Legal Solutions
in a Tough Economy

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Outline of Conversation

I. The Topic and challenges faced by contractors in the current economy

A. Why This Topic?
B. How Does the Economy Hurt The Contractor?

II. Loading Your Front End to Avoid Dispute and Legal Expense

A. Good Contracting Practices
   1. Rule Number 1: Have a great written contract everytime.
   2. Rule Number 2: Never sign a lop-sided contract.
   3. Contracts Resolve Disputes

B. Good Collection Practices
   1. Avoid Common Mistakes
   2. Have in-house collection measures in place
   3. Execute and Followup

III. Dealing with Dispute on the Backend

A. Alternative Dispute Resolution and Settling Cases
   1. What is ADR?
   2. Is settlement the best option?

B. Importance of Good Counsel
   1. Why is good counsel important?
   2. Who is your counsel? How do you know they are doing a good job?

C. Lien Lien Lien
   1. Top 3 Things You Should Know About A Lien
   2. How Liens Can Save You Thousands
   3. How to File A Lien

An Apple A Day… Proactive Steps Your Company Should Take to Weather the Economical Storm

We've all heard the adage "an apple a day keeps the doctor away," but we rarely hear any similar quips regarding lawyers. However, the same principal is absolutely true.

Taking proactive measures to insulate your company from liability can prevent future costly (and possibly fatal) lawsuits or legal disputes.

In the construction industry where litigation is frequent and costly, legal preparations are especially important. And while you can never completely isolate your organization from legal exposure, it will benefit from a conscious effort to place it in the best possible situation in the event of a dispute or injury.

Here are some ways your organization can be legally proactive to avoid costly and unnecessary legal expenses in 2008 and 2009:

1) Have a great written contract. Entering into a construction project of any size without a written contract is a recipe for disaster.

Your organization should have a "form contract" that meets your business' requirements, and addresses certain legal hot topics such as the scope of work, the indemnity requirements, the obligations of each party in the project, dispute resolution mechanics and procedures, etc. Written contracts should be a way of life for your organization, with contracts executed between contractor and owner, contractor and subcontractor, contractor and supplier, owner and architect, etc.

An attorney should be consulted to help make changes and insert provisions as required project-by-project, as each project has different needs. Even AIA or ConsensusDOCS form contracts are frequently edited by the parties to accommodate the needs of a particular project or agreement.

In the event of a dispute, a well-drafted written agreement can save your organizations thousands, and even hundreds of thousands or millions depending on the project's size.

2) Never Sign A Bad Contract.

This is particularly a problem with subcontractors who enter into written contracts with subs or GCs who are larger and better funded then themselves. In these situations, it is common for the larger party to present the smaller party with a very one-sided contract.

The larger contractor uses its size and the allure of the project to strong-arm the smaller entity into agreement. Be very weary of this type of practice.

In the event of a dispute under one of these unilateral contracts, your organization can sustain a fatal blow. In our experience, we've witnesses companies file bankruptcy or dissolve themselves not because their work was poor or they were legally wrong, but because they just couldn't afford to fight their position under the contract.

One proactive measure your organization can take to avoid costly litigation is to avoid signing these types of agreements.

While the heavy-handed form contract might seem mandatory, in fact these corporations are typically accustomed to making certain changes to the contract terms. Have an attorney consult with you regarding the consequences of the contract provisions, as well as suggested changes – and propose these changes to the other party.

If you cannot get the contract altered to meet your concerns, you may want to seriously consider whether the project is worth the risk in liability and exposure.

3) Create and Follow In-House Collection Procedures.

The importance of your in-house collection procedures will vary depending on the type of construction business you run. Certainly if your organization enters into hundreds or thousands of smaller contracts every year, collection procedures will be very critical to your operation. Conversely, if your organization has just a few big contracts each year, collections are likely more under control.

In any event, your organization should have a clear "plan of attack" in the event of non-payment.

In today's construction market and vulnerable economy, credit applications are often denied and cash flow can be tight. A high accounts receivables number can cause displeasure to your company.

The most effective way to prevent bad collection scenarios is not litigation (which is costly), but consistent collection practices and pre-litigation preparation.

