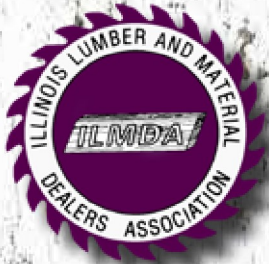
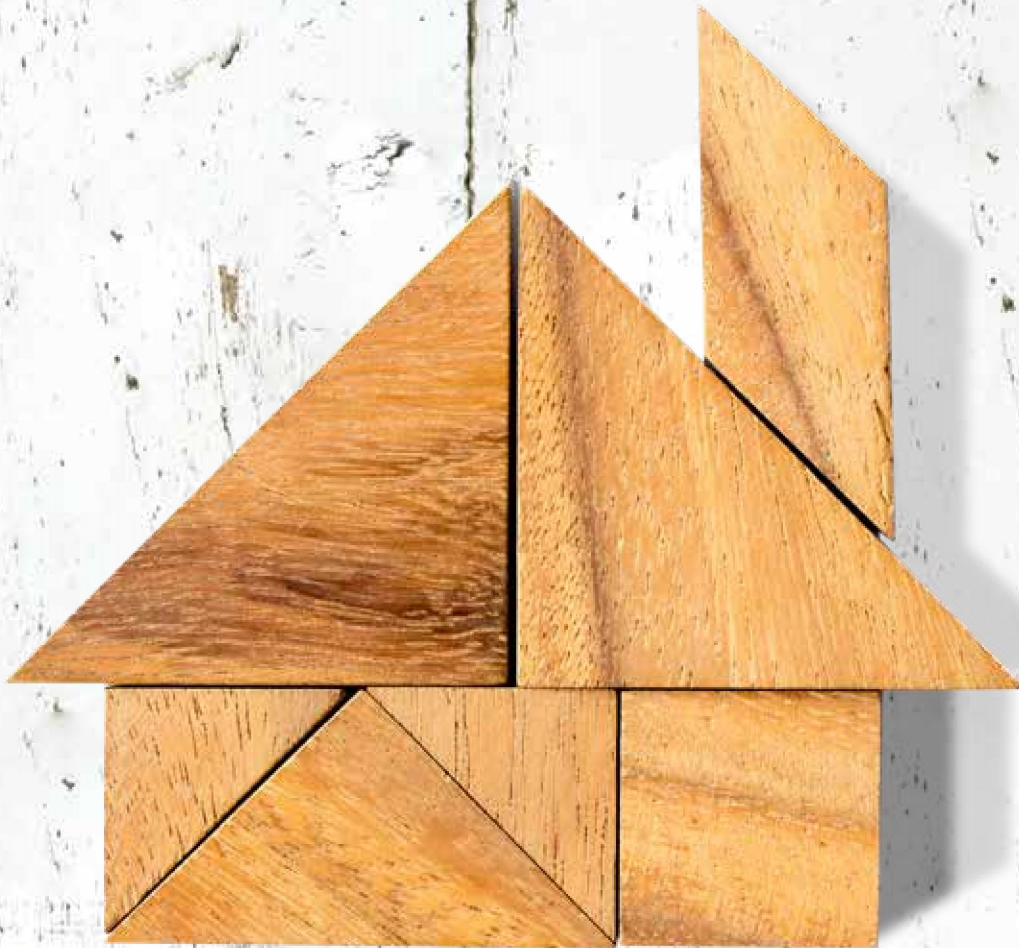


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# Collecting On Commercial Debt: The Philosophy of the Fight

By Adam Whiteman, Commercial Collection Attorney

I write to you as a proud new Associate Member of the Illinois Lumber and Material Dealers Association. I am a commercial debt collection attorney with decades of experience helping companies collect the money that is owed to them.

I will be contributing regularly to the ILMDA newsletter providing you with insights I have gleaned over the years that will help you to collect on your debts and possibly even avoid them in the future. For today, I would like to describe for you some of the debtor characters I have encountered over the years and my philosophy in dealing with them. Walking into a courtroom with a brief case full of arguments is much the same as walking into a saloon in the Old West and demanding justice. It's a fight. There are no two ways about it. Once a debtor has decided you need to sue them to collect, they have basically told you to "come and get it". It is essential, therefore, that you have an advocate who is prepared for a fight, can endure challenges presented, and ultimately prevail. This takes determination, grit and creativity. Above all, though, it takes a willingness and ability to fight.

