

# OPERATIVE GUIDES

## for Forwarders and Receivers Adopted by The Commercial Law League of America

**Effective date of this edition of the Operative Guides is May 2, 2019**

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**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That all provisions of any prior "Operative Resolutions" of The Commercial Law League of America are hereby repealed and made void; and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. Unless otherwise stated, all claims are in U.S. Dollars.

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 Fee. A fee 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, following acknowledgement of a claim from a forwarder or creditor. The fee 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 fee 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 contingent fee 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 or court related costs (such as process service fees or court reporter fees) are to be expended.

1.10 Retainer. A retainer is a sum of money paid in advance to retain the services of an attorney.

### 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 supersedes or which further explains these Operative Guides, shall upon the filing of a complaint subject such member to disciplinary proceedings by the League.

### **PART III – CONTRACTUAL COMPENSATION**

#### **A. Fees**

3.1 Unless otherwise expressly agreed, **fees** are contingent on the recovery of money or property. Upon placement of a claim, the forwarder shall state the total fees on that specific claim. If a forwarder requests a receiver to charge a contingent fee lower than the receiver's regular fee, the forwarder should explain to receiver the reason the forwarder is lowering the fees on that claim.

3.2 In all cases, terms stated in a forwarding contract 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 contingency 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 fee on the aggregate of all installments collected shall not exceed the total fee permitted upon such aggregate by the forwarding contract.

3.4 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 fees 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 contingency 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 contingency fee provided for in the forwarding contract, as provided in guide 6.1.

3.5 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 fees 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 not entitled to 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 was furnished to the receiver by the creditor or the forwarder within a reasonable time and the receiver had not spent significant time working the claim (see guides 3.9b and 7.1f).

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, the fee 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, unless otherwise agreed upon between the forwarder or creditor and the receiver.

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, and thereafter fails to remit fees due to the receiver when the money is collected, 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 Fees previously earned, or (b) in the event of a full or partial collection, the receiver shall be entitled to full fees on the amount collected, irrespective of the fees 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.

3.7 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 forwarding. 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 forwarding will be deemed a single claim.

3.8 A receiver is not entitled to € compensation in any of the following situations:

a. Where the receiver returns the claim prior to suit as uncollectible, 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 uncollectible 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 contingency fee. Unless otherwise agreed between the forwarder and receiver, and where not in violation of the law of the forum, money collected should be first allocated to principal, then to interest, fees, and additional sums awarded (see Section 4.3), and then to costs.

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 fees, 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 fees, 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 fees 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.

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, shall be deemed to be the property of the creditor and shall be treated for purposes of computing fees, the same as interest, unless prohibited by law. If so prohibited, the receiver shall retain the same as his own, and shall compute his fee upon the collection of principal and interest only, and shall deduct the amount so retained from the fee computed in accordance with the forwarding 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, the receiving attorney shall adhere to their applicable Rules of Professional Conduct or comparable in any foreign country or state.

## **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 acceptance of 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 in the form of suit requirements.

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 any fee. It belongs exclusively to the receiver unless there is a division of service and responsibility between the receiver and an attorney forwarder.

5.3 Suit fees are normally contingent, although a non-contingent suit fee should be provided on claims where,

a. The forwarder, at time of forwarding, has evidence of a risk of non-collectability in the receiver's jurisdiction or is knowledgeable of a potential dispute that could compromise the receiver's effectiveness in achieving resolution;

b. The receiver, upon commencement of work on a forwarded claim and prior to the presentation of suit requirements and acceptance of said requirements by the forwarder/client, uncovers knowledge of a potential dispute, circumstance or issue that deems the claim to be at a high risk of non-collectability in the receiver's jurisdiction;

c. The receiver is forwarded a claim where suit is commenced in a venue wherein the debtor is not located for purposes of enforcement in another jurisdiction.

d. Where the venue of the lawsuit is in a remote location, thus necessitating unusual time and effort for a receiver to get to that location to appropriately litigate the case

5.4 A suit fee is not earned until suit has been filed.

a. Any non-contingent suit fee shall be applied against the total suit fee set forth in the forwarding contract at the time the claim was referred by the forwarder to the receiver, unless otherwise agreed to in writing.

5.5 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.

5.6 A suit fee, being compensation for legal services rendered, may not be divided between the receiver and any other person except as provided by the receiver's applicable Rules of Professional Conduct or comparable in any foreign country or state.

## **PART IV – NON-CONTRACTUAL COMPENSATION**

### **A. Compensation in Addition to the Contract**

6.1 In addition to the fee 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 suit fee if notice of the possibility of such additional fee has

been given in the suit fee requirements letter.