Of course, a non-paying client can warrant litigation – and should, if payment is not tendered after collection procedures are employed. However, by taking in-house or outsourced collection measures prior to litigation your organization can limit the number of lawsuits required, and by preparing for litigation in each non-payment scenario, your organization will decrease the overall amount spent in court.

Collection procedures are most effective when they are structured, consistent, and employed early. By sending prompt demand letters you accomplish two important things: (a) you let the non-paying client know you are serious about collecting the account; and (b) you start the clock to collect attorneys fees, interests, etc. that you may be qualified for under contract or by law.

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Common Collection Mistakes and Pitfalls

Taking a reactive approach to collections instead of a proactive approach
Sometimes, unfortunately, the best collection procedures and attorneys on earth cannot fix a collections problem. An insolvent company who owes you $100,000.00 may owe you that amount forever. Good collection procedures, therefore, begin before you are owed any amount of money; they begin at the time of contracting. "An ounce of prevention is worth a pound of cure" rings true for those seeking to avoid a high receivables account. Starting with a good contract and following through with smart project management can help keep your uncollected accounts low.

Getting "Too Deep"
The worst collection problems are usually the most avoidable. Frequently, construction company will continue dumping materials and resources into a project without compensation.
It's important to reject the urge to perform your services upon a "promise" to pay. These promises are all too common between contractors, and in most cases, are all too empty as well.
Learn to notice cues from your prime contractors or customers that money is tight, and react by demanding exactly what you're entitled to: payment. You may fear that the paying party will seek someone else to perform the work, but not only are they likely contractually restricted from doing this, but the substituted company will certainly expect payment as well.

Being Unprepared for a Non-Paying Customer
The longer an account goes unpaid, the less likely you'll ever collect. One of the biggest mistakes you can make when faced with an overdue account, therefore, is to delay your attempts to collect.

It's easy to put off attempts to collect when you're not prepared. However, with a collection procedure in place, you can start collecting easily and automatically as soon as an account becomes overdue. Collection procedures will keep you proactive, consistent and more successful at collecting on unpaid accounts.

Disorganization
Finally, the most common and avoidable collections mistake is being disorganized, and specifically being incapable to prove what you are owed. As soon as an account goes into collections, it will go into dispute. The paying party will disagree with the amount of work performed, the quality of the work, its scope, the project's change orders, etc.

In construction as you likely know, there's no such thing as a perfect project, and so it's not difficult for an adversary in collections to dispute the quality of your work because of paint chips or an incorrect doorknob.

Organization and a detailed record of the work you performed will help you avoid these time-consuming and expensive arguments. If you have photographs, time-sheets, job logs, etc., you'll have the evidence necessary to combat these arguments and keep your overdue account from turning into a settled account.

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How To Get Paid Promptly Generally Speaking

Efficient payment is critical in construction. Without timely, dependable payments to those who are actually doing the work and providing the materials, construction projects of any size become vulnerable.

Non-payment or slow payment can cause abandonment of the job, sub-standard work, and decreased productivity -- as well as an increase in claims and liens. Reputations in the community can also be tainted by slow and unreliable payment procedures, resulting in harm which can take years to repair.

Still, slow payment and non-payment remains one of the biggest risks facing a contractor. Owners withhold payment for many reasons: they are dissatisfied with the work; they want to push a project that is behind schedule; or they may just be strapped for cash. Regardless of who is at fault, payment controversies can destroy a project.

Prompt Payment Acts - When They Apply & How They Help

Every state in the union has passed legislation that is similar in character to federal law requiring the prompt payment of government receivables. Prompt Payment Acts cover a variety of industries, but they are particularly important when construction is involved.

In any work performed for a governmental entity, payment of the invoices will be covered by the Prompt Pay law regardless of whether or not a contract exists to support the work. Invoices submitted to the government legally must be paid within a relatively short period of time or interest will be assessed, which the governmental entity will be required to pay, as well. The time limits vary from state to state and may or may not mirror the federal time limit of 30 days.

These statutes also set requirements for the invoices that are presented: if the invoice does not conform to the statutory requirements, then it will not be honored. The Acts will not force a timely payment on an improper invoice. Therefore, the preparation of applications for payment becomes very important in governmental work and many companies use automated software designed especially for this task.

