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Attorney/Client Privileged Communication**

**Law Offices of Roland Gary Jones  
Preference Defense Worksheet**

**Please review the following questions so we can better help you prevail in your preference defense.**

**We would be happy to review the questions and answers with you over the telephone or you can write on the form and fax back to (212) 202-4416.**

**A Word file of this form is available by email or on our website at [www.rolandjones.com](http://www.rolandjones.com). The access code for the document is "rgj".**

**Please do not hesitate to call with any questions.**

**1. Form Information**

- a. Date form completed?**
- b. Name of person filling out form?**
- c. Name of your Company?**
- d. Address of your Company?**
- e. Telephone?**
- f. Fax?**
- g. Your email address?**
- h. Website address?**

**2. Your business**

- a. Who at your company and who outside of your company has in depth knowledge of your company's receivables management, customer relations pertaining to receivables and collections activity and can sign an affidavit or testify in connection thereto?**
- b. Who at your company and who outside your company has in depth knowledge of your industry's receivables management, customer relations pertaining to receivables and collections activity and can sign an affidavit or testify in connection thereto?**

- c. Do you have any management level employees that have worked extensively for competitors?**
- d. Are you willing to testify in court or have an employee testify in court?**
- e. What is your SIC Code?**
- f. If you do not know the SIC Code, how would you describe your particular industry?**  
(For example, "wholesale sales of dry goods to retail stores.")
- g. What is the name of the bank where you deposited checks from the Debtor?**
- h. What kind of service or product did you supply the Debtor, if any?**
- i. Do your employees work full time or per project?**
- j. Do you subcontract out work performed for the Debtor?**

**3. For the person indicated in answer to question 1(a) who will execute an affidavit and/or testify:**

- a. How long have you worked for this company?**
- b. What is your position with this company?**
- c. What exactly are your duties at this company?**
- d. How would you describe your overall profession? (For example: "business manager" or "accountant".)**
- e. What was the last company you worked for and when did you leave that company?**
- f. How long have you been in this business/profession?**
- g. When and how did you first learn of the Debtor's bankruptcy filing?**
- h. What hardship would it cause you to travel to the location of the Debtor's bankruptcy filing for a deposition (if any)? What kind of disruption would your absence from work entail (if any)? Do you regularly travel to that location for business? Does your firm typically pay for your travel to this location?**

- 4. Length of relationship.**
  - a. How long have you had a business relationship with the debtor?**
  - b. When did you start doing business with debtor?**
  - c. Was the volume of business consistent over time?**
  - d. What was the gross yearly volume of business on average?**
  - e. What is your profit margin on goods or services sold to the Debtor?**
  - f. What is your company's gross yearly income?**
- 5. Stability of relationship.**
  - a. Did the debtor usually pay on time?**
  - b. Did the relationship change in the 12 months prior to the bankruptcy filing? For example, were payments much slower in the last 3 months? 6 months? 12 months?**
  - c. Did the volume of business change over time? How?**
- 6. Nature of relationship.**
  - a. What service or product did you supply to the Debtor?**
  - b. Did you have a special relationship with the debtor? For example, were you a prime supplier to the debtor?**
  - c. How necessary were you to the debtor's business? For example, if you stopped doing business suddenly with the Debtor would you be immediately replaceable? (For example, would the Debtor have trouble doing business on your terms with other another similar supplier?)**
  - d. Who did you normally conduct business with when dealing with the Debtor? Name and title, please.**
- 7. Terms of relationship.**
  - a. Was there a written contract?**
  - b. Were there written payment terms?**

- c. **Were the terms comparable to your terms with your other customers?**
- d. **Did the Debtor ever deviate from those terms?**
- e. **If yes, did the Debtor usually deviate from the terms?**
  - i. **If yes, when?**
  - ii. **If yes, by how much?**
  - iii. **if yes, was the deviation accepted by you?**
  - iv. **if yes, was the deviation similar to other customers of yours?**
  - v. **If yes, why did you accept that deviation?**
- f. **Did the Debtor's lateness ever cause you to reduce your volume of business with the Debtor?**
- g. **Did you have other customers that paid late during this time? Who were they and how did they compare in their payment history to the Debtor? We may need a spreadsheet or list of other customers to show that the Debtor's timing was not extraordinary.**
- h. **Do your invoice forms indicate on the invoice the lateness of the amount owed? For example, is there a box for 30 days, 60 days and 90 days?**
- i. **Were your terms similar to most other companies in your industry?**
- j. **If the Debtor deviated from your terms, was your acceptance of the deviation normal for your industry?**
- k. **What is the market share for your company in your industry, nationally and locally? For example, does your company represent more than 5% of the sales volume in this state? Nationally?**
- l. **Did the Debtor indicate on its checks which invoices to which payments the checks were to be applied? If not on its checks, did it indicated how it wished its payments to be applied verbally or in any writing?**