Just like a fight, different debtors have different tactics. Let's look at a few.

**The No Show.** Like a bar fight in the Old West, sometimes when you call someone out, they hide in the back room. This guy will simply never be anywhere. He will avoid service of summons. He will not show up and allow a default to be entered only to ask the court for time to get an attorney. When he finally gets an attorney, they usually come to realize their client won't pay their bills and they withdraw. The No Show then cycles through a number of attorneys constantly seeking to delay engagement or progress of the collection case. Persistence is the key here. My firm recently served a defendant while he was on his riding lawn mower doing yard work.

**The Runner.** The runner moves around. His tactic is to evade and confuse. This type of debtor will duck and dodge any question. He will never be straight with you in the hopes of tricking you or even the court about the facts of the case. He will set up his company in someone else's name. Many professional debtors put their companies in their wife's name even though she has nothing to do with the business. One fellow I came across put his company in his mother's name. He only agreed to settle up and pay when we sent his elderly mom a notice to take her deposition.

**The Big Talker.** This guy tries to act like your friend. Of course he wants to get this case settled. He just needs answers to questions about 120 invoices going back 3 years. He may even sign a settlement agreement with no intention of complying with it. Don't be tricked into delays with this debtor. Also, take advantage of the Big Talker's cooperation while you have it. The Big Talker will make promises to pay, and he will tell you there is nothing to worry about. In such a case, you should ask the debtor to secure his promise with a lien on his home or boat or motorcycle. After all, if you are

not supposed to worry about getting paid, then he should not have to worry about you foreclosing on the security.

**The Trickster.** This guy is constantly evading the truth. Everything he does is tinged with a coating of fraudulent or misleading conduct. He will make false claims of payment. He will set up a new company with a deceptively similar name and not update his credit agreement. He will issue NSF checks. He will promise payment if you just make this one big delivery for which he is expecting a big pay day. He will use all of his company's money for fancy cars and trips and then declare bankruptcy. The best way to deal with the Trickster is to nail down the facts as early as possible. Examine public records regarding his entities and other lawsuits. Draft the complaint and discovery in such a way that you get valuable admissions at the earliest stage of litigation. Treat his deposition like brain surgery and be prepared to deal with his deception by confronting him with facts, facts and more facts.

**The Penniless Debtor.** This guy will have some debt relief company call you to work out a deal for pennies on the dollar. Or he will simply tell you he has no assets and you won't be able to collect anything, so what's the point? The trick here is to be the last one standing. Many other creditors will give up. You should demand tax returns and bank records. See where his money is, and where it has been going. Bank records often tell the tale. Follow the money.

**The Big Guns.** This guy has a friend at a major law firm who comes in with all kinds of motions, counterclaims and accusations. He calls foul and flops around in the court room acting like his debtor client is the real victim even though he has racked up \$450,000 worth of debt with your company. Like many such fighters, this Big Firm attorney's energy is directly related to the balance left on his \$5,000 retainer. The key here is to weather the storm of blows. Deal with them one by one with dispassionate grace. You will impress the judge. The Big Firm will realize they can't get you to back down with their bluster and paperwork. A smaller law firm with reasonable fees can be a real benefit in such a battle when the Big Firm is meanwhile demanding \$500+/hour from his client. If your debt is legitimate, the opposing counsel will see that. Your goal here is to prove to opposing counsel that you have a good case with good facts and you are not going away.

It is critical when collecting on a commercial debt that you have an attorney in your corner who is an experienced fighter. Such an attorney will recognize patterns in the debtor's behavior and often can prevent problems before they occur. Cutting off the ring so to speak. Don't let debtors knock you down or harm your company. Know your opponent and fight back with calm deliberation and with fists full of facts. **Now get out there and Get Paid!**

**Adam Whiteman, Commercial Collection Attorney**  
118 N. Clinton Street, Suite LL 380 - Chicago, IL 60661  
[Adam@WhitemanBorden.com](mailto:Adam@WhitemanBorden.com) - (312) 655-1000