Automated Payment Systems

A simple web search reveals a cornucopia of software packages available for the construction payment process. Pricing and product features run the gamut. However, good quality automation need not be expensive: QuickBooks offers a highly regarded system for under $200 which should be well within range for most subcontractors and craftsmen.

What if it's Not a Government Project?

Projects that do not involve a public entity usually will not be covered by prompt pay legislation. However, those statutes can be used as a guide on how fast payments should be made, as well as how detailed payment applications should be. More importantly, however, will be the basic written contracts that the parties have signed: what the contract language relates -- or fails to address -- will control the project's payment process.

For example, in Louisiana, payment is not legally due in private contracts until the project is completed -- unless the contract language provides otherwise. (For more information here, see Wolfe Law's May 2007 article on Pay When Paid clauses, link shown below.)

Without a written contract, state law will control. Which state's law? The state where the construction is located controls. Thus, the importance of a strong contract in the construction payment process cannot be underestimated.

Securing Payment and Performance: Bonds Versus Liens

There are various methods of securing payment and performance of a construction contract that are recognized across the industry, in every state. These usually involve bonds or liens.

Owner's Security

One common method that owners use to insure that there will be performance under the contract is a performance bond. Here, a bonding company ("surety") issues a bond which documents that the bonding company is guaranteeing payment of a set amount ("face value") to the owner should the contractor fail to finish the job. The surety agrees to pay this sum to the owner if the contractor fails to perform all the required services and deliver all the required materials and equipment. Usually, the bonding company reserves the right to take action before paying on the bond, such as having the general contractor remedy any outstanding claims, or hiring another contractor to finish the work.

Contractors' Security

Mechanics' liens are used by contractors to secure payment. These are writings filed with the public real property records pertaining to the property involved in the construction, giving public notice of the contractor's priority interest.

Overall, there are two forms of mechanics' liens: general and particular. General mechanic's liens allow the owner's property to be held, and sometimes sold, to pay the unpaid amount that is due and owing to the contractor. Particular liens are those filed by contractors claiming a right to retain certain, identified property because of money or labor they have invested in that specific property. A security system company, for example, may have a particular mechanics' lien on all alarms and related equipment.

Contractors can create liens in a variety of ways. Mechanic's liens can be created by an express contract, in a standardized document that the parties sign. These liens can also be created under the law by "implied contract," which usually occurs as part of a particular usage of trade or from the

dealings between the parties. When goods are delivered to a subcontractor that he needs in order to complete his part of the project, for example, that subcontractor has a legal right to hold those goods until he gets paid for his work.

Payment Under The Contract

Today, most construction projects will see the use of one of two American Association of Architects ("AIA") contracts: either AIA Form 201 (most popular) or AIA Form 200. However, these forms both have problems when issues of slow payment or non-payment arise if they are signed without revision. For example, while AIA Form 200 does include language regarding the creation of a lien in the event of non-payment, it fails to include any specific time period for making payments to subcontractors. Similarly, AIA Form 201 does not prevent the commingling of funds, and fails to address possible delays in disbursements.

Both of these popular forms of written construction contracts have been criticized for their inadequacies in dealing with payment controversies. In response to this, in part, 2007 saw the introduction of an industry alternative to the AIA contract forms, the Associated Owners & Developers Standard Form of Contract Between Owner & Contractor ("AOD Form").

The AOD Form simplifies matters by requiring owners to pay general contractors within an agreed-upon time (e.g., 30 days) and requiring general contractors to hold monies due to their subcontractors and suppliers in trust, paying them within 7 days from the time that they receive payment.

The AIA has responded to the criticisms of the AOD by upgrading its own set of construction contract forms. Experienced contractors as well as owners using either set of forms, however, are careful to work with experienced construction attorneys to insert clear contractual provisions at the outset.

No contract form (AIA or AOD) should be signed without first obtaining the advice of legal counsel. Experienced construction attorneys may see holes in the forms that fail to address payment issues, as well as other concerns, that are particular to the project. Particular contractual provisions, or clauses, may be needed that the attorney will know are appropriate.

