

THE COMMERCIAL FACTOR

■ ■ ■ Newsletter for the Factoring Industry

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International
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■ CANCUN IS READY FOR YOU!

ARE YOU READY FOR CANCUN?

Factor in... balmy beaches and warm turquoise waters after a cold, gloomy winter and the decision to “get away from it all” in a tropical paradise should be easy to make.

So unthaw this April 5th-8th at the 12th annual Factoring Conference under one of the brightest blue skies on earth, in Cancun. An area that was once inhabited only by birds and iguanas is now filled with luxury waterfront hotels, shopping malls, excellent restaurants, challenging golf courses and sizzling nightlife!

Even though Mexico's most popular tourist destination was hit by a hurricane in October, Cancun is making remarkable headway. The storm is long-gone, vacationers have returned and the future is as bright as the sun.

The head of the Convention & Visitors' Bureau wants the world to know that “Cancun is open for business and that when visitors come back they will see an even better, stronger Cancun.” In fact, water, electricity and phone services are working in every establishment. The Cancun International Airport is operating normally. All roads are accessible in the hotel zone and downtown. Cancun golf courses are up and running and restaurants and bars are re-opening almost daily. Debris was carted away, hundreds of new palm trees are being planted and a \$17 million beach restoration project is underway. Cancun's hotels and resorts suffered from varying degrees of wind and water damage. The original site of our conference, the Hilton, will be closed until May; most resorts are back in operation after making repairs and renovations.

After switching hotels, the impressive Gran Meliá

Convention Center, Beach, Spa & Resort in Cancun is now the site of our gathering. This spectacular 700 room Mayan-inspired hotel, facing the Caribbean Sea on enormous beachfront property, will be in tip-top shape for the conference. Five glass atrium-topped pyramids surrounded by water and lush, tropical gardens are a site to behold, unlike any other resort in the world. Over the sea waves you can hear the relaxing sound of fountains and waterfalls as you check in to your room. Each elegantly-decorated guest room has magnificent views of either the lagoon or the sea.

The hotel is taking a little extra time, working late into March to make the resort better than ever. Every room will be remodeled with new furniture, beds and plasma TV's.

A Gran Meliá spokesperson promises, “Every single amenity and service will be completely restored by March.”

And something new in April; the Gran Meliá is rolling out the red carpet.

The 132 rooms in the resort's Royal Service Pyramid will also see some changes, as they will now become “Adults only.” Royal Service guests will appropriately be treated like a king, pampered with butler and secretarial services, pillow menus and private beach and pool areas. Other perks include private check in and check out service, [CONTINUED ON PAGE 2](#)





CONTINUED FROM PAGE 1

daily continental breakfast, coffee and tea all day, cocktails and canapés in the evening, international beer at night.

The resort has five restaurants to choose from including Mexican haute cuisine at “La Cascada,” and elegant Italian dining at “Prosciutto’s.” There’s also a new sushi lounge in the main atrium and a sports bar and beach bar.

After a leisurely lunch, take a stroll along one of the longest beaches in Cancun, 656 yards of Caribbean beachfront. Be one of the first to enjoy the Gran Meliá’s upgraded rooms, spa and gym with all the latest equipment and cardio and spinning classes.

Take the time to rejuvenate your body and satisfy your soul. How ‘bout an evening massage under the stars? Brush up on your Español at a complimentary Spanish speaking class or pick up appetizing ideas at a Mexican or Italian cooking demonstration. Want to unwind on the links? Equipment is available for rent at the Gran Meliá’s golf course. (This would be a good warm-up for Wednesday’s conference golf tournament.)

Want to cool off? Take a dip in one of the property’s two large fresh-water swimming pools, surrounded by towering palm trees and gorgeous gardens. Can’t bear to leave the refreshing waters of the pool? Sip your margarita at a swim-up bar. Thatched roof “Palapas” scattered around the pools shade platform beds large enough for the whole family to relax in the peaceful oasis.

Most people believe Cancun’s greatest asset is its marine playground, boasting a world famous marina. Thrills await the adventuresome visitors who try their hand at the many water sports available including snorkeling, SCUBA diving, parasailing, windsurfing and water-skiing. But Cancun is more than a beach, so much more.

The Yucatan Peninsula is one of the richest archaeological zones in the ancient Mesoamerica world. The area near Cancun is home to thousands of mystical ancient Mayan structures dating back to 500 AD, many still buried in the jungle.

Learn about the fascinating culture by visiting a modern Maya village or one of the nearby sites such as Coba with its 136-foot ancient pyramid and ball court or Tulum’s unique walled city right on the sea and Chichén Itzá where you can climb one of the best preserved and rebuilt pyramids in the Mayan world.

The Maya were masters of mathematics, invented the calendars we use today, mapped the heavens and without tools were able to construct creative jungle cities with an incredible degree of architectural perfection. Their legacy lives on in stone.

[CONTINUED ON PAGE 3](#)



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NEWSLETTER FOR THE FACTORING INDUSTRY

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The International Factoring Association’s (IFA) goal is to assist the Factoring community by providing information, training, purchasing power and a resource for Factors. The IFA provides a way for Commercial Factors to get together and discuss a variety of issues and concerns to the industry. Membership is open to all banks and finance companies that perform financing through the purchase of invoices or other types of accounts receivable.

