



## ***Using Interest Rate as a Negotiation Tool***

***By: Nan E. Hannah***

From an attorney's perspective, it is easy to see that many customers view their suppliers as part of the team, not as a lender. The customer purchases materials for use on projects and anticipates paying for the materials once the contractor or owner pays them. Yes, they signed an agreement that included payment terms with interest for late payment in its terms. Yes, every invoice and monthly statement references those interest terms. And, yes, the interest rate is high as compared to the Fed Rate. The customers rarely consider the issue of "carrying costs" for a supplier. Until ... they get behind.

From the suppliers' side of this equation, they purchase materials from their vendors on credit trusting that their customers will pay within or very near terms such that the supplier has the necessary cash flow to pay its vendors within terms. If not, they must account for the carrying costs associated with carrying the debt. Those carrying costs include interest, as well as internal costs for processing and managing the accounts. A corporation's carrying costs may entail layers of costs.

Once the time comes to collect a past due account, the carrying costs play a role in determining the range of terms to be considered in negotiating a payment plan. In North Carolina, the maximum interest rate that can be charged on an open account is 18% APR (1.5% per month). Most small businesses only have their mortgage rate, car loan, and the interest rate on their bank accounts to use as reference points, so 18% seems usurious in a market with sub-3% mortgage rates and even lower interest rates for cars and bank accounts. They see their supplier in the same light as a bank. Therefore, it seems to most that the supplier should simply permit payment over time without interest accruing.

As lawyers, we encourage a carrot and stick approach to payment plans. The "stick" is the default interest rate which we generally recommend remains the 18% APR found in the underlying contract, as well as 15% of the principal balance as attorney's fees. The "carrot" is a reduced interest rate so long as payments are timely made.

**-Continued on Page 3-**

# **LEGAL FOUNDATIONS NEWSLETTER**



## **In This Issue**

- Using Interest Rate as a Negotiation Tool
- Navigating North Carolina Courts
- Business Formation
- Bankruptcy Preference Amendments



## Civil Litigation

### ***Understanding and Navigating North Carolina Courts***

***By: Chad J. Cochran***

An experienced lawyer sits down with her client. She listens intently to the client's telling of how his rights have been violated. The client wants to sue the wrongdoers for every penny they are worth: "Go get them. I hired you to fight. Can we get in front of a judge tomorrow?" The old lawyer calmly replies, "We can fight for your rights. We certainly know how. But there is an inherent cost. The harder we fight; the more time we spend; the higher the legal bills grow." After a pause, the lawyer tells his client an old adage saying, "We can fight for principle or principal. Your job is to pick the 'al' or 'le'."

Principle: a moral rule or standard of good behavior or fair dealing (Cambridge Dictionary)

Principal: (of money) denoting an original sum invested or lent (Oxford Languages)

A good lawyer guides their clients through the emotional rollercoaster that litigation represents while constantly refocusing on the economics of the case. For moral reasons - "le" - a client may overrule the math problem that a given case represents and fight deep into the court system. My experience is that this dynamic is rarely black and white. Courts are sometimes inefficient, and clients feel passionately about their cases. Yet, most of the time, clients ultimately settle their disputes for sums certain. Principal - "al" - usually prevails.

Litigation represents parallel tracks: (i) litigating/fighting towards a court hearing or trial; and (ii) pushing for the best settlement figure available to resolve the dispute. As any dispute moves down these tracks, the client ultimately determines how many resources to invest towards any given legal fight—"al" or "le". A logical risk/reward analysis helps to cut through the drama - "al". Significant potential damages logically suggest a client invest resources towards litigation expenses. Smaller damages suggest spending less on legal expenses.

The North Carolina court system recognizes this economic structure by generally categorizing civil files according to claimed damages. Higher courts typically require a larger investment of time and resources to present a case. Lower courts often focus on efficiency, which inherently leaves less time to dig deeply into a given legal issue.

**North Carolina Small Claims Court (Damages Less Than \$10,000):** Court designed for non-lawyers to present their small case for a quick decision by a magistrate. Informal legal pleadings. Attorneys are permitted, but certainly not required. Simple appeal of the small claims court decision to District Court is permitted.

**North Carolina District Court (Damage Claims Less Than \$25,000):** Court designed to administer smaller civil disputes. Elected District Court Judge presiding. Mandatory, pre-trial arbitration required with simple appeals authorized. Ultimately, contentious disputes are resolved by judicial hearing or formal trial.

**North Carolina Superior Court (Damage Claims Exceeding \$25,000):** Elected Superior Court Judge. Mandatory, pre-trial mediation. Additional legal complexity expected. Formal. Legal issues often decided by judicial hearing or formal judge/jury trial. Legal briefs often

### ***Introducing Associate Attorney Rachel Rogers***

We are proud to announce an addition to our firm. Rachel Rogers joins us as an associate attorney. Rachel holds an undergraduate degree from North Carolina State University and a law degree from Campbell University.



### ***Introducing Paralegals Mark Soyars and AnnBurns Morrison***

We are also proud to announce that Mark Soyars and AnnBurns Morrison joined our law firm recently. Our new additions provide high-level service to our clients.





