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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

DEC 31 2003

ALAN CARLSON, Clerk of the Court

BY: *N. Lau*
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF ORANGE

10 CENTRAL JUSTICE CENTER 30-2008

11 JONATHAN NEIL & ASSOCIATES, INC.,

CASE NO. 00116790

12 Plaintiff,

13 **COMPLAINT FOR:**

14 v.

- 15 (1) BREACH OF FIDUCIARY DUTY
- 16 (2) FRAUD
- 17 (3) BREACH OF CONTRACT
- 18 (4) CONVERSION
- 19 (5) ACCOUNTING

20 SEALS & TENENBAUM, a Professional
Corporation; JAY TENENBAUM, an individual;
21 LINDA LEE SEALS, an individual; and DOES 1
through 50, inclusive,

JUDGE JAMES J. DI CESARE
DEPT. C18

22 Defendants.

Hearing Date

Date: [To Be Set]

Time:

Place: 700 Civic Center Drive West
Santa Ana, CA 92701

23 Plaintiff, Jonathan Neil & Associates, Inc., alleges:

24 1. Plaintiff is a California corporation in good standing with its corporate headquarters
located at 18321 Ventura Blvd., Suite 1000, Tarzana, California 91356.

25 2. Plaintiff is informed and believes and based thereon alleges that Seals & Tenenbaum
26 ("S&T") is a Professional Corporation duly formed and authorized under the laws of the State of
27 California, with its principal place of business in Anaheim, California.
28

ORIGINAL

1 3. Defendant Jay Tenenbaum ("Tenenbaum") is an individual who is licensed to practice
2 law in the state of California. Plaintiff is informed and believes and based thereon alleges that
3 Tenenbaum is a resident of Orange County.

4 4. Defendant Linda Lee Seals ("Seals") is an individual who is licensed to practice law
5 in the state of California. Plaintiff is informed and believes and based thereon alleges that Seals is a
6 resident of Orange County.

7 5. Plaintiff is unaware of the true names or capacities, whether individual, corporate,
8 associate or otherwise of the defendants sued herein as DOES 1 through 50 and therefore sues the
9 defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names
10 and capacities when they have been ascertained. S&T, Tennenbaum, Seals and DOES 1 through 50
11 shall be referenced as Defendants herein, unless otherwise noted.

12 **JURISDICTION**

13 6. This Court has subject matter over this action since the amount in controversy
14 exceeds \$25,000.00, exclusive of interest and costs.

15 **INTRADISTRICT ASSIGNMENT**

16 7. Pursuant to Code of Civil Procedure § 395(a), the Central Justice Center of Orange
17 County is the appropriate venue for this action because S&T resides in the District and contracted to
18 perform its obligations in this District.

19 **FACTS**

20 8. Plaintiff is in the business of receivable management services, including the
21 collection of debt accounts.

22 9. In or about 2004, Plaintiff hired Defendants as its lawyers to collect numerous debt
23 accounts owed to Plaintiff's customers. Plaintiff and Defendants entered into an oral agreement for
24 such legal services ("Legal Services Agreement") which outlined the scope of the legal
25 representation in accordance with the Operative Guides adopted by the Commercial Law League of
26 America ("CLLA"). A copy of the CLLA Operative Guides is attached hereto as Exhibit "1" and
27 incorporated herein by reference.

28 10. Under the Legal Services Agreement, Defendants were given access to Plaintiff's

1 confidential information which contained information on debt accounts to be collected and held in
2 trust by Defendants and paid over to Plaintiff.

3 11. Plaintiff forwarded approximately 465 files to S&T for collection, under which
4 plaintiff is informed believes Defendants made withdrawals of between \$50 to \$100 from the trust
5 account for alleged "fees" that were not agreed to or authorized under the Legal Services Agreement.

6 12. Plaintiff also advanced money to Defendants for future costs, which was to be held in
7 trust for Plaintiff until costs were incurred.

8 13. Plaintiff is informed and believes and thereon alleges that at all times herein,
9 Defendants and each of them were the agents, servants, employees, employers, or alter egos of each
10 other.

11 14. Plaintiff is further informed and believes and thereon alleges that Defendants were
12 acting within the course and scope of their authority as agents, servants, employees, employers, or
13 alter egos of each other.

14 **FIRST CAUSE OF ACTION**

15 (Breach of Fiduciary Duty against Defendants)

16 15. Plaintiff incorporates by reference the allegations in paragraphs 1 through 13 inclusive,
17 and realleges each and every allegation set forth therein as if it fully appears herein.

18 16. As Plaintiff's attorneys, Defendants stood in a fiduciary relationship to Plaintiff.

19 17. Defendants breached their fiduciary duty to Plaintiff by:

- 20 a. Failing to segregate Plaintiff's money collected on Plaintiff's claims and agreed to
21 be held in trust;
- 22 b. Failing to accurately report the money collected on Plaintiff's accounts;
- 23 c. Making unauthorized withdrawals from the trust account for alleged "fees" that
24 were not earned or agreed to under the Legal Services Agreement;
- 25 d. Failing to segregate Plaintiff's money given to Defendants as cost retainers for
26 individual matters, which were to be held in trust until they were used for a
27 permissible cost related to a collection matter; and
- 28 e. Failing to return money held in trust to Plaintiff after Plaintiff made demand

1 therefore.