The Commercial Factor invites the submission of articles of interest to the Factoring Industry. For more information on submitting articles or advertisements, please e-mail info@factoring.org, or call 800-563-1895.

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Modern day Cancun is the biggest convention site in Mexico boasting the country's most advanced communications infrastructure, which enables event planners to benefit from facilities that are well-equipped with video-conferencing capabilities and wireless internet access.

Another reason that this is the perfect place for the World's Largest Conference dedicated to banks and finance companies that offer financing through factoring; we've assembled an impressive array of speakers to provide you the information and knowledge needed to manage and grow your portfolio and network with your peers.

2006 Conference Sessions

Thursday, April 6, 2006

- *Economic Projections*: Highly acclaimed economist Dr. Loren Scott.
- *Over 20 Club*: Factoring experts with two decades experience discuss their secrets to success and the future.
- *Traits Of A Top Salesperson*: Find out what the most successful salespeople have in common.
- *How To Spot A Liar And Get The Truth*: Decorated U.S. Army Interrogator Gregory Hartley. Learn to utilize his fascinating methods in the board room or even on the phone.
- *Challenging Legal Issues*: Legal questions are answered by a panel of experienced attorneys/ factoring experts.
- *10 Truly Effective Ways to Build Your Business In 2006*: Professional Business Coach Harvey Smith.
- *Factoring 101 & 102 Workshops*: For those new to the factoring industry.

Friday, April 7, 2006

- *The Exotica Of Factoring*: Panel discussion featuring the entertaining Bob Zadek, Premier Attorney and Factoring Expert. Both legal and business questions will be answered.
- *How Much Is Your Company Worth*: Presentation to help you determine the value of your business. This panel earns rave reviews.
- *Transportation Factoring*: David Jencks, Attorney and Daniel Robbins, President & CEO, TranCentral, Inc.
- *Factoring in Mexico*: Alain Schwartz, Mex-Factor General Manager.
- *Fear and Loathing in the Factoring Business*: A realistic perspective from a client and his lawyer.

Saturday, April 8, 2006

- *Operations Round Table*: Small groups of conference attendees share ideas. A popular, well-received conference event.

Not only can you grow professionally, the Factoring Conference in Cancun offers numerous fun and educational diversions.

Wednesday, April 5, 2006

- *Welcome Reception, Gran Meliá Resort*. Pool side gathering open to conference attendees and guests.
- *Golf Tournament, Iberostar Playa Paraiso Golf Club, Cancun*. Inventive Par 72 course designed by P.B. Dye, newly opened in June 2005.

Or

- *Deep Sea Fishing Excursion, Guided boat trip in the Caribbean Sea*. Fish for Barracuda, Blue fin, Snapper, Grouper, Tuna, among others.

Thursday, April 6, 2006

- *Guest Activity: Shopping Tour & Cooking Lesson, La Casa de las Margaritas Restaurant*. Interactive culinary training with the restaurant's chef. Lunch. Shopping at Market 28.

Friday, April 7, 2006

- *Banquet Dinner, Hacienda El Mortero Restaurant*. Superb regional specialties, Mexican folkloric show & mariachi music. [CONTINUED ON PAGE 4](#)



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Saturday, April 8, 2006

- *Snorkel/SCUBA Diving Trip, Cozumel Island.* Swim with the colorful marine life in the world's 2nd largest barrier reef system.

Or

- *Archaeological Adventure, Mayan Ruins at Chichén Itzá,* the top tourist destination on the Yucatan Peninsula. Don't forget your camera!

So start packing your sunglasses, swim suit and sunscreen and join us April 5-8, 2006, in beautiful Cancun for the world's largest conference of its kind!

Go to our website at www.factoringconference.com for information on conference hotel and airline group rates. Book your trip today!

THE FOUNDERS COMMITMENT

By Dan Axelrod

"It was just not fun any more." The speaker was the founder of a company that had achieved considerable success in the financial services industry. He was explaining why, after years of sacrifice and hard work, he had decided to sell his company and walk away from the organization he created and had intended to be his legacy.

The decision to sell did not come easily. After enjoying several years of rapid growth, the founder realized that the continued success of his organization was dependent on his ability to expand into new markets and with new services. Expansion would require greater capital investment than he had available, and so he responded favorably when approached by a larger financial services organization looking for investment opportunities.

The chemistry between the principals was good, the two companies had complementary product lines, and the buyer promised the founder cooperation and support for his expansion plans. The chairman of the investing company was himself a founder. He understood and could identify with the founder's urgent desire to realize his dream. The deal was completed. The founder sold 51% of his company in exchange for shares of the buyer, with an option that he could exercise at any time that would require that the buyer acquire his remaining 49% interest.

The arrangement seemed to be working well. The founder started to put his expansion plans into effect with his investor's full support. The chairman of the larger company and the founder developed an easy and informal relationship. Approval for projects could be had with only a phone call or a brief memo. But the commercial environment is never static, and it wasn't long before the larger company itself became an investment target.

