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Recovery Advisers

Credit Insurance Claims Management & Recovery Services



Managing PH Engagement After Indemnification

Aman Union Third Technical Training
Beirut, 27 April 2013

Session Learning Outcome

- Recognize potential hazards presented by policyholders after indemnification.
- Consider and devise appropriate strategies to mitigate policyholder non-engagement hazard.
- Consider and plan for appropriate claims recovery strategies requiring minimal policyholder engagement.
- Recognize potential situations where policyholder engagement is unavoidable.

Outline

- Types of hazards presented by indemnified policy holders.
- Case Studies.
- Managing PH Lack of Engagement After Indemnification
- PH engagement is still required.
 - Set-off claims.
 - Performance claims (mid-term insurance more often).



General Overview of

POLICYHOLDER HAZARDS

Categories of Hazards

- Most types of insurance policies face a level of hazards from policyholders.
 - Moral Hazards – Policyholders take risks not normally taken without insurance.
 - Morale Hazards – Policyholders' indifference to losses incurred by the insurer.
- Credit Insurance faces a wide set of policyholder hazards specific to this type of insurance.
- Our focus in this session is on policyholder non-engagement after indemnification – a form of morale hazard.



POLICYHOLDER HAZARDS AFTER INDEMNIFICATION

Some PH Hazards Encountered After Indemnification

- Requesting debtors to prioritize payment of uninsured debt.
- Acknowledging and / or assuming responsibility of disputed transactions.
 - Prejudicing the interests of the ECA.
 - Presenting the debtor with the opportunity for set-off claims.
- Disengagement from the recovery processes.
- Such hazards have a significant affect on claims recovery efforts.

Non-engagement in Recovery Processes

- Signs of policyholder non-engagement in recovery processes.
 - Refusal or delays in presenting original transaction documents.
 - Refusal or delays in preparing necessary power of attorney.
 - Inability or refusal to provide accurate statements of accounts summarizing transactions with the debtor (including transactions preceding the claim).
 - Refusal or delays in providing information on [disputed] historical trade (transactions preceding the claim).
 - Delays in providing crucial / time-sensitive information and / or documentation.

Common Reasons Given For Disengagement

- Original transaction documents no longer available.
- Change in management and / or personnel responsible for this transaction(s).
- Corporate policy restricts provision of Powers of Attorney to external lawyers.
- Management and / or personnel not available to participate in formal action (in cases where witnesses are required).
- Lack of time and / or resources required to provide the required information.



Case Study I

**ORIGINAL TRANSACTION
DOCUMENTS NOT AVAILABLE**

Originals Not Available

- Claim amount: USD 1.9m
- Debtor's jurisdiction: Giza, Egypt.
- Type of claim: Undisputed / Protracted default.
- Background:
 - Debtor in protracted default since 2009 due to economic slowdown.
 - Amicable recovery attempts failed.
 - ECA instructed us to litigate with the understanding that original transaction documents will be presented by the PH.
 - After filing the claim, PH reported that originals are no longer available as they are archived in a different country.

Originals Not Available - Result

- Requested the appointment of court expert to inquire with related third parties.
 - Increased the duration of the court case substantially.
- Requested the entry of the customs offices, carriers, and clearance agents as new defendants in the claim to compel them to present proof of delivery.
 - Increased the duration and complexity of the court case substantially.
 - Increased the risk of the claim as the cooperation and response of the new defendants is not guaranteed.



Case Study II

POA CREATED TOO LATE

PoA Created Late

- Claim amount: USD 100,000.
- Debtor's jurisdiction: Dubai, UAE.
- Type of claim: Undisputed / Protracted default.
- Background:
 - Debtor in protracted default since 2008 due to low cash reserves.
 - Amicable recovery was ineffective and very slow.
 - Litigation was unavoidable.
 - PH promised to provide us with required PoA.
 - PoA was finally created 18 months after our request.

PoA Created Late - Result

- Debtor commenced winding down (liquidating) the company after almost one year of amicable recovery attempts.
- Lack of PoA prevented us from commencing legal action or joining the liquidation.
- The delay in PoA resulted in total loss of the claim amount.



Case Study III

PH COMPROMISED TO RESUME TRADE

PH Compromised to Resume Trade

- Claim amount: USD 150,000.
- Debtor's jurisdiction: The Netherlands.
- Type of claim: Disputed.
- Background:
 - Debtor was disputing breach / non-performance of contract (product quality claims).
 - The dispute was related to deliveries preceding the claim transactions.
 - Debtor withheld payment to compensate himself for alleged damages that resulted from breach of contract (set-off).

PH Compromised to Resume Trade - Result

- PH resumed business with the debtor before the ECA commenced formal action for debt recovery.
- PH email communications with the debtor promised “better quality”, and “fewer problems” with future deliveries.
- PH email communications implied acceptance of responsibility of previous quality claims.
- The communications increased the risk of formal action and consequently reduced the chances of success. We advised the client against litigation.



Case Study IV

PRIORITIZE REPAYMENT OF UNINSURED DEBT

Prioritize Repayment of Uninsured Debt

- Claim amount: USD 6m.
- Debtor's jurisdiction : Aleppo, Syria.
- Type of claim: Undisputed / Protracted default.
- Background:
 - Debtor was a private operator of a mass-transit / public transport network.
 - Debtor faced disruptions due to the political instability, rising fuel prices, and deteriorating security situation.
 - Policyholder had uninsured receivables owed by the debtor.
 - Policyholder pressured the debtor to commence settlement of the uninsured debt first.