2 17. The Defendants have gained possession and control of the trust account and pre- and
3 post-judgment interest accruing thereon by wrongful acts within the meaning of California Civil
4 Code § 2224.

5 18. Defendants do not have a contractual right, nor any right, to the trust account that is
6 higher or better within the meaning of California Civil Code § 2224.

7 19. Defendants are involuntary trustees of the trust account and the interest accruing
8 thereon for the benefit of the Plaintiff pursuant to California Civil Code §§ 2223 and 2224.

9 20. As a result of Defendants' breach of fiduciary duty, Plaintiff has been damaged in an
10 amount to be determined at trial.

11 21. Defendants' conduct as described herein was done with a conscious disregard of
12 Plaintiff's rights, and with the intent to vex, injure and annoy Plaintiff such as to constitute
13 oppression, fraud, and/or malice, thus entitling Plaintiff to an award of exemplary and punitive
14 damages in an amount appropriate to punish or set an example of Defendants, and each of them, in
15 an amount to be proven at trial.

16 **SECOND CAUSE OF ACTION**

17 (Fraud against Defendants)

18 22. Plaintiff incorporates by reference the allegations in paragraphs 1 through 21
19 inclusive, and realleges each and every allegation set forth therein as if it fully appears herein.

20 23. Defendants intentionally made unauthorized withdrawals from trust account for
21 alleged "fees" that were not earned or agreed to under the Attorney Services Agreement.

22 24. Defendants intended to defraud Plaintiff by affirmatively concealing and
23 misrepresenting the material facts as stated herein.

24 25. Plaintiff actually and justifiably relied on Defendants' disclosures and
25 representations, and therefore did not learn of Defendants' concealment and misrepresented and
26 misleading records until just before this action was commenced due Defendants' position of trust
27 and confidence as Plaintiff's attorneys.

28 26. As a result of Defendants' fraudulent acts, Plaintiff has been damaged in the amount

1 of at least \$25,000, to be proven at trial.

2 27. Defendants' conduct as described herein was done with a conscious disregard of
3 Plaintiff's rights, and with the intent to vex, injure and annoy Plaintiff such as to constitute
4 oppression, fraud, and/or malice, thus entitling Plaintiff to an award of exemplary and punitive
5 damages in an amount appropriate to punish or set an example of Defendants, and each of them, in
6 an amount to be proven at trial.

7 **THIRD CAUSE OF ACTION**

8 (Breach of Contract against Defendants)

9 28. Plaintiff incorporates by reference the allegations in paragraphs 1 through 27
10 inclusive, and realleges each and every allegation set forth therein as if it fully appears herein.

11 29. The Legal Services Agreement outlined the terms and conditions of Defendants' legal
12 representation of Plaintiff's accounts, including the reporting to Plaintiff of basic financial
13 information about each debt account and remit to Plaintiff any recovery Defendants received from
14 each account.

15 30. Plaintiff has fulfilled all of its obligations under the Legal Services Agreement.

16 31. Defendants breached the Contract by failing to accurately report the funds held in
17 trust, making unauthorized withdrawals from the trust account and refusing to return money held in
18 trust and confidential information to Plaintiff when Plaintiff made demand therefore.

19 32. As a result of Defendants' breach of contract, Plaintiff has been damaged in an
20 amount to be determined at trial.

21 **FOURTH CAUSE OF ACTION**

22 (Conversion against Defendants)

23 33. Plaintiff incorporates and realleges each and every allegation in paragraphs 1 through
24 32.

25 34. Plaintiff advanced funds to Defendants to cover, among other items, costs incurred in
26 collecting on debt accounts. Plaintiff is informed and believes that the trust account should contain
27 an amount to be determined at trial.

28 35. Defendants were to collect on debt accounts and report and convey such amounts to

1 Plaintiff. Plaintiff is informed and believes that Defendants have collected money on certain debt
2 accounts.

3 36. Defendants were to deduct from the trust account certain costs associated with
4 collecting on debt accounts. Any unauthorized deduction of funds in the trust account was an
5 improper misappropriation of Plaintiff's funds.

6 37. By failing to segregate Plaintiff's money held in trust, making unauthorized
7 withdrawals from the trust account and refusing to return money held in trust to Plaintiff when
8 Plaintiff made demand therefore, Defendants have wrongfully exercised dominion and control over
9 Plaintiff's funds. This wrongful exercise of dominion and control is fundamentally inconsistent with
10 Plaintiff's right to exercise control over its own funds.

11 38. As a result, Plaintiff has been damaged in an amount of at least \$25,000, subject to
12 amendment through the course of discovery.

13 39. Defendants' conduct as described herein was done with a conscious disregard of
14 Plaintiff's rights, and with the intent to vex, injure and annoy Plaintiff such as to constitute
15 oppression, fraud, and/or malice, thus entitling Plaintiff to an award of exemplary and punitive
16 damages in an amount appropriate to punish or set an example of Defendants, and each of them, in
17 an amount to be proven at trial.

18 **FIFTH CAUSE OF ACTION**

19 (Accounting against Defendants)

20 40. Plaintiff incorporates and realleges each and every allegation in paragraphs 1 through
21 39.

22 41. As a result of the aforementioned Legal Services Agreement between Plaintiff and
23 Defendants, Defendants have received money, a portion of which is due to Plaintiff from
24 Defendants, as alleged herein.

