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## It's important to be tough with struggling clients

By Leslie Kwoh/The Star-Ledger

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*Leonard Walczyk,  
bankruptcy attorney for  
Wasserman, Jurista &  
Stolz.*

Imagine you run a struggling business that provides goods or services to other small businesses. Times are tough all around, so you let an old customer slip in a payment or two.

Next thing you hear, that customer is bankrupt, and you're out of luck.

It's a problem a growing number of small business owners are confronting as the impact of the credit crisis continues to cascade downward, said Leonard Walczyk, a bankruptcy attorney for more than 20 years.

The recent news that CIT Group, the major small-business lender, is trying to stave off bankruptcy, serves as a reminder of how quickly cash flow woes can pass from debtor to creditor, he added.

Small-business bankruptcies in the U.S. increased by nearly 81 percent in June, compared with the same time last year, according to credit bureau Equifax.

"It's a chain effect," said Walczyk, who works at Millburn law firm Wasserman, Jurista & Stolz. "Say you're not getting paid for items or services you provided. Pretty soon, if you don't do something about it, you're going to be in financial trouble, too."

He spoke to Your Business about how to deal with a customer who stops paying, or worse, declares bankruptcy.

### BE ON ALERT

#### Q. What are some warning signs that a customer may be having financial trouble?

**A.** They're slow in paying, their sales are falling, their inventory piling up. It seems they're relying more extensively on credit. You can pick a lot of this up by making a phone call or a visit, or by reviewing credit reports and seeing that a customer is leasing more equipment instead of buying it. You can check to see if there are more liens filed against their assets. You really have to be vigilant on your receivables. If you see a lot of 60-, 90-, 120-day past dues, pick up the phone and say, "Hey, no more. You're not getting any products or services unless you bring this bill current."

**Q. So you should confront the customer?**

**A.** If things really deteriorate, tell them that unless things come current, you're going to stop shipping. Like they say in poker, you have to know when to "hold 'em or fold 'em." You can say, "This is ridiculous. I'm going to sue." Once there's a lawsuit, you'll get their attention. If the amount is small, you'll probably get paid. But if the amount is too big, it might cause their whole house of cards to come tumbling down. If you're looking at a five-figure number anyway, shame on you for letting it get that big.

**Q. Are legal contracts a good preventative measure?**

**A.** Here's my view on contracts: If you're dealing with a dishonorable person, I don't care how tight your contract is. All you're buying is years and years of costly litigation. If you have an honorable person, a handshake is good enough. If the other side is going to screw you, they're going to screw you. You have to know who you're dealing with. With a contract, all you get is the right to sue — and is that so great?

**Q. How do you deal with a customer who is not paying?**

**A.** You can put the customer on COD, or cash on delivery. When the driver comes with the goods, you want cash, a bank check, certified check, or money order. You might ask the owners of the business for a personal guarantee, a lien on the business assets or a mortgage on the real estate. They might not have that to give you because it's already given to a bank or primary lender. You can warn that you can issue a reclamation notice under the uniform commercial code, which tells the customer you're going to reclaim the goods previously shipped to them. This is on a case-by-case basis. And you can start sending letters with an attorney letterhead. That will certainly shake them up.

**Q. What about filing a lawsuit?**

**A.** Absolutely. That may get you paid, or at least a phone call that will get you talking. Or, at least a judgment. But I guarantee you, if this business is in that bad a shape, it's going to be difficult to collect.

**Q. What are the options once a customer goes bankrupt?**

**A.** You can't sue them. Once they file bankruptcy, it's an automatic stay against any and all creditor activity. If you're a general unsecured creditor, then you have certain rights under the bankruptcy code to make a written reclamation demand for goods, but not for services. Other than filing a proof of claim in a bankruptcy case, there's really not much creditors can do. In fact, a lot of it can be negative. You can be sued to recover payments made to you 90 days before their bankruptcy. So, keep meticulous records as to when services were provided, when you were paid, when goods were shipped, because that all can be used to defend later actions. You can at least try to negotiate a settlement.

*This interview was edited and condensed for length and clarity. Leslie Kwoh may be reached at [lkwoh@starledger.com](mailto:lkwoh@starledger.com) or (973) 392-4147.*