Here's why the checks really aren't in the mail

By Gerald Frawley
staff writer

The big question — is anyone getting paid around here?

People owe people, people owe businesses, businesses owe businesses, businesses owe banks — it seems the current economic slump has resulted in a serious cash flow problem for everyone.

That's nothing new. Even during the economic boom of the 1980s people were running up big debts. What is new is the number of businesses that have run up big debts and aren't paying them off.

Ironically, this cash-flow problem is creating a lot of business opportunities for companies that cater to solving cash-flow problems, companies and attorneys that negotiate debt resolution and collection agencies.

According to the National Association of Credit Management, business credit grantors across the country experienced record falling sales in the third quarter of 1991.

A survey of NACM members found a record number of companies reporting moderate to severe problems with falling sales and slow-paying customers as compared to the first and second quarters of this year.

Of those companies that reported an increase, many acknowledged the increase could be attributed to newer, undercapitalized companies that are generally considered a poor credit risk.

WALLY HILL, a representative of Transworld Systems in Southfield, a Southfield third-party, pre-collection agency, said he's seen a sharp rise in the number of businesses that owe money to other businesses.

Transworld Systems works unlike many collection agencies in that it charges a set fee, rather than a percentage of bills collected. The company also stresses "diplomatic collection" tactics, often by mail, as opposed to intense phone collection campaigns.

Transworld does not bill, but instructs debtors to pay creditors directly. Just like a collection agency, Transworld has resources unavailable to the average business, including arbitration, court judgments, liens on property and profits.

Hill said it's not a situation in which there is no money to be had — although that enters into it — but it is more a case of businesses changing standard operating procedure.

"Those companies that used to pay their bills in 30 days are paying them in 60 days; those that used to pay in 60 days are paying them in 90 days," Hill said.

Some of this can be attributed to the economy because consumers are cautious, Hill said. "But a lot of businesses are just using that as an excuse to not pay.

"They're blaming it on economic conditions — it's really getting out of hand," he said. As the times have changed, customers are learning to use the *system to their advantage.*

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>
> *— Wally Hill*
> *Transworld Systems*

BY WAY OF example, a client recently sold (on credit) some computer equipment to a school district. After several unpaid billings, the client contacted the school district seeking payment, only to be told by the district's finance director that the bill was not going to be paid.

His client, realizing it would be costly to repossess the equipment or take the district to court, asked the finance director if he would be willing to pay less than go through a long drawn-out court battle. The finance director asked what the computer retailer would settle for, and when told 90 percent, "he laughed and hung up."

"That's the credit manager's mentality," he said. Knowing how the system works and knowing the costs, and because the debtor already has the merchandise, the debtor has a certain amount of power in these situations.

Hill said part of the blame rests on the creditors themselves who have allowed debtor accounts to go uncollected for fear that they will lose clients.

"But that's happening anyway," Hill said. "What's happening is they are going to others and not paying them either. These companies are continually floating money all over the place."

UNFORTUNATELY for businesses, delayed paying is becoming a standard way of doing business. Hill maintains there is money out there — it's just that those who have it are holding onto it. "Those that are paying are the ones who are making a conscious decision to pay."

In the long run, such practices bode ill for the entire way of doing business in the United States, Hill said. Companies depend on the credit system as a way of staying alive between the time of the product being manufactured and the product being sold.

If billings continue being delayed or not paid, businesses will begin demanding upfront payments that will drastically alter the ability of companies that do get products to market — in some instances, customers will have to pre-pay for products before they are manufactured.

Arthur Bardell, president of Midwest Arbitration in Livonia, said he has also noticed the change in business bill-paying practices, but since he works for the debtor — negotiating bill payments — he is more inclined to believe poor economics is the root cause.

Midwest Arbitration negotiates debts for small- to medium-sized businesses on a results-only, risk-free basis. The service is intended to save clients time and money, eliminate stress and avoid the need for legal counsel except when it's truly warranted.

"A lot of people don't know that your debt can be negotiable," Bardell said. *For those companies that* really are in need of more time, negotiating debt can mean the difference between success and bankruptcy.

WHEN IT'S LEGITIMATE, creditors are happy because they get paid, and debtors are happy because they save their business and perhaps even a little money.