25 42. The total amount of money due from Defendants to Plaintiff is unknown to Plaintiff's
26 and cannot be ascertained without return of Plaintiff's client files and an accounting of the receipts
27 and disbursements of the aforementioned transactions.

28 43. Plaintiff is informed and believes and thereon alleges that the amount due to Plaintiff

1 exceeds \$25,000.

2 44. Plaintiff has demanded the return of the files and an accounting of the aforementioned
3 transactions from Defendants and payment of the amount found due. Defendants have failed and
4 refused, and continue to fail and refuse, to return such information, render such an accounting and to
5 pay such sum.

6 **WHEREFORE**, Plaintiff respectfully prays for judgment against Defendants as follows:

- 7 1. For compensatory damages in excess of \$25,000, to be proven at trial;
8 2. For an award of punitive damages in an amount sufficient to deter Defendants;
9 3. For a determination that Defendants engaged in the conduct alleged and that
10 Defendants do not have any right to the trust account that is higher or better than the
11 rights of Plaintiff to such property;
12 4. For imposition of a constructive trust on the funds constituting the trust account and
13 interest accruing thereon for the benefit of Plaintiff and a determination that the
14 Defendants are involuntary trustees of such trust over such funds.
15 5. For an accounting between Plaintiff and Defendants;
16 6. For the amount found to be due from Defendants to Plaintiff as a result of the
17 accounting and interest on that amount;
18 7. For costs of suit herein incurred; and
19 8. For such further relief that the court deems just and proper.

20 Dated: December 31, 2008

BLAKELEY & BLAKELEY LLP

21
22 By 

Bradley D. Blakeley

23 Attorneys for Plaintiff,
24 Jonathan Neil & Associates, Inc.
25
26
27
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EXHIBIT

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OPERATIVE GUIDES

for Forwarders and Receivers

Adopted By
The Commercial Law League of America
Effective date of this edition of the Operative Guides is July 10, 1999

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**ENABLING RESOLUTIONS
ADOPTED BY THE BOARD OF GOVERNORS OF
THE COMMERCIAL LAW LEAGUE OF AMERICA ON JULY 6, 1974**

RESOLVED, That all provisions of any prior "Operative Resolutions" of The Commercial Law League of America are hereby repealed and made void; and

FURTHER RESOLVED, that the following "Operative Guides for Forwarders and Receivers" are hereby adopted by the Commercial Law League of America. These Guides shall be mandatory, unless expressly excluded or modified by the parties in writing, for all forwarders and receivers (attorneys) in the handling of claims as these terms are defined herein. The Guides are incorporated by reference in the written authorization and forwarding contract between the forwarder and receiver, and shall be subject to the disciplinary provisions of the Constitution of the Commercial Law League of America upon the filing of a complaint; and

FURTHER RESOLVED, That the "Declaration of Fair Practices of Collection Agencies" as approved by the National Conference of Lawyers and Collection Agencies February 18, 1963, as same may from time to time be amended, is incorporated herein by reference; and

FURTHER RESOLVED, That it is not the intent of the Commercial Law League of America to adopt any Guide which may be or become inconsistent with the Code of Professional Responsibility of the American Bar Association or any Code of Conduct or law in any state or locality applying to forwarders and receivers subjected to jurisdiction therein; any Guide that is or becomes inconsistent shall be deemed inoperative.

PART I DEFINITIONS

1.1 Claim. A claim is either commercial or retail.

 a. A Commercial Claim is a claim which arises from an obligation to pay for goods sold or leased, services rendered, or monies loaned for use, in the conduct of a business or profession. An "average" commercial claim may be defined for general purposes as \$2,000.

 b. A Retail Claim is a claim which arises from any obligation of a consumer to pay money arising out of a transaction in which the goods, money, financing, lease, property, insurance, or services rendered are the subject of a transaction which are primarily for personal, family, or household purposes.

 c. All other claims that are not covered under 1.1(b) are considered commercial claims under 1.1(a)

1.2 Agency. An agency is a collection agency to which claims are referred for collection by creditors.



- 1.3 Forwarder. A forwarder is a person who or an entity which refers claims for collection.
- 1.4 Receiver. A receiver is an attorney to whom an account is referred for collection by a forwarder, and who is thereby employed, as attorney for the creditor, to collect the same. Upon acceptance of the claim for collection, the full attorney-client relationship exists between the receiver and the creditor.
- 1.5 Law List. A law list is a publication, which lists the names and addresses of receiving attorneys and law firms.
- 1.6 Commission. A commission is the compensation payable by a creditor and earned by a receiver for his services in effecting collection of a claim, in whole or in part, and is normally contingent and computed as a percentage of the sum collected.
- 1.7 Forwarding Contract. A forwarding contract is the agreement entered into between the creditor (or the forwarder as the agent of the creditor and with the creditor's consent) and the receiver, specifying among other things the commission agreed upon between the receiver and the creditor as the receiver's compensation for effecting collection, in whole or in part, of a claim.
- 1.8 Suit Fee. A suit fee is a fee payable to the receiver in addition to the commission, for legal services rendered by the receiver for the creditor involving court action in connection with the prosecution of a claim.
- 1.9 Cost Advance. A cost advance is a sum of money advanced by the creditor to the receiver, as a fund from which court costs are to be expended.
- 1.10 Retainer. A retainer is a sum of money paid in advance to retain the services of an attorney, and should be taken into account in determining the ultimate fee to be charged for services rendered and results obtained.