Clauses which owners should consider regarding payment include those addressing:

description of the work; contractor's cost of the work plus fee; separate contractors; subcontractors and subcontracts; applications for payment; retainage; conditions for final payment; insurance; warranties; changes; no damages for delays; defaults and remedies to default; right to terminate without cause; alternative dispute resolution; concealed conditions; and unknown conditions.

Clauses which general contractors should consider regarding payment include those addressing:

incomplete or deficient plans and specifications; architect's right to withhold funds; changes in taxation; architect's approval or disapproval of payments, or final payment; warranty; concealed conditions; weather delays; separate contractors; change orders; schedule of values; stored materials; substantial completion inspections; retainage; and right to terminate for convenience.

Subcontractors: Contingent Payment Clauses and Liquidating Agreements

To buffer themselves against a slow-paying or non-paying owner, general contractors have developed several methods of sharing this burden with their subcontractors and suppliers. Two of the most common are contingent payment clauses and liquidating agreements.

Contingent payment ("pay when paid" or "pay if paid") clauses are inserted into agreements by the general contractor, making the sub-contractor or supplier wait along with the general contractor for the owner to make payment. These provisions are not legally recognized in all states. (For their use in Louisiana, see the May 2007 Wolfe Law Article on Pay When Paid Clauses.)

Liquidating ("pass through") agreements are contracts entered into between a general contractor and a subcontractor, where the subcontractor agrees to be paid only when, and if, the general contractor is paid by the owner. The agreements may not, however, provide for the subcontractor to have any remedy against the general contractor should the owner decline to ever make payment. Accordingly, pass through agreements are not recognized as valid contracts in every state.

Suppliers: The Joint Check Rule

Joint checks are commonly issued to pay both a subcontractor and a supplier at the same time. Since these are often accompanied with a number of legal issues (endorsement, allocation of proceeds, etc.), many states have enacted a "joint check rule" which requires any supplier endorsing a joint check to collect its proceeds from that check or be legally barred from later asserting a lien or bond claim on that amount.

State law bases this rule upon a variety of doctrines (release, waiver, estoppel), but all share the perspective that a joint check is intended to protect the issuer from the supplier's claim, as well as protecting the supplier by ensuring payment, and the owner from any lien.

Tools developed by the construction industry, as well as protections created in the law, to deal with the issues of payment during the construction process are numerous, and they are constantly evolving. While standardization across the county has removed many of the payment pitfalls, the best protections for smooth payment remains strong, written contracts entered into by all the construction participants.

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Now What? Three Simple Principles to Mind When You're Involved with a Costly Dispute

The construction industry is riddled with risk and disagreements, and some say it's only a matter of time before a construction organization finds itself in litigation. Regardless of its certainty, litigation is a fact of business and has the potential of costing your organization thousands, hundreds of thousands or millions.

Accordingly, your business wants to weather the litigation storm as painlessly and quickly as possible. Here are three principals to mind if your construction company is facing litigation.

1) Settlement Should Always Be An Option
If the dispute is in litigation, there were likely settlement attempts before formal filings. Simply because these pre-litigation settlement efforts have failed, however, does not mean post-litigation settlement efforts are without utility. To the contrary, the reality of litigation often hits parties only after filing and can be a powerful influence to settle.

Attorneys oftentimes are scorned by the public for their desire to settle cases rather than litigation. The practice, however, is not the result of laziness or a fear of the courtroom. To the contrary, attorneys are usually looking out for the best interests of their clients – and in most cases, it's in all parties' best interest to settle the case.

Litigation of all types is expensive. The associated legal fees, expert fees and court costs associated with taking a case to trial is going to be a minimum of $10,000 - $15,000.00, regardless of the amount in dispute. The more complex a case, the more expensive the litigation – oftentimes costing parties hundreds of thousands or millions of dollars.

As such, parties should make objective reviews of their legal positions and consult with attorneys to discuss the challenges of their case, its possible exposure, and estimated legal costs.

Judges and mediators often say, "a good settlement is when both parties leave unhappy." While unhappiness is not the most pleasant end to your legal dispute (in which you may be emotionally and personally invested), it may be the best. Depending on the associated risk of the case and your company's exposure, full-blown litigation may result in a much worse scenario than a mediocre settlement.