In time, the larger company was acquired by a still larger, diversified financial services organization, and the easy relationship which the founder enjoyed with his now departed chairman was gone. In its place was a rigid, hierarchical structure. The founder now found himself part of a distant and complicated reporting chain of command. Whereas once he had the authority and flexibility to direct his business, now he was little more than one of the many links in a long, cumbersome chain of command. Whenever he wanted to execute a plan, he had to submit forms to justify his decisions and obtain permission through proper channels, maneuvering through a political and impersonal morass. His requests for investment capital were more frequently denied than granted. On those rare occasions when his requests were approved, decisions were slow to come and difficult to put into effect. Work just wasn't fun any more. He remembered the passion and commitment that drove him in the early years and wondered where it had gone. What had he done wrong?

The founder of a company is like a parent with a new baby. There is an inherent passion and commitment that the founder feels toward his or her "baby" that nurtures the infant organization and gives it the strength it needs to succeed. If the founder loses the ability to control the growth and development of the "baby", commitment will also be lost.

Entrepreneurs do not start organizations with an expectation of making a lot of money quickly. They are driven by the need to convert an idea into a reality. In an infant organization, the founder is totally committed to his or her dream. When the founder no longer controls the dream, the commitment dies. Just as in the animal kingdom, where a parent will abandon a fledgling or cub which has been contaminated by alien smells, the founder of an infant organization may decide to walk away from a highly demanding baby over which he or she no longer has control and which will never grow to become all that the founder dreamed that it would.

After the founder in our example sold his remaining shares and left the organization, the distant parent tried to install new management, but without success. The infant organization needed the nourishment provided by the founder's commitment. No one else had that dedication, and as a result, the company stopped growing and started to fail. Eventually, it was sold for substantially less than its acquisition cost.

Just as the founder's commitment is dependent on his organization, the organization is dependent on the founder's commitment. It is the passion to pursue his dream that motivates an entrepreneur. Yet, when the founder agreed to the acquisition, he ultimately gave up the very thing that motivated him from the start. He gave up control. Turning control over to someone who does not have that inherent commitment risks that the organization will be directed by someone who will not endure the hard work and long hours, someone who will not struggle to ensure the survival and growth of the organization in an environment riddled with constant crises. These efforts are made worthwhile only because of the founder's love and dedication to his idea. Without this commitment, the organization will die.

Loss of control through external intervention is not the only potential cause of a founder's failure of commitment to his organization. Many founders start their companies without considering the strains that a new organization can place on personal and family life. In an infant organization, there are no eight-hour days, no week-ends off, no scheduled vacations. There are many sleepless nights spent worrying about making the payroll and paying the rent. There is always more to be done than there is time to do it, and there is the constant need for focused attention.

What keeps the founder going during this difficult and demanding time is his or her commitment to the dream. The demands of single-minded dedication can put a heavy strain on the founder's personal life and may force a difficult choice - commitment to family and relationships, or commitment to the infant organization. I know of more than one case where founders of successful organizations achieved their goals only at the cost of failed relationships and ruined families. In one extreme instance, the failure of the founder to recognize and acknowledge the needs of his family contributed to the death of his wife and led to the complete estrangement of his children. The fortune that he made, and the prominent position his company achieved, did not compensate for the devastation he suffered in his personal life.

This apparent Hobson's choice - company or family - can be avoided if the parties involved have a shared understanding of what lies ahead. In a family, a healthy environment for a newborn infant requires the cooperation and understanding of both the mother and the father. It is not healthy for the relationship or the child if one parent resents the time and attention the other must spend feeding and caring for the infant. It is the same in a new or very young organization. The demands are constant, the needs are great, and the potential for success will be much greater if the one giving attention to the infant organization can expect and receive from his or her spouse or partner understanding, cooperation, and support. Without this healthy environment, the strain on commitment may become unbearable, and the venture may fail.

If the infant organization is to succeed and grow to maturity with the founder's commitment intact, the founder must be aware of the traps that lie in wait for the unwary. It is dangerous to ignore interpersonal needs while tending to the needs of the organization. It is also tempting but unwise to risk premature dilution of control by bringing in outside investors for what in retrospect may be relatively little money.



Dan Axelrod is a management consultant and coach affiliated with the Adizes Institute of Santa Barbara, CA. He is based in Los Angeles, CA and can be reached by email either at dan@adizes or danaxelrod@aol.com

O CANADA¹ - DOING BUSINESS IN CANADA

By Patrick Stiehm

WHAT ARE SOME OF THE LEGAL CONSIDERATIONS FOR A U.S. FACTOR TO DO BUSINESS IN CANADA?

