

NATIONAL ASSOCIATION OF CREDIT MANAGEMENT

OCTOBER 2007

# BUSINESS credit

THE PUBLICATION FOR CREDIT & FINANCE PROFESSIONALS \$7.00

WEB  
SERVICES

TECHNOLOGY

# Solutions

SOFTWARE

**Another Type of Risk: Data Security Isn't Just for IT Anymore**

**Only in the Movies: Why Entrusting Your Company's Operations to a Piece of Software Might Not Be Such a Bad Thing**

# Bankruptcy and the Good Humor Truck

I sat on a long bench in the hallway outside of the courtroom, surrounded by people waiting for their hearings. Some had come with their attorneys, some with little children that they couldn't leave at home. Laughter and good humor were in short supply and chances were high that no Good Humor truck would trundle by to distribute happiness and joy in the form of frozen confections. Too bad, really; I think it would've lightened a mood that needed to be lightened.

I looked around, trying to figure out which one was my customer: Tim B. Jenkins (not his real name).

Jenkins ran an electrical contractor firm (not really). More precisely, he ran it into the ground. Frankly, by this point, I secretly thought the more appropriate name for his company (instead of the real one, which will remain anonymous) was 'The Big Jerk Electric,' or TBJ. But this seemed immature, so don't tell anyone.

Anyway, I'd never met him, but he had been described as a sloppy looking, unkempt person with questionable hygiene. Well, okay, I'm kidding about the hygiene, but the rest is accurate.

I slid my eyes around the hallway, pretending to read my notes, morbidly interested to see if I might recognize him before the hearing.

**Not everyone signs the guarantee, but if they do, we pull a credit report. It only costs about four bucks, and why would anyone accept a personal guarantee without making sure the guarantor's endorsement is worth the paper it's written on?**

Nobody seemed to fit the description, and the trustee kept calling in new people for their Section 341 hearings. I figured that Jenkins probably cleaned up for today's proceedings. Maybe his physical description was no longer apt. So I kept an ear out for his name and started reading my notes in earnest. My stomach clenched in anticipation of what I knew was going to happen in the hearing. A Popsicle would come in handy for my dry mouth, but, well, the Good Humor truck doesn't deliver in courtrooms.



By the time we were done with him, Jenkins wouldn't be wanting a Popsicle. For you see, he had no idea that he was walking into an ambush.

Our firm is an electrical material distributor, and TBJ came to us in 2002 asking for credit. At the time, they were two years old, but their references weren't anything you could shake a stick at, so I asked for and received financials that showed solvency. He also signed the personal guarantee, so we pulled a TransUnion credit report on him as we do with any applicant who signs the guarantee incorporated in our application.

Not everyone signs the guarantee, but if they do, we pull a credit report. It only costs about four bucks, and why would anyone accept a personal guarantee without making sure the guarantor's endorsement is worth the paper it's written on?

Anyway, he checked out okay and we opened a charge account for him.

But about eight months later, he joined our 90/120 days as an habitual resident, and my assistant and his accounts payable person became phone buddies. Payment promises were cheap though, and they made many that were rarely kept. A few months later, I called and left a voice message for Jenkins saying that he was leaving us no choice but to get outside counsel involved.

Jenkins called back and said that he had to close the office for a bit and had laid off a lot of his men, but that he'd booked a lot of work and expected to get back in the black. I asked him for updated financials and he sent them without complaint. I usually do this with a customer in distress: both to gauge their cooperativeness

and because if there's a bankruptcy on the horizon, they might do some creative stuff to start squirreling away some assets. Plus, I could compare them to the financials that he'd given us the year before when he first applied.

The other thing that came out of this conversation was that he said he still considered us his primary supplier and he intended on paying cash while working through his troubles. I suggested instead that we sell to him on a COD-roll, where he would pay each time he bought material, but his payment would be applied to the past-due amount and we would allow the new sale as a new charge. This would help him by reducing his finance charges and help us by reducing 120 days.

COD-roll comes in other forms, too, and we use them all depending on circumstances. There's also the COD-roll 50% where, when someone pays, they can charge half as much as they buy. This drives their balances down, but allows them to nibble away rather than coming up with big chunks of money. Some

## You see, the COD-roll only works if you're receiving money, and NSFs gum up the works.

customers might pay a lump sum and they are allowed to charge half of their paid amount. Others simply pay twice what they are buying at the time.

Jenkins also asked if he could return some material. Some people don't like to accept returns. But if a company's in distress, I'm all for it, especially for the resalable stuff. It helps both sides, as it reduces his balance and we simply restock the material and sell it to someone who can pay. Yes, I know if the company files a bankruptcy a return might be subject to a preference claim, but it's worth the risk because it's on A/R otherwise.

It was working pretty well ... until the NSFs.