**8. Collection attempts**

- a. Did you ever send "dunning" letters to the Debtor?
- b. Did you ever put a credit limit on the Debtor?
- c. Did you ever raise prices for the Debtor and not for other customers?
- d. Did you ever charge interest on late payments by the Debtor?
- e. Did you ever demand COD payments from the Debtor?
- f. Did you ever turn your account with the Debtor over to a collection agency?
- g. Did you discuss internally any "game plan" to obtain payment from the Debtor?
- h. Did the Debtor ever bounce any checks?
- i. Did you ever threaten to sue the Debtor?
- j. Did you ever threaten to hold back product from the Debtor?
- k. Did you ever have an attorney call the Debtor?
- l. Did any of your collection attempts with the Debtor differ dramatically from attempts to collect late payments from your other customers?
- m. Would most other companies in your industry act similarly? How do you know that?

**9. Knowledge of Debtor.**

- a. Did you know that the Debtor would file for bankruptcy?
- b. Did you have any indication that the Debtor would file for bankruptcy?
- c. When did you first learn of the Debtor's bankruptcy and how?
- d. What action did you take, if any, upon learning of the bankruptcy?
- e. Did you have any personal knowledge of the Debtor's balance sheet or cash flow prior to the bankruptcy filing?
- f. Did the Debtor mislead you prior to the bankruptcy filing as to its financial condition?
- g. Do you have any reason to believe that the Debtor was solvent (had assets greater than liabilities) prior to the bankruptcy filing?

- h. Do you have any belief or information that fraudulent activity caused this bankruptcy and/or your losses in this case?**

**10. Workouts**

- a. Did the Debtor ever enter into a workout arrangement with your company to pay past debt over time?**
- b. If yes, when was the last time you entered into a workout agreement with the Debtor?**
- c. If yes, was that workout initiated by the Debtor or by your company?**
- d. If yes, how was the workout finalized? Was there a letter or other contract?**
- e. If yes, were the payments made pursuant to the workout agreement?**
- f. If yes, were any of the alleged preference payments part of that workout agreement?**
- g. If yes, how long was the workout? For example, how many payments over how many months?**
- h. If yes, how many payments were actually made?**

**11. Landlord issues**

- a. The questions in this section apply to landlords only:**
- b. How important to the Debtor was the space. For example, without the space would the Debtor be forced to halt operations?**
- c. Did the Debtor assume a lease with you after the bankruptcy filing?**
- d. Did you enter into any written stipulations with the Debtor in the year prior to or after the bankruptcy filing?**
- e. Did the Debtor continue to use the space after the bankruptcy filing?**
  - i. If yes, did the Debtor pay for that use?**
  - ii. If yes, did you make any motions in bankruptcy court compelling payment?**

**12. Security interests**

- a. Are you aware of any security interest that your company possesses against any property controlled by the Debtor?
- b. Did you provide services that involve warehousing or repairing to the Debtor?
- c. Did you ever voluntarily relinquish a security interest in property you sold to the Debtor? When?
- d. Did you lease any property to the Debtor?
- e. Did you fix any property of the Debtor?
- f. Did you warehouse any property of the Debtor?
- g. Did you transport any property of the Debtor?
- h. Did you lend any money to the Debtor?
- i. Did you give any property to the Debtor to sell on consignment?

**13. Claims against the Debtor.**

- a. Was your company owed money prior to the bankruptcy filing?
- b. Did you file a proof of claim in this bankruptcy case?
- c. Did your company supply goods or services to the Debtor after the bankruptcy filing?
  - i. If yes, have you been paid?
- d. Did your company supply goods or services to the Debtor during the 3 months prior to the bankruptcy filing?