In the twenty plus years that I have represented factors, questions concerning doing business in Canada have come up with a high degree of regularity. In the last few years, the effects of NAFTA and globalization seem to have increased the frequency with which these questions come up. "Doing business in Canada," can run the gambit from the purchase of a single invoice to a client's Canadian customer to entering the Canadian market with a full marketing effort in an attempt to garner as many Canadian customers as possible. There are clearly many stages in between. The decision on whether to do business in Canada or any other foreign country for that matter, will of course include many non-legal considerations. Examples of such considerations can include, things like what effect, if any, will the currency exchange rate have on the proposed transaction; do language factors, i.e., French in Quebec and to a lesser extent Manitoba in the case of Canada, affect the transaction? Legal concerns often get lost in the shuffle. Because of the proximity of Canada to the U.S. and our shared Common Law traditions, (in all Canadian jurisdictions except Quebec) we tend to think of Canada as just like us. That is not the case.

The purpose of this articles is to highlight selected legal matters a factor must consider before deciding to do business in Canada.

This article will consider the enforceability of a so called choice of forum clause in a factoring agreement, as it may be applied under Canadian law.

Virtually every factoring agreement I have ever seen has a provision that reads something like this:

***Governing Law and Related.** This Agreement shall be governed by and interpreted according to the laws of the State of West Dakota, without giving effect to the conflicts of law rules thereof. Client consents to and acknowledges the right of all courts, administrative agencies, boards and/or quasi-judicial bodies in the State of West Dakota, including without limitation the (state courts of general jurisdiction) and the United States District Court for the District of West Dakota, to exercise personal jurisdiction over Client with respect to any dispute or controversy between Client and Factor relating to this Agreement or to any transaction in connection therewith, whether arising during the term of this Agreement or after its termination. Client agrees that any action which it may initiate against Factor, whether initiated during the term of this Agreement or after its termination, will only be filed in the courts of the State of West Dakota or the federal courts located in the State of West Dakota, consistent with the subject matter jurisdiction requirements of those courts.*

We are all reasonable comfortable that these provisions will be enforced in the United States, as long as there is a nexus (connection) between the choice of law and choice of venue provisions and the transactions governed by the factoring agreement. That is always going to be the case, since factors always choose the state where they are located as the governing law and the place of venue for any court action.

Conversely we have always been less comfortable with these provisions

being enforced by a Canadian court, if a Canadian client we take on should attempt to litigate in Canada. In the past, when I have had occasion to put this question to Canadian counsel, the answer has always been tentative. The answer has been something to the effect that, "...there is a strong possibility that a Canadian court would enforce such a provision but, the law on the question is not well developed, so don't hold us to that answer." This is clearly what one of my clients refers to as a, yes, no, maybe answer.

At last however, we have good news on this issue. In July 2005, the Supreme Court of Canada issued a decision in the case of GreCon Dimter Inc. vs. J.R. Normand Inc. et al. While primarily dealing with the enforceability of international commercial arbitration clauses in Canada the case clearly held that choice of forum clauses picking foreign law and courts as the place of litigation, will be enforced.

What the Canadian Supreme Court has held was that the decision of the parties to submit litigious issues arising from a contractual relationship to among other things a foreign (Non-Canadian) court or to an arbitrator will be enforced despite specific provisions of applicable provincial law which may provide otherwise. Although focusing on arbitration, this case highlights among other things the importance for those of us in the factoring business, of a choice of forum clause in a factoring agreement with a Canadian client.

The facts of the case are relatively simple and clear cut. GreCon Dimter Inc. ("GreCon") is a German corporation. It manufactures and sells specialized equipment used in processing plants and saw mills. Defendant J.R. Normand Inc. ("Normand") sells and services industrial wood working machinery. Co-Defendant Scierie Thomas-Louis Tremblay Inc. ("Tremblay") operates a saw mill in the Province of Québec. The case arises out of two contracts. One was entered into by Normand and Tremblay for the supply and delivery of equipment in Québec. The other contract is a contract of sale between GreCon and Normand. The latter contract contains a choice of forum and choice of law clause which reads as follows:

"It is agreed, by and between the seller and buyer, that all disputes and matters whatsoever arising under, in connection with, or instant to this contract... shall be litigated, if at all, in and before a Court located in Alfeld, Germany to the

[CONTINUED ON PAGE 6](#)

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exclusion of the Courts of any other State or country...

This agreement is governed by and construed under the laws of Germany to the exclusion of all other laws of any other state or country (without regard to the principles of conflicts of law).¹²

Tremblay brought an action in damages against Normand based on defects in the product. Normand, in turn filed an action in warranty against GreCon seeking to be indemnified by GreCon in the event of an award being made against it in the first action.³ At the trial court level, GreCon unsuccessfully attached the jurisdiction of the Québec Courts on the basis of the choice of forum clause, quoted above. This unsuccessful attach on jurisdiction was renewed, again unsuccessfully at the court of appeals level in Québec and lead to the appeal to the Supreme Court of Canada.

In a unanimous decision the Supreme Court of Canada⁴ held that the jurisdiction of the Canadian courts is ousted once it is established that the parties have chosen by a clear and precise agreement to submit their disputes to a foreign court or to an arbitrator.

What this means as a practical matter, is that your choice of forum provision, assuming it is clear, will be enforced in Canada and your Canadian client will be forced to litigate in your home state rather than being able to do an end run on you by going to court in Canada.⁵ Thus, if everything else points to entering into a factoring agreement with a Canadian client, the fear of having to potentially litigate in a Canadian court should not stand in the way of you

entering the transaction.

