general partners or the like. Ask for more information to confirm assets and financials for the entity that is contracting with your company and purchasing on credit.

Do not forget to check in on existing customers as time passes. Keep up with them and their financial condition as much as you can. Situations can and do change, and not always for the better. As another philosopher once said, knowledge is power.

Be Prepared—Document and Organize

As leaders, credit managers need to be prepared for worst-case scenarios, including nonpayment and litigation. Organization is one of the best tactics credit managers can implement to lead and improve results in the legal process. Keeping your file organized and up-to-date will advance the ball if a dispute "goes legal."

The company lawyer will thank you when you hand them an ordered and chronological stack of documents, including the credit application, guarantee agreements, master contracts, amendments, invoices, statements of account and customer correspondence, etc. Your boss will also thank you for taking the lead on saving the company in attorneys' fees when counsel does not have to dig through or chase down documents.

Credit managers, who are often on the front lines, must lead the charge as disputes develop with customers. As such, they play a critical role in influencing the direction of any given customer dispute. Therefore, it is imperative you think carefully about how you are communicating with customers concerning payment issues or customer complaints or excuses for nonpayment. Think carefully about how you are documenting customer communications, such that customer admissions, made in phone calls, are captured in writing and so that you are avoiding making admissions or leaving the wrong impression about your company's position. Lead your team to draft impactful customer communications to document circumstances in a helpful way. If you are unsure, do not wait to seek input from your legal advisors.

At the complex intersection of credit and legal, credit professionals are uniquely positioned to lead their teams and their companies to produce positive results in credit decisions, account disputes and litigation, and overall, in business.