Lessons Learned in Collections

Michele R. Stafford, Esq.
Shareholder and Vice President
Saltzman & Johnson Law Corporation
San Francisco, California

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Lessons Learned in Collections

- Have a good stipulated judgment (and follow it!)
- Secure your judgment
- Know your general contractors
- Collaborate with the union
- Work with your auditor
- Understand the bankruptcy rules
Stipulated Judgments

Essential Terms

1. Staying current in contributions
2. Personal guarantee/successor
3. Job lists
4. Audit provisions
5. Ongoing fees and costs
6. Interest on declining balance
Personal Guarantee and Successor Language:

*Defendant confirms that she is personally guaranteeing the amounts due herein.* Defendants further confirm that all successors in interest, assignees, partners, and affiliated entities (including, but not limited to, parent or other controlling companies), and any companies with which Defendants join or merge, if any, shall also be bound by the terms of this Stipulation as Guarantors. This shall include any additional entities in which Defendants are an officer, owner, or possess any controlling ownership interest. All such entities shall specifically consent to the Court’s jurisdiction, the use of a Magistrate Judge for all proceedings, and all other terms herein, in writing, at the time of any assignment, affiliation or purchase.
Security for Your Judgment

1. **UCC Liens**
   A UCC-1 financing statement is a legal form that a creditor files to give notice that it has an interest in the personal property of a debtor.

2. **Abstracts of Judgment**
   An Abstract of Judgment is a written summary of a judgment, which states how much money is owed to the creditor, plus the rate of interest to be paid on that amount. The purpose is to create a public record and create a lien or claim on any real property owned or acquired by the debtor in the county in which the abstract is recorded.
Know Your General Contractors

- What if you have to levy?
- The union may need to pull labor
- Getting payments in exchange for a waiver and release
- Liens and stop notices
Collaborate With the Union

• They can contact the members
• They often know the “gossip”
• They can issue a “48-hour notice”
• They can remove labor from jobs
Brick Masons Pension Trust v. Industrial Fence and Supply, Inc. (839 F.2d 1333 (9th Cir. 1988))

Once the Trustees produce evidence raising genuine questions about the accuracy of the employer’s records and the number of hours worked by the employees, the burden shifts to the employer to come forward with evidence of the precise amount of work performed.” Specifically, “once the Trust Funds proved the fact of damage” and the employer’s “failure to keep adequate records”, the burden “shifted to the employer to come forward with evidence of the extent of the damage.”
Motion Picture Industry Pension & Health Plans v. NT Audio Visual Supply, Inc., 259 F.3d 1063 (9th Cir. 2001)

Noted that under Brick Masons, once the Trustees show that (1) NT Audio failed to keep adequate records, and that (2) there exist some employees who (a) performed covered work that was (b) unreported to the Trust Funds, then the burden shifts to NT Audio to show the extent of the unreported covered work for those employees.
Understand the Bankruptcy Rules

11 U.S. Code Section 547

Avoiding a Transfer:

The trustee may avoid any transfer of an interest of the debtor in property to or for the benefit of a creditor on or within 90 days before the date of the filing of the petition.
Understanding the Bankruptcy Rules (continued)

*Keeping the money.*

The trustee may not avoid under this section a transfer to the extent that such transfer was payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee, and such transfer was made in the ordinary course of business or financial affairs of the debtor and the transferee; or made according to ordinary business terms;
Overview of Employment Law

- Understand and use all of the tools in your tool box
- Collections are a team sport
- One size fits all collections will not work
- Get to the money first and secure your rights
- Understand the law so that you can prepare your case accordingly

Website Resources
https://www.ifebp.org/Resources/infoquick/Pages/default.aspx
Collection Procedures (Members Only)
https://www.ifebp.org/inforequest/ifebp/0165149.pdf
2017 Educational Programs
General Topics

63rd Annual Employee Benefits Conference
October 22-25, 2017
Las Vegas, Nevada
www.ifebp.org/usannual

Trustees and Administrators Institutes
February 20-22, 2017
Lake Buena Vista (Orlando), Florida
June 26-28, 2017
San Diego, California
www.ifebp.org/trusteesadministrators

Fraud Prevention Institute for Employee Benefit Plans
July 17-18, 2017
Chicago, Illinois
www.ifebp.org/fraudprevention

Construction Industry Benefits Conference
November 13-14, 2017
Santa Monica, California
www.ifebp.org/construction

Collection Procedures Institute
November 15-16, 2017
Santa Monica, California
www.ifebp.org/collections

Related Reading
Visit one of the on-site Bookstore locations or see
www.ifebp.org/bookstore for more books.

Employee Benefits Glossary, 13th Edition
Item #7570
www.ifebp.org/glossary