2) Explore Alternative Dispute Resolution
It's never, ever too late to explore alternative dispute resolution options. In the past, parties have chosen to mediate or arbitrate their differences even on the eve of trial – and successfully so.

In the event of litigation or arbitration, however, you shouldn't wait that long to explore the possibility to resolving the parties' differences through mediation or some other less expensive resolution program.

Mediation may be a great alternative to litigation since it is entirely driven by the will of the parties, voluntary and less expensive than a formal dispute. However, mediation is not free (depending on complexity of your case and length of mediation, it may cost between $2,500 and $25,000, or more). Accordingly, you want to agree to participate only if both parties come to the table in good faith to settle the case. Both parties, in other words, should be prepared to have a flexible settlement discussion.

Settlement discussions within mediation are confidential, allowing the parties to discuss details of the case frankly and to exposure each other's weaknesses. Furthermore, in the event mediation is not successful, it is a great way to prepare your for trial and to gain a stronger understanding of your opponent's position.

3) Good Counsel is Priceless
The type of attorney you'll need to most effectively and least expensively litigate your claims will depend on your desires and circumstances. And unfortunately, there are so many shades of desire and types of circumstances that your company may face in the event of litigation.

A good counselor will review your claims, defenses and financial health to determine the best course of action for your company. While it's always important for an attorney to be a qualified litigator, "being right" or "litigating your claim" might not be best for your business. There are a number of factors to consider before setting forth on your litigation course.

Counsel should review the risk associated with your claim, your company's financial exposure and your ability or desire to go through to trial to properly advise an organization on its options to proceed.

Perhaps it is in your company's best interest to push the matter towards trial as rapidly as possible….but that it not always the case. Mediation may be a better option, or some other sort of settlement procedure.

In short, it's important to have a counselor to give solid and objective advice about your company's legal position and options. Your selection of legal counsel is perhaps the most important component of your claim. As such, be careful to choose wisely.

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What You Need To Know About Liens

Lien statutes are complex and technical in every state, but throughout the country common themes and policies emerge.

If you're in the construction industry, it's important to know these policies, and specifically it's important to know how to use a lien and how liens can help your business.

1. Liening a project starts before work even begins

The urgent need to lien a project usually strikes a company after a job's completion, but in many situations preserving lien rights requires serious consideration before work even begins and any dispute arises.

While pre-lien requirements are not applicable to every project and organization, one of the most common liening mistakes is for an organization to neglect pre-lien requirements and thereby abandon their lien rights.

The most common pre-lien requirement is the need to give the property owner notice of the lien laws.

Simply stated, the laws in most states require a contractor to notify the property owner that it may lien the project if it is not paid.

The notice must be delivered - in most cases - before services are rendered or materials are delivered.

An article on Louisiana notice requirements, plus some applicable forms, can be found here.

An article on Washington's requirements, plus some applicable forms, can be found here.

One common misunderstanding about lien notices is that they are only required to be sent before liening a project.

Do not fall prey to this myth.

Lien notices, when required, most always require delivery before work begins, and not simply before the lien is filed. If you fail to preserve your lien rights with the proper notices, you'll forever lose your right to lien that construction project.

2. Your lien rights won't last forever, or for very long

If there is any delay in getting paid on a construction project consider filing a lien immediately. Many companies lose their right to lien a project because they wait too long to file.

The window of opportunity to file a lien is short, and once you're time expires, you lose this powerful collection tool forever.

If payment isn't on-time, protect your company's interest in the property, and file your lien immediately.

3. A lien is the first step, not the last step

After filing a construction lien, you will certainly have more work ahead in attempting to collect.

In many cases, a construction lien by itself will result in prompt payment. In these cases you will likely be charged with the duty of canceling the lien.

This can be as simple as drafting a final letter and sending it to the property owner, or executing and notarizing a formal lien cancellation certificate (depending on state requirements).

If the lien does not produce payment, it will be necessary to take an additional collections step. Contrary to popular belief, construction liens are not permanent. In fact, they normally don't last very long at all and they cannot be renewed.