PART II GENERAL PROVISIONS

- 2.1 A forwarder, when so authorized by the creditor as his principal, may act for the creditor in the forwarding of claims, and when so acting is performing a service for the creditor separate and apart from the service performed by the receiving attorney, for which service the forwarder is entitled to be separately compensated by the creditor, the amount thereof being a matter of contract between the forwarder as agent and the creditor as principal.
- 2.2 Under no circumstances shall the forwarder receive a share of the compensation of the receiver; except that where the forwarder is an attorney primarily engaged in the private practice of law and there is an actual division of the work and responsibility between the attorney forwarder and the receiver, the compensation may be divided between them in proportion to the effort expended and responsibility assumed by each.



2.3 These guides are intended to apply in the absence of specific agreement to the contrary, but nothing contained herein shall prevent the parties from making an agreement at variance with these guides so long as such agreement is consistent with the enabling Resolutions.

2.4 Violation of these guides by a member of the League, or violation by a member of any agreement between the parties which supercedes or which further explains these Operative Guides, shall upon the filing of a complaint subject such member to disciplinary proceedings under Article XI of the Constitution of the League.

PART III CONTRACTUAL COMPENSATION

A. Commissions

3.1 Unless otherwise expressly agreed, commissions are contingent on the recovery of money or property. Upon request by the receiver prior to acceptance of the forwarding contract, the forwarder should promptly supply information on the total compensation being charged to the creditor on a specific claim. If a forwarder requests a receiver to charge a contingent commission lower than the receiver's regular commission, the forwarder should disclose to the receiver in its forwarding contract the total compensation the forwarder is charging the creditor on that claim.

3.2 In all cases where terms are stated in a forwarding contract, such terms control. However:

a. A mere statement by the receiver that he will not handle the claim except upon other terms will not establish his right to compensation other than as offered in the original forwarding contract.

b. A receiver objecting to the terms as set forth in the forwarding contract should either return the claim or withhold taking action on the claim until satisfactory arrangements are made with respect to compensation. The terms of the original forwarding contract shall prevail notwithstanding the fact that the receiver has performed services in connection with the claim, unless and until the terms are changed by agreement or acquiescence.

c. A forwarder shall be deemed to have acquiesced in the terms proposed by the receiver where the forwarder subsequently instructs the receiver to proceed, without making reference to the receiver's counter-proposal. A forwarder's mere request for a status report, however, shall not be construed as an instruction to proceed.

3.3 When a claim is collected in installments, the contractual commission rate shall apply to the aggregate of the installments collected, and not to each installment individually. In the event the forwarding contract provides for a declining percentage rate, the higher rate may be taken on the first installments collected, with adjustments to be made in accordance with the forwarding contract, to the end that the total commission on the aggregate of all installments

Operative Guides for Forwarders & Receivers

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January 6, 2004

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collected shall not exceed the total commissions permitted upon such aggregate by the forwarding contract.

3.4 In situations where the receiver may obtain amicable agreement for the debtor to make payments over an extended period of time, the receiver can give the creditor the option to (a) pay a higher contingent fee without suit or (b) litigate, giving requirements for suit including suit fees and court costs.

3.5 Where the time elapsed from the creditor's original due date on any claim is greater than one year at the time it is placed with the forwarder, and the forwarder is receiving a commission rate higher than its commission on claims less than one year old, the receiver should be entitled to additional commission.

3.6 In cases where a collection results from the filing of a claim in probate, or in bankruptcy, receivership, assignment or other insolvency or kindred proceedings:

a. The mere filing of a claim in said proceedings and the receiving and remitting of a dividend or dividends thereon entitles the receiver to commissions in accordance with the forwarding contract, and

b. The aggregate of all dividends received from such proceeding, together with the aggregate of all collections prior to the institution of such proceeding, shall be treated as a single recovery for the purposes of applying a commission rate in accordance with the forwarding contract, and

c. The mere appearance of the receiver before the court or any officer thereof to represent such claim, there being no contest as to its validity, shall not entitle the receiver to any additional compensation; but if the receiver, in order to establish a claim filed in any of said proceedings, is obliged to serve notices, examine witnesses, or to take other comparable steps to obtain allowance or to insure payment of the claim, or if the exigencies of the situation make it immediately necessary to perform legal services to protect the creditor's interests, the receiver shall be entitled to a reasonable fee in addition to the commissions provided for in the forwarding contract, as provided in guide 6.1.

3.7 When a claim is paid by the debtor, directly to the creditor or the forwarder, after it has arrived at the office of the receiver:

a. The receiver is entitled to commissions in accordance with the forwarding contract, if payment was made by the debtor after demand was made by the receiver. The mere technical failure of a receiver immediately to acknowledge receipt of a claim shall not operate to deprive him of his right to compensation at the agreed rate provided he actually made demand for payment (see guide 7.1f).

b. The receiver is entitled to no compensation if payment was made by the debtor before the receiver made demand on the debtor or otherwise worked on the claim, provided notice of



such direct payment is furnished the receiver by the creditor or the forwarder before work is begun or demand is made (see guides 3.9b and 7.1f).