You see, the COD-roll only works if you're receiving money, and NSFs gum up the works. He bounced two checks and that's when his numbers were disconnected ... his

cell, office number and fax. And we were left with \$27,000 on the books.

Our salesman learned that Jenkins had recently sold his house. I ordered a search of the property and found that he had sold it a couple months earlier. The new owner's bank had placed a mortgage on the property for \$281,000. Houses in the neighborhood were worth \$350,000-\$400,000 and it had been held in tenancy in the entirety, a deadbeat haven since it makes it impossible for you to attach the house unless you have both the husband and the wife's guarantee.

Meanwhile, I pulled a new credit report (our application says that we may pull one at any time) and found out two things: first, there had been two mortgages on his old house totaling \$178,000. There are several websites that list home sales, so I got onto one and, get this, it listed the sale of his

## Protection from the elements



- Make the right credit decisions fast
- Instant access to credit data
- Do more with fewer people
- Prioritize collections
- Comply with Sarbanes-Oxley

The Corporate Credit Manager™ and The Collection Assistant™ are the most widely used integrated software system for B2B credit scoring, financial analysis, collections, and credit decision support.

See how over 1500 colleagues worldwide have weathered credit risk.

Call: (847) 735-9700  
Visit: [www.icmsglobal.com](http://www.icmsglobal.com)



Software Systems for  
The Hard Decisions

Credit & Management Systems, Inc.  
49 Sherwood Terrace, Suite 49E  
Lake Bluff, IL 60044

™ Corporate Credit Manager and CCM are trademarks of Credit & Management Systems, Inc.

## Corporate Credit Manager & The Collection Assistant Software

Request more information from this Advertiser (#4) using the form on page 72.

---

## [The trustee] started asking my questions, and Jenkins' eyes opened in shock. He shot an alarmed look at his attorney and started stammering answers that amateurishly avoided the trustee's questions.

---

house at \$375,000. He actually pocketed \$200,000, less realtor fees!!

Did you hear me? No, of course you couldn't...but did you read me? And when I reviewed his credit reports from earlier compared with his existing debt, it doesn't appear as if he paid any debt with this money.

The second thing I found was his new address. Our salesman drove by and saw Jenkins there, grilling for a party in his backyard. I guess he wasn't too despondent about the demise of his company. I checked out his new house and learned that it was titled in his wife's name only.

I sent the file to my attorney and we were able to serve him, but then my attorney seemed to stop working the file and started, well, acting like a past-due customer. He ignored my letters, my calls, everything. Many months went by and finally I fired him. A lot of wasted time had gone by.

Then I received the bankruptcy notice: a no-asset Chapter 7—personally and corporately.

A few months ago, I wrote a piece on another bankruptcy case and I told you about PACER. PACER stands for Public Access to Case Electronic Records. Every credit manager should have a PACER account. If you don't, whip yourself with a wet noodle and skedaddle over to <http://pacer.psc.uscourts.gov/register.html> and sign up. This government-run website allows you to sign in, look up and retrieve bankruptcy documents for the hefty fee of eight cents a page. Even if you download and print a 70-page document, it only costs you a whooping five bucks and change.

Anyway, I got on PACER and looked up his bankruptcy filing and that's when things got interesting. As you'll recall, his wife did not

file bankruptcy with him. But her income was listed in the schedules and it said she brought home a monthly income of \$480 per month. I knew from the credit reports that their new mortgage was \$200,000, so how did she swing that on just \$480 a month? Well, easy, because his income was a part of the equation. But Mr. Jenkins listed on his bankruptcy schedules that he was paying "rent" of \$1,675 without any real estate taxes or property insurance. He wanted to give the illusion that he had no house, no equity.

I also noticed that there was no mention of the windfall \$200,000 from a year and a month previously. Sneaky dude.

I sent a letter to the bankruptcy trustee telling him that I intended to come to the hearing and had several questions for the debtor. I also asked him to allot a little bit more time for this case. If you've ever been to a 341 hearing, you know that quite often no creditors show up, and after a bunch of perfunctory questions, the debtor

people waiting for their turn to discharge their debts. Nobody was happy. There was no Good Humor truck in sight. There also weren't very many attorneys around, so my hives were minor.

And that's when I saw him ...

A big man came strutting down the middle of the hallway, dressed in flip flops, shorts and a Hawaiian shirt. I knew without a doubt that this was Tim Jenkins. A little bug dressed in a bad suit scuttled alongside, like a tugboat next to a barge... I'm guessing that this was his attorney.

The trustee took this moment to Popsicle, er, pop out of the room and he called Jenkins' name. Jenkins swerved majestically and squeezed into the room, followed by his terrier, er, attorney. I followed behind, buffeted by the eddies of his passage, and introduced and identified myself as a creditor. This earned me a squinty-eyed look from both Jenkins and his attorney and a nod from the trustee.