After filing a lien, if not immediately paid you will need to bring an action in court to "foreclose" or "enforce" the lien in some way. This process essentially converts your construction lien into more formal and permanent "judgment." The judgment can be executed by seizing property and through other techniques.

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3 Reasons its Critical to Lien

Are you uncomfortable by one customer's delay in paying for construction work? Are you putting off liening a project because your uncomfortable with the process or unsure of how to proceed?

Here are just three reasons why it's critical to lien a non-paying construction project.

Number One: You Can Only Have One Chance to Lien a Construction Project
Contractors have a unique and powerful legal remedy in construction liens...but not for long. Once your liening period has expired, you'll never get the chance to put a lien on that project again.

If you want to pursue your legal remedies without filing a lien, you'll be required to file a regular lawsuit for breach of contract - a process that may take years and cost you thousands. A construction lien is an adverse legal step against the non-paying party that only costs $235.00 (plus filing fees), and it places a restriction against the property that you can normally only achieve after years of litigation.

You only get one shot at filing your construction lien. Check your state's time requirements at ExpressLien.com.

Number Two: Liens Freeze Funds
Are you a subcontractor afraid that the contractor is getting paid from the property owner but not disbursing the funds down the ranks? Do you have to pay your material suppliers and subcontractors while being told from the contractor that it hasn't been paid by the owner?

Although the law does not require a freeze in funds, as a practical matter, filing a lien as a subcontractor against the property owner almost always causes the property owner to stop making further payments to the contractor. As a result of this "freeze" in funds, there is pressure on the contractor to pay the liening sub.

Many construction projects run into cash-flow concerns. Filing a construction lien is one way to prevent that cash-crunch from affecting your company.

Number Three: Get All Parties Involved
If you're unable to get paid on a construction project, you have a legal remedy under contract law against the person who hired you. If you contracted with a general contractor, for example, you could sue the general contractor for payment if it refuses to pay your company for its services. Since you did not contract with the property owner, however, you would be unable to sue him or her.

Construction liens, however, completely changes who is liable to you for your construction services. With a properly filed construction lien in the above example, you'd be able to file a lawsuit not only against the general contractor, but also against the owner. The owner may even be liable to you regardless of whether the general contractor had been paid for your work!

Clearly, this is a very powerful legal tool for contractors. Instead of relying on just one party to make payment to your company, a construction lien can make it possible for many parties to have liability for one party's non-payment.

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General Collection Letter Template

This basic collection letter template can be used by contractors who are seeking to collect accounts owed to it from a property owner.

Date

To: Name of Debtor
Address of Debtor
City, State, Zip of Debtor

Re: Your Company v. Name of Debtor
Amount Due: $_____

SENT VIA U.S. CERTIFIED MAIL
PARCEL NUMBER _____
& US FIRST CLASS MAIL

Dear Debtor:

This letter shall serve as formal written demand for immediate payment in full of the above-captioned past due amount.

Documentation verifying this debt is enclosed with this correspondence. Should payment in full not be forthcoming or should arrangements for payment not be made within thirty (30) day s from your receipt of this letter, appropriate collection procedures may be commenced against you.

[If your contract has provisions about penalties and/or attorneys fees, you will want to insert a paragraph warning the debtor that you will seek penalties, interest and attorneys fees in accordance with the contract terms].

Sincerely,
YOUR COMPANY

Your Name

Enclosures

Demand Letter on an Open Account Template

If you have an "open account" with the debtor, you will want to send a demand letter substantially similar to the template below. Open Accounts are provided special treatment under Louisiana law, with the benefit to creditors being that they are able to collect interest and attorneys fees as a matter of law.

The critical questions when collecting an open account are: (1) Is the debt an open account? and (2) Has the creditor taken the correct steps to collect on it, preserving its rights to obtain attorneys fees and interest?

The answer to this first question is discussed in the earlier sections of this toolkit. In general, however, contractors are infrequently able to capitalize on the open account laws in Louisiana, which are more ordinarily preserved to other professions and types of accounts. However, construction material suppliers are frequently able to use the open account laws.

Regarding the second question, the Louisiana Open Account law requires that you send a demand letter before qualifying to collect attorneys fees and interest. The demand letter must give the debtor information regarding the debt (invoices, contracts, estimates, photographs, etc.), and it must provide them with a certain amount of time to make payment on the account (30 days).