3.8 Without limiting the rights set forth in guide 3.6, the receiver is entitled to full compensation in accordance with the forwarding contract in each of the following situations:

a. Where the receiver receives the claim and does work on it, and the debtor subsequently pays the amount of the claim to another person who had previously been employed to collect the claim.

b. Where the claim is in the hands of the receiver and either the creditor or the forwarder intervenes for the purpose of accepting a post-dated check or a promissory note, or an acceptance or other instrument from the debtor, thereupon withdrawing the claim from the hands of the receiver; and the commission shall be computed upon the face amount of the instrument so taken, and shall be payable to the receiver in full upon the taking of the instrument, the same as if money had been collected.

c. Where the receiver settles the claim by taking such an instrument from the debtor, provided that such settlement is authorized or ratified by the creditor. In such event:

(1) If the instrument remains in the hands of the receiver until maturity and collection, the receiver shall be entitled to compensation only upon the money actually collected and only when collected, but

(2) If the creditor or forwarder demands possession of the instrument, the receiver is at once entitled to full compensation computed on the face amount of the instrument, the same as if money had been collected. In the event the instrument is not paid at maturity and is returned to the receiver for collection, the employment to collect the same is a new employment, and

(a) in the event of a failure to collect, the receiver shall not be required to refund the commissions previously earned, or

(b) in the event of a full or partial collection, the receiver shall be entitled to full commissions computed on the amount collected, irrespective of the commission previously earned on the taking of the instrument.

d. Where a claim or judgment is compromised upon the advice or with the approval, tacit or expressed, of the receiver; but in such event, the receiver's compensation shall be computed only upon the amount actually recovered and not upon the original debt.

3.9 If portions of a claim are sent to the receiver at intervals without notice to the effect that other portions are to follow, and

a. If settlement is reached before the other portion or portions are forwarded, or

b. If the receiver is required to render separate services on the portion or portions subsequently forwarded, the subsequent forwarding shall constitute a new and separate employment. But if no settlement is reached and no separate services are required by reason of



the delay, the subsequent portions shall merely increase the amount of the original claim, and the entire employment will be deemed a single employment.

3.10 A receiver is not entitled to commission in any of the following situations:

a. Where the receiver returns the claim as un-collectible, or where it has been properly withdrawn from his hands, and the debtor subsequently makes payment in full or in part to the creditor, to the forwarder, or to a subsequent receiver.

b. Where a claim is paid or settled after it arrives at the office of the receiver but before the receiver has performed any services in connection with the claim, provided the receiver is notified by the forwarder or the creditor of the payment or the settlement before work is done on the claim.

c. When the receiver reports a claim to be un-collectible without suit and the creditor chooses not to sue, and the claim is returned to the forwarder, except as provided in guide 7.1 g.

B. Interest, Costs, Attorney Fees, Etc.

4.1 Interest collected on an account or judgment is the property of the creditor, and the collection of interest must be disclosed by the receiver to the forwarder. Interest collected should be added to the principal collected for the purpose of computing the commission.

However, where not in violation of the law of the forum, where monies are collected in excess of the principal, said excess shall first be allocated as a recovery of court costs, and only when costs have been recovered in full shall additional monies collected be deemed interest and subject to commission.

4.2 Court costs expended in connection with litigation and subsequently recovered from the debtor may not be added to the principal in computing the commission, and the creditor is entitled to a full return of the money advanced by him for costs when such money is collected from the debtor as part of the judgment.

4.3 Where, under local law, a plaintiff is awarded a sum in addition to his damages and costs (which sum is variously known as statutory costs, taxed fees, taxed cost, or the like), said additional sum shall be deemed to be the property of the creditor and shall be treated, for purposes of computing commissions, the same as interest, unless prohibited by law. If so prohibited, the receiver shall retain the amount so awarded and collected as his own, by way of his suit fee or on account of his suit fee, and shall compute his commission upon the collection of principal and interest only, so that the receiver will not be paid twice for his court services, once by the statutory recovery and once by the creditor.



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4.4 Unless otherwise agreed upon by and between the forwarder and receiver, because an attorneys fee clause in a contract or note is intended to reimburse the holder for expenses incurred in the collection thereof, any such attorneys fee collected in addition to principal and interest, where no suit has been filed, shall be deemed to be the property of the creditor and shall be treated for purposes of computing commissions, the same as interest, unless prohibited by law. If so prohibited, the receiver shall retain the same as his own, and shall compute his commission upon the collection of principal and interest only, and shall deduct the amount so retained from the commission computed in accordance with the commission contract.

4.5 Sums awarded by a court or arbitrator for contempt for failure to appear; failure to proceed; failure to comply with an order of the court; false or frivolous pleadings; or the like; and intended to compensate the receiving attorney, shall belong to the attorney.

4.6 In all instances of recovery pursuant to Sections 4.3 and 4.4 herein above, it shall be the obligation of the receiving attorney to disclose said recovery to the forwarder and to inform the forwarder of the specific local law which prohibits said recovery from being deemed the property of the creditor.

C. Suits and Suit Fees

5.1 The mere forwarding of a claim for collection does not warrant the commencement of suit, nor does the mere employment to collect a claim imply any authority to sue. No suit shall be commenced by any receiver unless he shall have authority from the creditor, or from the forwarder to do so.