¹ With a respectful nod to the Canadian national anthem. Its first lines are:
"O Canada!

Our home and native land!

True patriot love in all thy sons command."

Like those of us south of the border, I have found most Canadians don't know the words to their entire national anthem and can't get much beyond this point.

² Note the similarity between this choice of forum clause and the one quoted above.

³ This differs a bit from normal U.S. practice in these situations. In the U.S. GreCon, would normally be third partyed, i.e., brought into the original suit, rather than a second suit being brought.

⁴ The fact that the Supreme Court of Canada had the final word on this issue underscores one of the differences between the U.S. and Canada. This is a pure contract dispute and the state law on the matter once decided by the state supreme court or its equivalent would be final. In the U.S. there would be no appeal to the U.S. Supreme Court, because there is no federal issue.

⁵ This article is for informational purposes only. In any question involving Canadian law a competent Canadian attorney should be consulted.



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NEW IFA WEBSITE TO DEBUT

The IFA will be implementing their new website during January. The new site will feature a multitude of enhancements that will make the site easier to use.

Some of the features will be:

1. Your logon has changed from the username you were originally given to your email address. Your password will be staying the same.
2. The website will now remember you eliminating the need to logon each time you revisit the site.
3. If you forget your password, you can now have it emailed to you.
4. You no longer need to logon to access the Vendor section of the website. This section is open to everyone. As such, we will make an

effort to verify that this is a complete listing of all goods and services that are offered to the Factoring community.

5. You can do a keyword search for articles in archived newsletters.
6. The IFA store has been completely redone. You no longer need a separate log-on to order items from the store.
7. The forums have been completely redesigned. We have implemented a new and modern forum. All of the past postings are still listed, but the conversion required us to list them as coming from the IFA.

These new enhancements will make the site more user friendly and easier for you to access the information you are looking for. If you have any questions or problems with the IFA web site, please contact us at info@factoring.org or call us at **800-563-1895**.



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Fortis has finalized the acquisition of Atradius Factoring, with its operations in Denmark, Sweden, France, Germany and Italy set to move under the Fortis umbrella. Atradius Factoring's business - which employs 150 people - is now being integrated into Fortis Commercial Finance and will soon operate under the Fortis brand.

Datamonitor NewsWire
November 1, 2005

BB&T Corporation said it completed the merger of BB&T Factors Corporation into Branch Banking and Trust Company. The merger created a new line of business: BB&T Commercial Finance, a combination of the corporation's factoring and asset-based lending divisions.

PR Newswire US
November 3, 2005

Tianjin Economic-Technological Development Area ("TEDA") announced today that the country's first international factoring center, Binhai International Factoring Center, is to be founded in TEDA by Orbrich Financial Guaranty Limited, the only domestic specialized international factoring company.

PR Newswire US
December 13, 2005

Larry Toshio Osaki, 57, of Upland who ran a gigantic Ponzi scheme and continued to offer bogus investments in accounts receivable "factoring" after being ordered to stop by a federal judge was sentenced this morning to 240 months in federal prison. In addition to the prison term, Judge Wilson ordered Osaki to pay more than \$145 million in restitution to victims. From at least 1997 until his arrest in October 2003, Osaki offered investments in factoring. Employees at Wallenbrock, and later at the Canadian-based Village Capital Trust, told investors that their money would be used to purchase the accounts receivable of latex glove manufacturing companies based in Asia and that investments would yield returns of 20 percent every 90 days. However, neither Wallenbrock nor Village Capital Trust purchased any accounts receivable, nor did they operate a factoring business. Instead, Osaki used investors' money to improperly pay the salaries for

him and his associates and run his own venture capital firm.

States News Service
December 16, 2005

BIBBY Financial Services has opened an office in Edinburgh that will offer invoice factoring services to Scotland's small business owners.

Daily Post (Liverpool)
December 28, 2005

The Chilean factoring industry foresees factoring growth at 20-25% annually for at least the next two years due in part to more international factoring transactions.

Business News Americas
December 30, 2005

The Utah State Supreme Court warned citizens of stock scams. Making the top ten list was the factoring in which Investors are asked to loan money to fund a company's operations, getting a promissory note in return. These offerings have been unusually successful because they often are offered by insurance or real estate salespeople, who don't realize the promissory notes are worthless and who are not licensed to sell securities. In December, an insurance agent in Brigham City was charged with four felonies for selling promissory notes and other fraudulent practices. A related scheme involves factoring, or selling accounts receivable at a discount with a promise that when the customer pays his or her bill, the investor will receive the full amount.

