

# BERNSTEIN-BURKLEY, P.C.

*Attorneys at Law*

A BUSINESS APPROACH  
TO LEGAL SERVICE<sup>SM</sup>

## “Ask the Legal Professional”

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### BANKRUPTCY

**Q** My customer has fallen behind and wants me to continue selling to them on the promise they will get caught up. What should I do?

**A** If the customer is one that you want to continue doing business with, one of the first things to do is to assess their financial situation. Do they have enough free cash flow to pay for future orders? If not, than you shouldn't sell to them on credit any longer, and you'll need to decide whether it's time for collection action. If they can pay for future orders, you must next assess whether they have enough free cash flow to pay off their previous debt. While you want to be paid in as short as time as possible, you also don't want to have them agree to something they simply are unable to perform.

After you agree on the basic repayment terms, you should reduce the payment plan to a promissory note that contains a confession of judgment clause. This will enable you to quickly take action if they default. The promissory note should contain very clear terms as to when payment is due. The more frequent the payments, the faster you will know if the customer is going to default. Finally, if you do agree to continue selling future orders on credit, make sure that future orders are less than the monthly repayment amount. It is recommended that you continually reducing your exposure until the customer is rehabilitated and back in good standing.

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Kirk B. Burkley, Esquire  
Bernstein-Burkley P.C.  
Suite 2200 Gulf Tower,  
Pittsburgh, PA 15219-1900  
Ph: 412-456-8100  
Fax: 412-456-8135  
kburkley@bernsteinlaw.com  
www.bernsteinlaw.com