## Business Law

# ***Choosing A Legal Structure: An Important First Step to Business Formation***

***By: Zachary N. Layne***

During the COVID-19 pandemic, everyone has spent more time inside their homes than in the pre-pandemic world. During this extended period of time in the home, creativity may have sparked an idea for a business, or given extra motivation to act on a pre-existing idea. Now, you are excited and ready to form a business. One of the most important decisions to be made at an early stage is how to register the business with the State of North Carolina, as well as deciding which type of legal entity the business will be. This article will focus on a high-level overview to assist in making these decisions.

First, in any business that is not a sole proprietorship or partnership, the entity will need to be registered with the North Carolina Secretary of State. The entity can be created and registered as any of the following: Limited Liability Company (LLC), Limited Liability Partnership (LLP), Corporation (can be either C-Corp or S-Corp), Nonprofit Corporation, Limited Liability Limited Partnership (LLLLP), Limited Partnership (LP), Professional Corporation (PC), or Professional LLC (PLLC).

The Limited Liability Company (LLC) is a popular choice for individuals starting their own business, due to its attractive features such as limited liability (hence the title Limited Liability Company) and pass-through taxation. Limited liability is simply the notion that a member of the LLC is only liable up to the amount of their personal contributions. Since the LLC is a separate legal entity, the personal assets of any individual member cannot be reached to pay the debts and obligations of the LLC. Thus, for new businesses and individuals chasing their dream of opening a business, the notion of limited liability is quite comforting. In regards to taxation, an interesting wrinkle is that the LLC is not taxed on its income. Instead, the members of the LLC are taxed on its income, as the tax is “passed through” to the members. It should be noted that an LLC can choose to be taxed as a corporation, and therefore would no longer enjoy the benefit of pass-through taxation.

At first glance, it can be overwhelming deciding which legal structure your business will be. Factors to consider when choosing a legal structure include tax benefits, degree of personal liability, and management structure. In order to illustrate this more clearly, for example, if a major factor in choosing an entity is the best tax benefit without much regard for other factors, it may be beneficial to form an LLC, LLP, LP, or LLLL . However, if you are searching for a structure in which you will not be personally liable for any obligations of the entity, then perhaps electing to create an LLC, LLLL, or Corporation is the right decision for you. All factors should be weighed in order to determine the best overall legal structure for your goals and needs.

The attorneys at Hannah Sheridan & Cochran, LLP have extensive experience in assisting clients with business formation. Please contact us to assist you in turning your idea into a legally registered business with the North Carolina Secretary of State.

## ***- Interest Rates—Continued -***

As a creditor, our clients need to consider their carrying costs, the expense risks involved in litigation, and the benefits of recovering the full principal, plus some interest, as they negotiate terms for a payment plan. You can appear magnanimous in waiving attorney’s fees while recovering them via the interest terms. Each client considers carrying costs differently. Some value interest more highly, while others are primarily concerned about recovering principal, plus costs. Whatever your motivators, keep in mind that giving a bit on interest may provide the incentive necessary to achieve a successful payment plan. A successful payment plan, especially one “secured” by a Confession of Judgment, brings certainty to legal fees and expenses. So, giving on interest may well result in a better ultimate recovery.

# Bankruptcy Preference Amendments: Consolidated Appropriations Act of 2021 Helps Protect Suppliers and Landlords as Preference Defendants

By: Rachel Rogers



Have you ever tried to be nice to a struggling customer only to have a bankruptcy trustee later send you a letter telling you that you have to return money that customer paid in the 90-days before they filed bankruptcy? This question could be especially vexing in the time of COVID where you agree to give a customer more time to pay, receive the late payment as agreed, and then receive a “preference letter.” For once, Congress seems to understand the problem and has created a temporary fix.

In December 2020, Congress passed the Consolidated Appropriations Act (CAA). The CAA provided various forms of economic relief to help address the effects of COVID-19. Within the bill, Congress included a temporary amendment to Section 547 of the United States Bankruptcy Code.

The temporary amendment in the CAA helps to avoid the situation described above. The amendment provides that payments made by a debtor after March 13, 2020 cannot be “clawed back” from landlords of nonresidential real property and suppliers of goods or services to the extent that such deferred payments do not include any fees, penalties, or interest in an amount greater than the fees, penalties, or interest the debtor otherwise would have owed without the deferral. To qualify for this exemption, (a) the debtor and counterparty must have entered a lease or executory contract before the bankruptcy filing, (b) must have amended the lease or contract after March 13, 2020, and (c) the amendment must have deferred or postponed payments otherwise due under the lease or contract.

This temporary amendment will allow for suppliers of goods and services to continue to support struggling customers by agreeing to postpone or defer payments during the COVID-19 pandemic. Although this temporary amendment will expire on December 27, 2022, it is a great step in providing additional protection to creditors who are willing to work with their debtors during these difficult financial times.



**HANNAH SHERIDAN  
& COCHRAN**  
ATTORNEYS AT LAW

PLACE  
STAMP  
HERE