The Salt Lake Tribune (Utah)
December 31, 2005

The Ohio State Supreme ruled that a State university is not subject to statutory notice requirements concerning financing agreements in the case of MP star Financial inc. vs.. Cleveland State University. Cleveland State moved to dismiss the action, arguing the complaint was based on §1309.406(A) and that because Cleveland State was an institution operated by the state of Ohio, §1309.406(A) was not applicable, pursuant to Ohio Rev. Code §1309.109(D)(14). Section 1309.109(D)(14) states, "This chapter does not apply to *** [a] transfer by a government,

state, or governmental unit." The court of claims dismissed the action, concluding §1309.406(A) does not apply to payments made by an account debtor that is a governmental unit. The appeals court affirmed the court of claims' judgment. The supreme court granted a discretionary appeal. The supreme court held §1309.406(A) did not apply to payments made by Cleveland State since the payments were transfers within the meaning of §1309.109(D)(14):

National Financing Law Digest
January 2006

Factoring in Hungary is up 30 – 40 pct in 2005. About 1,800 businesses used factoring services in Hungary last year. Hungary's factoring market is considered riskier than in other markets because Hungarian companies are smaller and have fewer customers.

MTI Econews
January 6, 2006

Factoring in Czechoslovakia is up 5 pct in 2005. Transfinance was number one with a 26.3 percent market share, followed by Factoring CS with 25.6 percent and O.B. Heller with 18.9 percent

CTK Business News Wire
January 10, 2006

DO MORE
DEALS

MAKE MORE
MONEY

LEFCO
IS COMING!

LEFCO

Our company has been successful for the past several years by seeking market share in the contiguous United States of America. We were resigned to the concept of keeping our business domestic and frankly, not interested in the attacking the vagaries of international business. Some recent events have occurred which I would like to share with fellow factors who may have carried with them some of the same apprehension that I did.....until now. While we are not embarking on an adventure to the Far East or for that matter Western Europe, we decided to take a much shorter trip up North, in fact right across the Great Lakes, to our friends to the North: Canada.

Our reservations about doing business in Canada were certainly justified initially in light of the different laws and currencies in our two countries. Then, other questions surfaced, such as, how do we handle the mechanics of conducting business with account debtors in Canada? How do they pay us? How stable are the conversion rates? Is it worth going forward?

The answer to the last question (for now) is yes. Many United States banks have affiliate banking relationship in Canada. I was happy to find that our bank falls into this category. In talking to them further about how to provide cash to our client, they suggested that we fund an account at their branch in Canada with enough cash to cover our client's needs. All payments could be set up to come straight to the bank so the account would continually be replenished. Most important, there would be no need to constantly be exchanging US Dollars for Canadian Dollars. By maintaining a fresh supply of Canadian Dollars in our bank account in Canada, we would not need to send money all that frequently. This leads to our next question: exchange rates.

The US Dollar has suffered in recent months in comparison to the Canadian Dollar. Fortunately, the ups and downs have not been so drastic that we would take a hit overnight, however, we are not taking this issue lightly. We will constantly monitor the fluctuations of the US Dollar; should the US Dollar gain value against the Canadian Dollar, we may find ourselves funding the account a little more than normal to get more "bang for our buck." Our attorneys have spent a considerable amount of time crafting specific language in our Agreements protecting us in the event of major fluctuations in exchange. Of course, we will carefully monitor this situation closely to mitigate any possible loss.

We spent a significant amount of time looking at other relevant legal and taxation related issues. There are no usury laws that cause us any concern (unless we were a lender disbursing funds at greater than 60% interest). Furthermore, the sale of receivables (so long as it is not in reality a secured loan) is not a taxable event for a company such as ours. Additionally, an important distinction is made between companies doing business "in Canada" rather than "with Canada." The former would subject us to taxation through the Canadian Revenue Agency. Fortunately, we fall into the latter

category, as our business does not operate in Canada but merely with it. In fact, we do not need to register to do business with a Canadian company, as long as we are not a company operating in Canada. It should be noted that if we were a company operating in Canada, the tax laws are much more favorable to corporations than limited liability companies based upon the current treaties entered into between the United States and Canada.

Our Uniform Commercial Code Financing Statement will hold muster in Canada just as it does in the States, but I am told that we absolutely must consult a local attorney in the event that we decide to venture into the Province of Quebec, where the Uniform Commercial Code has not been a big hit. The bankruptcy legislation in Canada is different as well and we are hopeful that we will not need to familiarize ourselves with it.

As a factor, I am also an entrepreneur and the prospects of jumping into an untapped market excite me. I take on this new challenge with cautious optimism that everyone is right about the relative ease of doing business with Canada. I would be remiss if I did not thank the IFA and specifically, Attorney Martin Fingerhut of Blake, Cassels & Graydon LLP, who consulted with my office with regards to this matter. The IFA proved once again to be a tremendous resource to help factors of all kinds grow and improve their business.



Danny Goldstein is Director of Operations for Advance Payroll. He can be reached at 216-831-8900 ext. 124 or 888-651-6500 or www.advancepayroll.com

IFA's NEW LOCATION

The IFA has relocated to new offices. Our new address is:
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For questions or comments please contact Bert Goldberg at: bert@factoring.org

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PURCHASE MONEY SECURITY INTERESTS - HOW DO THEY IMPACT FACTORS?

A purchase money security interest ("PMSI") gives special priority to a secured lender who provides financing to acquire certain collateral. A factor needs to understand how a PMSI can impact the factoring relationship.