A demand letter in substantially similar form to the following should suffice to start the clock for your company under Open Account laws. Be sure, however, to enclose evidence of the debt with the letter, and to keep documentation to prove that it was sent and to prove exactly what was sent.

Date

To: Name of Debtor
Address of Debtor
City, State, Zip of Debtor

Re: Your Company v. Name of Debtor
Amount Due: $_____

SENT VIA U.S. CERTIFIED MAIL
PARCEL NUMBER _____
& US FIRST CLASS MAIL

Dear Debtor:

This letter shall serve as formal written demand for immediate payment in full of the above-captioned past due amount.

Documentation verifying this debt is enclosed with this correspondence. Should payment in full not be forthcoming or should arrangements for payment not be made within thirty (30) day s from your receipt of this letter, appropriate collection procedures may be commenced against you.

Furthermore, should you fail to make payment in full on this past due account within thirty (30) days as requested, please be advised that in addition to the principal due amount, we will seek attorney fees for the prosecution and collection of this claim in accordance with Louisiana Revised Statute Ann §§ 9:2781.

Sincerely,
YOUR COMPANY

Your Name

Enclosures

Demand Letter on NSF Check

The penalties for writing an NSF check can be severe. If your company seeks re-payment of the NSF check in accordance with Louisiana statutes, it will be positioned to take advantage of these penalties, applying great pressure to the party who wrote the NSF check to make payment.

The following is a sample template letter that may be sent after receipt of a NSF check.

Date

To: Name of Debtor
Address of Debtor, City, State, Zip

Re: Your Company v. Name of Debtor,
Amount Due: $_____

SENT VIA U.S. CERTIFIED MAIL
PARCEL NUMBER _____
& US FIRST CLASS MAIL

Dear Debtor:

You are hereby notified that a check number _____ issued by you on ___/____/_____ drawn on _____(Bank Name) and payable to _____ has been dishonored.

Pursuant to Louisiana law, you have fifteen (15) working days from receipt of this notice to tender payment in full of the amount of the check plus a service charge of $25.00 or 5% of the amount of the check, whichever is greater, the total amount due being $_____.

Unless this amount is paid in full within fifteen (15) working days, the holder of check may file a civil action against you for two times the amount of the check, or $100, whichever is greater, plus any court costs and reasonable attorneys' fees incurred in taking this action. See Louisiana Revised Statute Ann §§ 9:2782.

In order to avoid the substantial additional costs and consequences associated with issuing worthless checks, please immediately redeem this check by delivering us a cashier's or certified check or money order in the amount indicated.

Sincerely,
YOUR COMPANY

Your Name

Demand Letter on Contractor Who Misapplied Funds

When a contractor misapplies funds as above-discussed, you may send this template letter to put that contractor on notice of its default and to demand payment under the statute.

Date

To: Name of Debtor
Address of Debtor
City, State, Zip of Debtor

Re: Your Company v. Name of Debtor
Amount Due: $_____

SENT VIA U.S. CERTIFIED MAIL
PARCEL NUMBER _____
& US FIRST CLASS MAIL

Dear Debtor:

This letter shall serve as formal written demand for immediate payment in full of the above-captioned past due amount.

Documentation verifying this debt is enclosed with this correspondence. Should payment in full not be forthcoming or should arrangements for payment not be made within thirty (30) day s from your receipt of this letter, appropriate collection procedures may be commenced against you.

Please be advised that Louisiana Revised Statute Ann §§ 9:4814 provides that "no contractor, subcontractor or agent of a contractor or subcontractor, who has received money on account of a contract for the construction, erection or repair of a building, structure, or other improvement...shall knowingly fail to apply money received as necessary to settle claims to sellers of movables or laborers due for the construction or under the contract."

Failing to properly apply any money you have received for the work in controversy is a violation of this statute, and should you fail to make payment within seven (7) days of the above-stated amount, we will seek attorneys fees and statutory penalties in accordance with Louisiana Revised Statute Ann §§ 9:4814. .

Sincerely,
YOUR COMPANY

Your Name