**14. Alleged Preferential Payments by Debtor.**

- a. How was the alleged preferential payment received? For example, was the payment by check or by other means? (For the questions that follow we assume you were paid by check.)
- b. When exactly (date and time) did the alleged preferential payment to you by the Debtor actually clear the bank?
- c. When exactly did you receive the alleged preferential payments?

- d. Did you receive any payments from the Debtor after the bankruptcy filing?**
- e. Were the alleged preferential payments larger than usual?**
- f. Did the check(s) match the amount on the invoice(s)?**
- g. Did the check(s) reference the invoice(s)?**
- h. How much time elapsed for each payment between the date on the applicable invoice and the time the alleged preferential payments were actually received by you?**
- i. Did you commence the work or deliver the product prior to receiving the alleged preferential payments?**

**15. Generally**

- a. Do you have copies of invoices sent to the Debtor for the 1 year prior to the bankruptcy filing?**
- b. Do you have a computerized record of your collection history with the Debtor. For example, can you print out a spreadsheet of when the Debtor was invoiced and when the Debtor paid for every transaction during the year prior to the bankruptcy filing?**
  - i. Can this record be exported to Microsoft Excel?**
  - ii. This data will have to be analyzed in depth by our firm. Are you willing to input the data into Microsoft Excel or would you prefer that we do that? (We charge \$75 per hour for paralegal time.)**

**16. Conduit Defense**

- a. Did your company act as a broker for the Debtor?**
- b. Did your company pay invoices on behalf of the Debtor?**

**17. Property of the Debtor**

- a. Were the funds paid to you by the Debtor, which the Debtor claim are preferential, return to you of a deposit that you or others placed with the Debtor?**
- b. Were the funds held by the Debtor on your behalf for any reason?**



- c. Were the funds held by the Debtor on the behalf of any third party?
  - d. Were the funds transferred to you rightfully the property of the Debtor or did the Debtor obtain these funds by fraud (if you know)?
- 18. **Setoff**
  - a. Were the funds paid to you by the Debtor, which the Debtor claim are preferential, setoff by your company against funds owed to your company by the Debtor?
- 19. **Subsequent Advances?**
  - a. Did your company transfer any goods or services to the Debtor after the date of the alleged preferential payment. If there is more than one preferential payment, please list services or goods transferred to the Debtor after each alleged preferential payment.
- 20. **Contemporaneous Exchange**
  - a. Did you charge the Debtor interest on the alleged preferential payments? Did you have the right by contract to charge interest?
  - b. Did both you and the Debtor intend that payment would be simultaneous with purchase?
  - c. Was the payment simultaneous?
- 21. **Counterclaims**
  - a. Did the Debtor breach any contracts that you know of?
  - b. For example, did the Debtor place an order for goods and then rescind the order?
  - c. Did you suffer any damages as a result of a breach of contract by the Debtor?
  - d. For example, did you have to dispose of custom merchandise ordered for the Debtor at a loss?
- 22. **Did your company have credit insurance covering the invoices rendered during the preference period?**

23. Was payment of the invoices rendered during the preference period guaranteed by a 3<sup>rd</sup> party?

**Documents Needed for Review**

**The first 5 documents listed are necessary to the analysis of the case. If this information cannot be provided, please contact us immediately to discuss.**

**PLEASE DO NOT STAPLE ANY DOCUMENTS TOGETHER AS ALL DOCUMENTS ARE SCANNED (ALL DOCUMENTS FILED WITH THE COURT MUST BE PDF FILES)**

1. Copies of all invoices to the Debtor for one year prior to the Debtor's bankruptcy filing. (The date of the bankruptcy filing is stated in the Complaint. Please feel free to email or call our office with any questions as to the date.)
2. Copies of all invoices rendered during the preference period. (the preference period is the 90 days prior to the bankruptcy filing).
3. Document showing the date payment was received on each invoice.
4. Document showing when the payment for each invoiced cleared the bank.
5. Spreadsheet showing (a) each invoice amount, (b) the date the invoice was rendered, and (c) the date payment was made on the invoice.
6. Any proofs of claim filed in the case.
7. Brochure or website address for your company.
8. Copies of proof of delivery showing date of delivery of goods, if any.
9. Copies of detailed description of goods or services rendered.
10. Any correspondence with the Plaintiff regarding payment terms.
11. Any correspondence with the Plaintiff regarding a payment plan.
12. Any contracts between you and the Debtor.

**13. Any correspondence regarding collection activity with respect to the Plaintiff.**