Prioritize Repayment of Uninsured Debt - Result

- We insisted on the debtor meeting his obligations towards the ECA.
- As a compromise, our client accepted the allocation of 33.3% of each instalment towards the policyholder's uninsured debt.
- The security situation in Syria deteriorated which made adherence to the repayment plan and complete settlement of the debt impossible.
- Debtor repaid approx. 40% of the claim amount.



Case Study V

PARALLEL NEGOTIATIONS

Parallel Negotiations

- Claim amount: USD 174k.
- Debtor's jurisdiction : Sharjah, UAE.
- Type of claim: Undisputed / Protracted default.
- Background:
 - Debtor imported wheel rims of various specifications / destined to various markets (re-export).
 - Debtor's initial reasons for non-payment was slow markets (local and export markets).
 - PH remained in communication and negotiations with the debtor for the settlement of the claim invoices.

Parallel Negotiations - Result

- Debtor expressly refused negotiations with us; claiming that they are in settlement negotiations with the policyholder.
- Policyholder and debtor agreed to a settlement based on 50% of the claim amount.
- We believe that full settlement was possible. However we were not in a position to re-negotiate the settlement terms.



Case Study VI

REASSIGNMENT OF RECEIVABLES

Reassignment of Receivables

- Claim amount: USD 312k.
- Debtor's jurisdiction : Riyadh, Saudi Arabia.
- Type of claim: Undisputed / Protracted default.
- Background:
 - Debtor imported consumer bags (travel suitcases, school bags, etc.).
 - Reason for non-payment was slow market and wrong import timing.
 - Policyholder negotiated a repayment plan with the debtor.
 - Policyholder instructed the debtor to pay an unrelated third party.

Reassignment of Receivables - Result

- After paying the first instalment we intervened and requested that the debtor stops paying the unrelated third party.
- The ECA instructed the policyholder to inform the debtor to pay them (the ECA) directly instead of the unrelated third party.
- The policyholder repaid the amount of the first instalment back to the ECA.

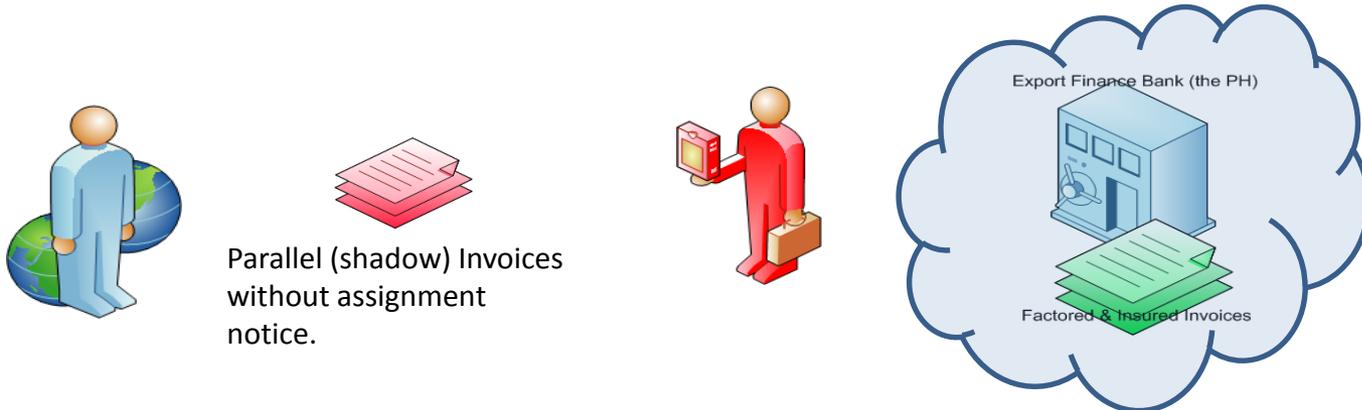
Case Study VII

FACTORED INVOICES + ASSIGNED RECEIVABLES

Export Finance / Factoring

- Export Finance
 - Ex. Dev. Bank finances exporters sales.
 - Export invoices assigned to bank + Credit insurance policy (combination serve as collateral).
 - Bank expects / requests buyer to pay *them* as per assignment terms.
- Exporter presents buyer with parallel / shadow invoices without mention of assignment to bank.
- Exporter collects assigned receivables.

Compliance with the assignment and notification rules of the buyers' jurisdiction is critical.





Recommendations for

MANAGING PH LACK OF ENGAGEMENT AFTER INDEMNIFICATION

Plan for Lack of Engagement

- Commence thorough claim analysis and investigation as early as possible [i.e. before indemnification].
 - Identify and investigate potential disputes with the debtor.
 - Evaluate feasibility, risks, and requirements of formal action (litigation / arbitration & enforcement)
- Collect as many original transaction documents as possible prior to indemnification.
- Plan for and collect documents required formal action.
 - Get super-legalized PoA in case formal action via the PH is planned.
 - Serve notices of debt assignment in compliance with the requirements of the debtor's jurisdiction in case of formal action directly by the ECA.

PH Involvement May Still Be Required

- Aiming for 100% PH non-engagement is unrealistic.
- PH may still be required to stand as witness in court, sign affidavits, respond to expert questions, etc. as required in some jurisdictions.
- PH may still be required to reply / defend counter claims and set-off claims presented by the debtor.
- PH is required not to communicate or resume business with the debtor in a manner that prejudices the rights of the ECA or presents additional risks to formal action.

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Thank You

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