5.2 The amount of the suit fee is a matter of contract between the receiver and the creditor, as is the question of whether the suit fee is to be contingent or non-contingent, or partly contingent and partly non-contingent. A suit fee, if earned, is payable in addition to commissions. It belongs exclusively to the receiver unless there is a division of service and responsibility between the receiver and an attorney forwarder (see guide 5.5). The suit fee agreement preferably should be entered into before suit is commenced, and the fee should be commensurate with the services rendered, the amount involved, and the results accomplished.

5.3 The mere authorization to commence suit does not entitle the receiver to charge a suit fee, and a suit fee is not earned until suit has actually been commenced by the filing of the requisite papers in court or by their delivery, as the practice may be, to a process server, constable or other properly constituted authority, for service on the defendant. The mere preparation for suit is not sufficient to justify the charging of a suit fee, but neither is it actually necessary to serve the defendant or recover a judgment against him. When a suit fee arrangement contemplates that it shall be fully contingent, then the suit fee arrangement may be greater than one that is fully non-contingent. When a suit fee arrangement contemplates that it shall be partly contingent and partly non-contingent, then the suit fee arrangement may be less than one that is fully contingent but more than one that is fully non-contingent.



5.4 When the suit fee arrangement contemplates that the suit fee will be computed as a percentage of the recovery, the percentage shall be computed on the gross amount collected by the receiver, not including the court costs expended and recovered from the defendant. When the suit fee and court costs arrangement contemplates the creditor advancing a portion or all thereof, the forwarder is obligated to forward to the attorney all of such costs and fees received from the creditor.

5.5 A suit fee, being compensation for legal services rendered, may not be divided between the receiver and any other person except members of his law firm; provided, that if the forwarder is also an attorney primarily engaged in the practice of law, and if there is a division of both the work and the responsibility between the attorney forwarder and the receiver, the fee may be divided between them in proportion to the efforts expended and responsibility assumed by each.

PART IV NON-CONTRACTUAL COMPENSATION

A. Compensation in Addition to the Contract

6.1 In addition to the commissions agreed upon between the creditor (or the forwarder as agent of the creditor) and the receiver, the receiver shall be entitled to reasonable compensation in the following situations:

a. Where the receiver, in order to establish a claim filed in probate, bankruptcy, receivership or other insolvency or other kindred proceedings, is obliged to serve notices, examine witnesses, or to take other steps in an attempt to obtain allowance or to insure payment of the claim (aside from the mere filing thereof).

b. When the exigencies of any situation make it immediately necessary to perform on behalf of the creditor legal services which would normally not be anticipated.

c. When a claim has been put into litigation and it is necessary for the receiver to attend a trial or arbitration hearing, the receiver may charge a reasonable trial fee in addition to his or her normal suit fee if notice of the possibility of such additional fee has been given in the suit fee requirements letter.

6.2 In all cases in which a claim has been forwarded to a receiver, if payment is not received after initial demand by the receiver, the receiver may request in advance a reasonable non-contingent administrative fee.

6.3 In all cases calling for additional compensation as set forth in guides 6.1 and 6.2, the receiver shall promptly advise the creditor or forwarder as agent of the creditor as to the necessity for additional compensation.

B. Reasonable Compensation as a Substitute for Contractual Compensation

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7.1 Normally, the compensation to be paid to the receiver is a matter of contract between the creditor and the receiver, but it is recognized that situations arise in good faith which are not covered by the forwarding contract and which alter the circumstances; thereby requiring a different compensation basis. In such situations, the receiver shall be reasonably compensated for the work and services actually performed, and where appropriate, for the expenses incurred. Some of such situations are described as follows:

a. Where goods or property are taken in settlement, rather than money. If this situation is not covered by the forwarding contract, the receiver's compensation shall be an amount to be determined by the reasonable worth of the services rendered, viewed from the standpoint of the work done, the amount involved, the character of the employment, and the results accomplished, whether such amount is greater or lesser than the amount as measured by the forwarding contract.

b. Where goods or property are taken in partial settlement, and money is also taken in partial settlement. In this situation, the forwarding contract controls the compensation earned upon the recovery of the money, and guide 7.1a above controls the compensation earned upon the property taken.

c. Where a claim is met by a debtor's claim of prior payment, offset, counterclaim or other similar defense, or is barred by the statute of limitations, and the receiver accepts the claim without notice of the defense and learns of the defense only in the course of his work, and where the defense is a valid one and is either accepted as valid by the creditor or is ruled valid in litigation. In this situation, the receiver is entitled to a reasonable fee on the amount so disallowed, in addition to his contract compensation on any remaining balance actually collected. But if the claim was forwarded with notice of the defense, the receiver shall not be entitled to any non-contractual compensation on the portion disallowed by reason of such defense.

d. Where a claim is disputed and the dispute is known to either the creditor or the forwarder but is not disclosed to the receiver at the time of his employment. In this situation, the receiver shall be entitled to reasonable compensation for services performed and expenses incurred by him in endeavoring to collect such claim in the event he is, by reason of such dispute, unsuccessful in the collection thereof.

e. When either the creditor or the forwarder shall improperly interfere with the efforts of the receiver and thereby prevent collection. In this situation, the receiver shall be entitled to reasonable compensation for services rendered.

f. Where a claim is paid direct to the creditor or the forwarder. In this situation, it is the duty of the forwarder to notify the receiver immediately of the fact of payment, and



(1) Where payment is made prior to the arrival of the claim in the office of the receiver, and

(a) Where such notice is given, the receiver shall be entitled to no compensation, but

(b) Where notice is not immediately given the receiver, and he does work on the claim or incurs expense before notice is received, he is entitled to reasonable compensation for work performed and expense incurred.