### **B. Reasonable Compensation as a Substitute for Contractual Compensation**

7.1 Normally, the compensation to be paid to the receivers 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 between the forwarder and the receiver.

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, 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, and the receiver has spent significant time on the claim and/or filed suit before the dispute is discovered, then the receiver may request 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. The term "improperly interfere" shall include, but not be limited to:

(1) the creditor's refusal or inability to provide substantiating documentation to the forwarder to enable the forwarder to proceed with collection efforts;

(2) the creditor's refusal or inability to sign sworn statements requested by the forwarder for court purposes

(3) the creditor's refusal or inability to provide a witness with knowledge of the facts to the forwarder once the matter is already before the court;

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, and has made demand, 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 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.

7.3 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.

7.4 Where suit is authorized and commenced, and the creditor subsequently requests that the receiver close their file, or the creditor fails to furnish the receiver with the evidence or testimony to substantiate the claim, or to comply with discovery, disclosures of documents and/or witnesses, 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. In this situation, the forwarder shall cooperate with the receiver and attempt to recover reasonable compensation for services rendered.

7.5 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.

7.6 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 if the forwarder is entitled to reasonable compensation for its services.

### C. Counterclaims

7.9. Where a receiver has a reasonable expectation that a counterclaim will be filed, the receiver shall notify the forwarder/creditor at the time suit is recommended; and that any counterclaim interposed must be defended.

a. In the event that a forwarded claim is litigated, and the defendant files a counterclaim, the receiver shall notify the forwarder/creditor of the existence of the counterclaim and any particulars associated with the counterclaim, i.e. complaint papers, etc. The forwarder/creditor will respond to the receiver as to their intentions in defense of the counterclaim. The creditor has the right to substitute its own counsel of choice to defend the counterclaim or may elect to retain the receiver as the defender of the counterclaim.

b. The counterclaim is a separate issue from the original forwarded claim and, unless otherwise agreed to in writing by the creditor/forwarder/receiver, the defense will be handled at the attorney's standard hourly rate.

c. The costs associated with the counterclaim are separate from the original forwarded claim, as are any contingent fees that would occur should any payment or settlement be conditioned as part of the resolution of the counterclaim. In other words, should the original forwarded claim be paid in whole or in part, the receiver remains entitled to the agreed upon contingent fees as stated in the forwarding letter, regardless of whether the receiver is defending the counterclaim or the creditor has elected to utilize a counsel of their choice.

### 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 Where suit is authorized by the creditor, money expended in service of process or endeavoring to serve process on defendants by a receiver is a legitimate expense that the creditor must pay.

8.4 Upon completion of a receiver's efforts on a claim, be it by payment in full, settlement or closure for any reason of uncollectability, including recall of a claim by the forwarder/creditor, all unused advance court costs should be returned to the forwarder/creditor along with an accounting of any expenditures that the receiver incurred during the course of their efforts. Unused advanced costs should not be considered

as non-contingent compensation to the receiver, unless otherwise agreed upon between the forwarder and the receiver, and should be returned to the forwarder/creditor as soon as possible.

## **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 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 debtor desires to pay a claim in installments but shall not accept installment payments without authorization from the forwarder/creditor.

9.4 A receiver shall promptly return all papers and/or remittal 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, the receiver shall remit per the creditor's instructions.

9.6 A receiver shall account for and remit on:

- a. Principal
- b. Costs, on which no fee is calculated
- c. Interest
- d. Statutory fees (where permitted)
- e. Contractual fees (where permitted)

9.7 To minimize receiver costs of handling claims under \$2,500.00, 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 dating's based on local procedure

9.8 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 fees and service charges. If the amount due the creditor is less than \$100, remittance may be deferred for an

additional 30 days, provided notice of such deferral of remittance is provided to 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 It shall be the duty of the forwarder to assure that each receiver is paid whatever contingent and non-contingent fees which have been agreed to on behalf of the creditor. Notwithstanding the foregoing, in the event the creditor receives direct payment and does not remit the agreed upon forwarder/receiver's fees, the forwarder shall use its reasonable efforts to cooperate with the receiver to enable those fees to be paid.

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 collection 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's agent for the creditor, accept payment from the debtor; and the receiver shall not be entitled to any fees on any payments which he does accept.

## **B. Upon Forwarders**

12.1 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.

12.2 No forwarder shall use the name of an attorney in the assertion of rights against a third party unless specifically authorized by the attorney.

12.3 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.

12.4 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.

12.5 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.

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

12.7 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.

12.8 Subject to guide 3.2, no forwarder shall discourage a receiver from requesting a higher fee 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.