What is a Purchase Money Security Interest?

A PMSI secures an obligation incurred to acquire the collateral. There must be a close nexus between the acquisition of the collateral and the secured obligation. A purchase money security interest is not created if property is acquired on unsecured credit and a loan is subsequently obtained secured by that collateral. A purchase money security interest can only be created in goods (which includes inventory and equipment) and software. There cannot be a PMSI in accounts receivable.

A special rule (UCC 9-103(b)(2)) allows purchase money security interests in inventory to be cross-collateralized. A seller may sell inventory (Item 1) to debtor and take a purchase money security interest in that inventory to secure the purchase price and all other existing and future obligations of debtor to seller. If that seller then sells debtor another item of inventory (Item 2) and again takes a PMSI in Item 2, the PMSI in Item 1 also secures the obligation owing for the sale of Item 2.

Perfection and Priority of a Purchase Money Security Interest

There are no special requirements for the perfection of a purchase money security interest. A UCC Financing Statement is not required to indicate that the security interest is a PMSI.

The general rule is that a perfected purchase money security interest in goods other than inventory and livestock has priority over conflicting security interests in the same goods. This priority also extends to identifiable proceeds if the PMSI is perfected when the debtor receives possession of the collateral or within 20 days thereafter.

For inventory, the general rule is that a perfected PMSI has priority over a conflicting security interest in that inventory, in chattel paper and instruments constituting proceeds of that inventory, and in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before delivery of the inventory to a buyer but only if (1) the PMSI is perfected when the debtor receives possession of the inventory, (2) the purchase money secured creditor sends "authenticated" ("authenticated" basically means signed) notice to the holder of the conflicting security interest, (3) the holder of the conflicting security interest receives the notice within five years before the debtor receives possession of the inventory, and (4) the notification states that the person sending the notice has or expects to acquire a PMSI in the inventory of the debtor and describes the inventory.

Impact on Factoring of Inventory

These rules have a significant impact on a factor which provides financing of inventory. First, the factor will want to take the appropriate steps to establish a purchase money security interest in the factored inventory. This is especially important if there are other security interests in inventory. Second, the factor must monitor and be on guard against a subsequent PMSI in inventory - and remember that the conflicting PMSI can be perfected up to 20 days after the debtor takes possession.

Impact on Factoring of Accounts

Factors sometimes become concerned that if they factor an account receivable that is proceeds of inventory subject to a purchase money security interest, the factor will lose its priority in the account. This concern arises

from the well understood principle that accounts are proceeds from the sale of inventory and if another secured creditor has a prior perfected security interest in inventory, the other secured creditor's interest in the accounts will have priority over the interest of the factor. Factoring companies know they cannot safely factor accounts that arise from inventory which is subject to a prior perfected security interest in the inventory. Can a subsequent PMSI in inventory leapfrog the purchase money secured creditor ahead of the factor's interest in the resulting account receivable?

The answer is generally no. A purchase money secured creditor does not receive any priority interest in accounts resulting from the sale of inventory subject to a PMSI. As always, however, there are exceptions. The purchase money secured creditor does receive priority in resulting chattel paper, instruments and "identifiable cash proceeds". If a sales contract or promissory note is given for payment of the inventory, the purchase money secured creditor will have priority in those proceeds. "Identifiable cash proceeds" do not include accounts. "Identifiable cash proceeds" are money and checks which can be traced and identified.

A proper understanding of purchase money security interests will allow a factor to navigate around potential traps of a purchase money security interest and avoid any problems.



Information provided in this article is general information only and not legal advice. Readers are encouraged to consult an attorney for specific legal advice.

John A. Beckstead, Esq. is a partner in the Salt Lake City Office of Snell & Wilmer L.L.P. He can be reached at jbeckstead@swlaw.com.

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THE ONE THING...

In the ABCs of Selling Factoring, we've covered the "A": honestly assessing your Strategic Advantages AND Disadvantages as a firm and as a salesperson. We then covered the "B": deciding who to call on given your Strategic advantages and disadvantages (the Go-to-Market Strategy). And over the last two articles, we went over the Tactical Sales Call Process itself. Now, it's time to sum up the ABCs of Factoring Sales by focusing on the single-most important thing a salesperson must do to be successful. We touched on this element many times over the course of these articles. Sometimes we blatantly made the point. At other times, we hinted at, implied, went at it in a roundabout way, or simply pointed you in the direction of this critical element. Now it's time to put all of our attention on what separates the truly successful from the rest of the pack.

OWN Something. Anything!

Take your pick. Is it the transportation industry? Is it the small deal niche? Is it the state of Texas? Is it the Community Banking channel? Is it the small transportation deals from the Community Banking channel in the state of Texas? Basically, it really doesn't matter what industry niche, deal size range, geographical region or referral source channel you go after. What IS important is that you focus your resources on something that at the end of the day you can call your own.