(2) Where payment is made after arrival of the claim in the office of the receiver, and

(a) Where such notice is given before receiver has done any work on the claim, the receiver is entitled to no compensation, but

(b) Where such notice is given after the receiver has started work on the claim or has incurred expense, the receiver is entitled to reasonable compensation for work performed and expense incurred, and

(c) Where such notice is not given until after the receiver has made a demand on the debtor, the receiver is entitled to full compensation as measured by the forwarding contract.

Where the fact of payment does not become immediately known to the forwarder through the neglect of the creditor, thereby preventing the forwarder from giving immediate notice to the receiver, this guide 7.1f shall remain applicable and fully effective.

g. Where the arrangement under which the claim was referred authorized the commencement of suit, and the receiver performed services in reliance upon the creditor's good faith in that regard, and subsequently the creditor chooses not to sue. In this situation, the receiver shall be entitled to reasonable compensation for services rendered.

7.2 Because the placement of a claim with a receiver on a contingent basis vests the receiver with an interest in the claim to the extent of his contingent commission, the withdrawal of a claim for any reason (including a desire to file the claim direct in any probate, bankruptcy, receivership, insolvency or other kindred proceedings) except fault on the part of the receiver, shall entitle the receiver to reasonable compensation for services rendered.

7.3 When a claim is sent to a receiver by mistake of either the creditor or the forwarder, and the mistake or fact of prior payment has been learned by the receiver in the course of his work and by him brought to the attention of either the creditor or the forwarder, the receiver is entitled to reasonable compensation for his services.

7.4 When any neglect or failure to act on the part of a creditor or forwarder, including but not limited to the failure to give timely notice of payments received from or settlements made with a debtor, which neglect or failure results in the receiver being compelled to do work which



otherwise could have been avoided and for which he will not be otherwise compensated, the receiver is entitled to reasonable compensation for services rendered.

7.5 Where suit is authorized and all requisite papers have been prepared, and the creditor fails to cooperate with the receiver, the receiver is entitled to reasonable compensation for his services.

7.6 Where suit is authorized and commenced, and the creditor fails to furnish the receiver with the evidence or testimony to substantiate the claim, or to comply with orders of the court, which failure results in the dismissal of the case or in a judgment adverse to the creditor, the receiver is entitled to reasonable compensation for his services.

7.7 Where a creditor employs two or more receivers in the same or different towns to handle the same matter, and fails to inform each of them of the dual representation, and where either of them collects the claim in whole or in part, the other is entitled to reasonable compensation for his services.

PART V COURT COSTS AND EXPENSES

8.1 Money advanced for court costs is a fund to be drawn upon for the purpose of paying court costs, and should be accounted for at the conclusion of the receiver's employment.

8.2 Except in cases of emergency, where the interests of the creditor might be prejudiced by delay, it shall be the duty of the receiver to consult the creditor, or the forwarder as agent of the creditor, before incurring any items of expense.

8.3 Money expended in service of process or endeavoring to serve process on defendants where suit is authorized is a legitimate expense that the creditor must pay.

PART VI DUTIES

A. Of Receivers

9.1 A receiver shall acknowledge receipt of a claim promptly unless otherwise instructed.

9.2 If a receiver finds it impossible or impractical to handle a claim personally, it shall be his duty promptly to return the same, rather than to transfer the claim to any other party for attention. This provision, however, shall not be interpreted as prohibiting the delegation of authority by the receiver to associates, employees or clerks in his office.

9.3 A receiver shall report the fact that a claim is being collected in installments.



9.4 A receiver shall promptly return all papers and/or remit all moneys collected and unexpended costs, on claims that have been withdrawn because of the receiver's neglect or inability to handle the same.

9.5 Where a receiver is called upon to remit the proceeds of a collection to different and conflicting parties, he shall impound the money with some responsible depository, and shall then notify the conflicting parties that it will not be released until he is assured by both parties, by stipulation or otherwise, that the dispute has been completely adjusted.

9.6 A receiver shall account for and remit on:

- a. Principal
- b. Costs which are not commissionable
- c. Interest
- d. Statutory fees (where permitted)
- e. Contractual fees (where permitted)

9.7 To minimize receiver costs of handling small claims, a receiver can be expected to make demand on the debtor in an effort to obtain payment; but the receiver need report only every 90 days unless:

- a. Documentation is needed
- b. Payment is made
- c. Merchandise is offered for return d. Account is closed or e. Requested by forwarder

9.8 To minimize receiver reporting it is recommended that, on claims in litigation, a receiver

- a. Confirm that suit is filed
- b. Report each significant development or event in the course of the litigation and
- c. Give realistic file datings based on local procedure

9.9 Unless otherwise agreed between the forwarder and receiver at a minimum, a receiver shall remit within 15 days after the close of a calendar month during which monies are collected for a creditor or forwarder or within 21 days after receipt of the payment, whichever is longer, account in writing and remit to that creditor or forwarder all monies collected and received during the month less commissions and service charges. If the amount due the creditor is less

Operative Guides for Forwarders & Receivers

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than \$100, remittance may be deferred for an additional 30 days, provided such deferral of remittance is approved by the creditor or forwarder.