They had taken two chairs in the back of the small room and I took the one closest to the door. There was a table in front of us, with a tape recorder and a pile of papers. The trustee sat on the other side of the table. The trustee started asking his standard questions about the history of the

---

## If you've ever been to a 341 hearing, you know that quite often no creditors show up, and after a bunch of perfunctory questions, the debtor gets a quick and easy discharge.

---

gets a quick and easy discharge. If you've never been to one, go, if for no other reason than for the experience. It's not as fun as a family barbecue, but at least you don't have to hear Uncle Frank's old stories.

Anyway, a few days before the hearing, I reconsidered and decided to tell the trustee all of my questions and concerns. I sent him a detailed letter with all of my proof and then I waited for the hearing.

Now it was the day of the hearing and here I was, sitting in the hallway, surrounded by

company, any open assets, disposition of inventory and accounts receivable, present income, any previous gifts, etc.

Then he started asking my questions, and Jenkins' eyes opened in shock. He shot an alarmed look at his attorney and started stammering answers that amateurishly avoided the trustee's questions. The trustee stayed on him though, and the questions got more pointed and specific. At one point, when Jenkins was reeling under one of the verbal blows, the trustee gave me a quick look and, get this, he winked!

Jenkins had been blindsided, not knowing what hit him. The trustee told him that he wanted all records of the sale of his previous house, all bank account transactions, everything on his new house, all of his check history and everything going back three years and more stuff that I can't remember because I was too excited.

A little later I received a request for a proof of claim ... always a good sign in a no-asset case, since it means they found assets to distribute. Then I received a motion for a hearing to rule on accepting a settlement offer from the debtor. More months went by with no word and I sent a few letters to the trustee and checked PACER off and on,

Then, three weeks after Christmas I received a late gift—an envelope from the trustee's office. No bow, no wrapping paper, but that's okay because inside was a check for \$28,273.01, paying 104% of our net claim. Being the only creditor netted us, even after the trustee's fees, all of our money plus about \$1000 in finance charges.

---

**Then, three weeks after Christmas I received a late gift — an envelope from the trustee's office. No bow, no wrapping paper, but that's okay because inside was a check for \$28,273.01, paying 104% of our net claim.**

---

The next day, I sent a letter to the trustee thanking and praising him for his efforts and I beseeched him not to let Jenkins out of the bankruptcy because he could bring assets back into the estate that I couldn't touch through a regular civil action. He assured me that he wouldn't let the fish off the hook. Then all I could do is wait. A few months later, Jenkins was granted his discharge. This surprised me, so I called the trustee's office and they said that they had no objection to the discharge and that they had filed an adversary proceeding against him that was proceeding slowly because they were running behind due to the new bankruptcy law.

looking for updates. Finally, the trustee responded to my letters and said the motion for settlement was approved and that he had sent his final report to the U.S. Trustee. He said it would take a couple more months.

Again, I waited.

And waited.

And waited.

Christmas came, and still no check.

I was bummed.

Woo-hoo.

Greed's a funny thing. This guy had close to a quarter-million dollars in his pocket and could have elected to pay every single bill and still have had a tidy sum. He could have gone on with his life. Instead, he bankrupted his own name, committed fraud, likely ran up legal fees and tried to burn people out of money they rightly had coming. Sure, it took almost four years from start to finish, but in the end justice prevailed.

Another summer has come and gone now, and I think of him sometimes, especially when the Good Humor truck goes by. ■

*Norm Cowie, CCE is vice president, finance at Evergreen Oak Electric Supply and Sales. He has previously won NACM's Best Article Award and has written two humor novels, The Adventures of Guy and The Next Adventures of Guy. Norm may be reached through [www.normcowie.com](http://www.normcowie.com) or email at [ncowie@evergreenoak.com](mailto:ncowie@evergreenoak.com).*

Jacob Barron

**TRADELINE**

## Court Information Costs Come Down

**T**he Administrative Office of the U.S. Courts recently announced that customers of the federal court's Public Access to Court Electronic Records (PACER) system will now have access to district court written opinions free of charge. The office's Judicial Conference defines a written opinion as "any document issued by a judge or judges of the court sitting in that capacity that sets forth a reasoned explanation for a court's decision." Still, the authoring judge determines which documents fall into this category.

Additionally, district courts that have not updated to version 2.4 or higher of the Case Management/Electronic Case Files system will not offer this access. The office said, however, "PACER customers also can access opinions via existing reports and queries, such as the docket report." Users are not billed for accessing the written document itself, but billed for the report or query used to identify the document.

Normal fees to access court documents on PACER are \$.08 per page, which is applied

to the number of pages found in a search, regardless of whether or not the pages are viewed, downloaded, printed or if the search returns no results.

The decrease in cost represents another step in the Judiciary's initiative to increase public access to court information that began with the E-Government Act of 2002, which set requirements for providing public access to government information over the Internet. ■