Bardell said many instances in which companies aren't paid or are paid late are legitimate. "What I see as the cause of it all is people don't want to go out of business and people don't want to go into bankruptcy. It's not necessarily that the money isn't there, it's just that people are being conservative."

Company owners are afraid to pay bills that they can delay because they are worried about the economy and think they may need what money they have.

Bills that are necessary for staying in business — like space and equipment, rent and utilities — are going to take priority. Bills that can be delayed — like those for supplies and materials — are more likely to take on a lower priority.

"The longer (the recession continues) the greater the instability," he said.

And even though the owner of a business may have money, he may not want to divert personal money to a business if there's a chance the business may go under.

"There's no business that is safe," he said. It is not just the small and medium businesses that are having trouble or are reluctant to pay bills, he said.

"I'm no great economist, but it's the consumer that plays a big part in this," Bardell said. Until consumers open their pocketbooks, Bardell said the businesses will suffer and creditors will go unpaid.

Bardell said there are cases where people aren't paying because they don't want to, he said. "My personal opinion is that the growing greediness for the quick buck in America is the cause.

Bardell said he regularly turns down potential clients who can't prove a real need for negotiated debt. "There needs to be a moral revolution in this country."

Not paying debts or feigning troubles to avoid paying them on time is going to alter the way people do business, he said. "I think people are going to have to dig a little deeper."

State law limits how collectors can bird-dog overdue accounts

By Gerald Frawley
staff writer

Whether the money is there, creditors have to follow certain rules when it comes to chasing debtors. The number one rule is be civil.

At least that's the interpretation of Birmingham attorney David Zuppke, a partner in the firm of Zuppke & Wiseman, who has a $95,000 out-of-court settlement to back him up.

Under terms of the settlement agreement, Zuppke cannot disclose the names of the collection agency, opposing attorney or his client.

Basically, the case boils down to a collection agency relentlessly pursuing a debtor for nearly five months with phone calls at all hours of the day, at home and at work, with threats of incarceration, forcible eviction and abusive language.

A never-tested-in-court state statute protects the private — and presumably corporate — debtor from misleading, deceiving, threatening or otherwise abusive treatment from creditors, he said.

The statute permits a judge to award triple damages and attorney fees if a jury returns a guilty verdict.

"This law is not generally known — there are no published cases, no civil court cases, no appellate court cases," Zuppke said. Passed in 1981, the Michigan Collection Practices Act is part of Michigan consumer protection law.

For the most part, attorneys are unfamiliar with the law because many collection disputes are over fairly small amounts that don't involve attorneys.

WHEN HE TOOK the case, he was surprised at how little information there was on consumer protection from collection agents, he said. But a little diligence paid off.

"A general rule is that if something's unfair, there's generally a law that deals with it," Zuppke said.

Since the settlement, and since the results have been published in several judicial publications, he has received many inquiries into the law — something he also attributes to the general downturn in the economy and the inability of people to pay off debts.

What constitutes abusive treatment? Zuppke said it's easier to determine what a collection agency cannot do than to say what it can do. "I guess if it's not expressly forbidden, it's legitimate."

ACTIONS SPECIFICALLY forbidden by statute include:

- misleading or deceiving the debtor by giving the appearance of judicial process;
- concealing in communications the intent to collect debt;
- threatening to arrest or imprison the debtor or seize the debtor's property;
- communication with the debtor when the collecting agent knows the debtor is already represented by an attorney;
- failure to disclose the collector's identity in phone calls;
- unauthorized communication with the debtors employer;
- threats of physical violence;
- attempts to slander the debtor; using harassing, oppressive or abusive methods; or,
- using obscene or profane language.

After researching the law, Zuppke said he was confident he could win the case, but as the case proceeded, it became apparent the defendant collection agent didn't wish to see the case end up in court.

He anticipated a $10,000 award, but in the end won a $95,000 settlement.

Zuppke said the reluctance to go to trial was due in part to the possibility a court case could result in triple damages. But he speculated another significant reason is the case would have set a legal precedent.

If the normal avenues open to a collecting agent — reasonable phone calls, letters and other reminders — fail, the remaining option is to take the debtor to court, where the court can order payment.

"They can't send out Vinnie the knee-breaker to your house. We live in a civilized society where everyone has to follow certain rules of conduct," Zuppke said.

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