B. Of Forwarders

10.1 In an effort to minimize receiver requests for information and documentation, every claim forwarded to a receiver should be accompanied by the following where available:

a. Information

- (1) Creditor's full name and address
- (2) Debtor's legal name, legal composition and address, including the name and address of any guarantor
- (3) Amount due, principal and interest
- (4) Debtor's contact and phone number
- (5) Nature of creditor's business
- (6) Details of any dispute and creditor's response with copies of memos and correspondence

b. Documentation

- (1) Credit agreement
- (2) Contracts, leases, personal guarantees, promissory notes, and NSF checks
- (3) Purchase orders, delivery receipts, invoices, and statements of account
- (4) Security agreement (with copy of any financing statements)

c. Credit information

- (1) Credit application
- (2) Financial statements
- (3) Credit reports
- (4) Debtor banking information



- (5) Real estate owned
- (6) Place of employment
- (7) Social security number or employer ID number
- (8) Vehicle identification number

10.2 The forwarder should disclose to the creditor the receiver's contingent fee requirements. Where practical:

a. A copy of the receiver's letter stating suit fee and cost request should be sent to the creditor with the request that the creditor make its check for such fee and costs payable to the receiver and

b. Contingent and non-contingent fee requests by a receiver should be acknowledged by the creditor.

10.3 It shall be the duty of the forwarder to provide relevant information on any of the following matters to the receiver at the time of forwarding:

a. When the forwarder knows or suspects that a forwarded claim is other than a commercial claim;

b. When the forwarder knows of any dispute on the claim;

c. When the forwarder has knowledge that creditor will not authorize suit or provide witnesses or has other restrictions on suit.

PART VII RESTRICTIONS

A. Upon Receivers

11.1 No receiver shall retain an item of business if he cannot handle it properly for any reason; except that, if the reason is an apparent conflict of interest, the receiver shall place the creditor or forwarder in full possession of all the facts or shall return the claim at once.

11.2 No receiver, having taken property or money from a debtor as settlement of a claim, may, in a controversy arising with the creditor or forwarder regarding his compensation, return the property or money to the debtor. Once the property or money is taken and received as payment of the claim, the property or money is in the constructive possession of the creditor and may not be returned without his authority.



11.3 No receiver shall charge and retain in one case the fees or costs claimed in another, where there is no authority to do so.

11.4 No receiver shall incur any item of expense, chargeable to the creditor, without the creditor's consent, except in cases of emergency where the interests of the creditor are likely to be prejudiced by delay.

11.5 No receiver may institute a suit or compromise a claim without authority of the creditor, either given directly by the creditor or by the forwarder as his agent.

11.6 A receiver having voluntarily relinquished an account should not, after giving notice to that effect to the forwarder as agent for the creditor, accept payment from the debtor; and the receiver shall not be entitled to any commissions on any payments which he does accept.

B. Upon Forwarders

12.1 No forwarder shall withdraw a claim from a receiver in the absence of fault on the part of the receiver, without compensating the receiver in accordance with guide 7.2.

12.2 No forwarder shall send any claim to a receiver on condition that it be handled without charge. No forwarder shall induce a receiving attorney to accept a lower contingent fee by a false representation that the total percentage charged the creditor will be reduced by at least that percent.

12.3 No forwarder shall use the name of an attorney in the assertion of rights against a third party.

12.4 No forwarder shall intentionally mail or deliver envelopes to a debtor containing a letter or a letter copy purporting to be written to an attorney, either authorizing or instructing action by the attorney against the debtor, for the purpose of deceiving the debtor into thinking that the attorney has been so authorized or instructed.

12.5 No forwarder shall use a form of notice which purports to be a summons or other writ issued by a court, for the purpose of deceiving the debtor into believing that legal action has been actually commenced, or that the communication is a court notice.

12.6 No forwarder shall place a claim with a receiver without disclosing, if such be the fact, that the claim has previously been forwarded to and worked on by another receiver.

12.7 No forwarder shall request an attorney to incur the cost of litigation without an express agreement for reimbursement by the creditor.

12.8 No forwarder shall attach more than one law list coupon to any item placed with a receiver, nor send bonding coupons to more than one law list on a single item placed with a receiver.



12.9 No forwarder shall place a claim with a receiver reserving the right to withdraw the same without payment of compensation in the event of any insolvency proceedings concerning the debtor. (See guide 7.2).

12.10 No forwarder shall himself file one or more claims in bankruptcy or other insolvency proceedings, and send one or more claims to a receiver, for the purpose of obtaining status reports from the receiver as to the progress of the proceeding.

12.11 Subject to guide 3.2, no forwarder shall discourage a receiver from requesting a higher commission than set forth in the forwarding contract and shall not view adversely any receiver who makes such a request.

PART VIII ARBITRATION

13.1 Any dispute between a forwarder and a receiver may be resolved by arbitration. In any dispute between two or more League members involving a forwarding contract the League members are presumed to have submitted to the jurisdiction of the Committee on Arbitration, Grievances and Objections to Membership of the Commercial Law League of America for resolution of the dispute unless all League members involved in the dispute agree otherwise or the forwarding contract specifically states otherwise. Arbitration shall be in accordance with the rules of procedure from time to time adopted by the Committee and approved by the Board of Governors pursuant to authority granted by the Constitution of the Commercial Law League of America.

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