This isn't to say that the best of the best get 100% of their deal flow from the same particular referral sources or marketing channels year in and year out; although some do. Most, however, usually obtain at least half of their business this year from the same sources that produced at least half of their business last year. In other words, they invest their time in activities that will not only produce today, but will also produce tomorrow (and the next day, and the next). Notice I pen "invest their time" and not "spend their time." Spending refers to using up present resources now for present gain now. Investing suggests directing present resources for gain today AND tomorrow. The best invest. The rest spend.

Investing occurs when you follow the ABCs. You must know what you are and what you are not. You must determine the targets that most need what you are and least need what you are not. You must then focus your time and energy on those individuals within those targets that you best connect with. And then you must nurture those relationships so that no matter who else calls on the referral source, they think of you first and foremost. The nurturing process requires you to invest your resources. Further, you must care about your source as much as you want them to care about referring you business. The most successful salespeople figure out ways to make their key relationships a two way street. If they cannot see you working to help them, don't expect them to continue on helping you forever; no matter how well you connect.

This line of thinking applies to advertising and marketing activities just as much as it does to referral source marketing. I have done just about every form of marketing in my 20-plus years in this business. You name it, Direct Mail, Telemarketing, Radio Advertising, Print Advertising, Strategic Alliances, Private Labeling, Trade Show Marketing, Billboard Marketing, etc., I tried it all. More often than not, I achieved better results than others that tried the same activity. Why? Again, because I invested my time and money into those activities, not merely spent my time and money. Each of these activities requires that you take your time and research it so that you choose the precise medium that best reaches your specific target market. They require a certain amount of care to ensure that your message is appropriate given the medium. They also require a certain minimum level of investment to make certain that the message has time to work. And finally, they require you to track the results to determine if your investment is paying off. Most people or firms are willing to follow a couple of these steps, but seemingly always

fall short of the commitment required to be successful. You see, even when a particular marketing avenue failed for me, my firm still benefited. How, you ask? Well, at least we knew that we had given it our all, did it right, and accurately tracked the results. So we knew it was better to move on and try other things. We didn't have to second guess ourselves by saying "maybe we should have given it more time" or "maybe we should have tried a different magazine" or worse, "maybe we did get some leads and didn't know where they came from".

Conclusion

The Best Invest. They focus on what they feel will produce the greatest deal flow and stick with it, even when instant results don't follow. They prefer to call on the most key sources over and over to establish a long term relationship rather than call on as many people as possible in hopes of getting lucky. They look to build mutual relationships, the best kind of relationships. They don't try to be all things to all people. They recognize when things aren't happening and move on. They are confident that what they bring to the table has value for a certain market segment and go after that particular market segment with reckless abandon. They don't mind hearing "NO", because the more NOs they hear, the closer they are to a YES. Does it take some luck? Sure it does. But as the Best say, "The harder and smarter I work, the luckier I get!" Go figure.



Thomas G. Siska is the Managing Director of FactorHelp, Inc. He can be reached at tsiska@factorhelp.com or 847-498-9136.

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By Steven N. Kurtz

One of the services that the IFA offers to its members is the Amicus Brief Program, where the IFA has taken positions in various appellate cases which are of interest to the association and its members. One of its cases was MP Star Financial, Inc. v. Cleveland State University, 107 Ohio St.3d 176 (2005). Unfortunately, on December 7, 2005, the Ohio State Supreme Court ruled against one of its members, MP Star Financial, with whom the IFA participated in the case.

The facts in this case are simple. The factor entered into a financing arrangement with its client. The factor client conducted business with Cleveland State University and sold various accounts to the factor. Cleveland State University received a proper notice of assignment which instructed the University to render payment to the factor instead of the factor client. Cleveland State University paid the factor client instead of the factor. The factor client failed to remit the money to the factor. The factor sued Cleveland State University for failure to comply with the notice and the trial and intermediate appellate courts held that the assignment provisions of the UCC did not apply to governmental entities. The factor appealed and the IFA filed an amicus brief. The Ohio State Supreme Court then granted review.

The issue in the case was whether or not the assignment provisions of the Ohio version of UCC Sec. 9-406 (the UCC assignment provisions) apply to a state government entity. This issue turned on a reading of the Ohio version of the "step back" provision of the UCC, found in Ohio's version of UCC Sec. Sec. 9-109. The UCC Step Back provision sets forth the types of transactions which are not covered by Article 9, and generally exclude transactions where state law or federal law provide an alternative means of registering a security interest, such as motor vehicles (unless it is inventory), aircraft, or registered copyrights. The step back provision also addresses loans to state governments and governmental units.

Revised Article 9 also states in Sec. 9-109(c)(2) that it does not apply if another statute of the state expressly governs the creation, perfection, priority, or enforcement of a security interest created by the state or governmental unit of the state. This means that a security interest granted by a state or governmental unit of the state is governed by Article 9 unless the state created a different law which governs such transactions. The comments to Sec. 9-109(c)(2) clearly reinforce this point. Revised Sec. 9-109(c)(2) replaced a prior section which stated that Article 9 does not apply to a transfer by a government or governmental unit.

Unfortunately, Ohio has not adopted Revised Article Sec. 9-109(c)(2). Rather, it uses the prior version of the step back statute, which states that Article 9 does not apply to a transfer by a government or governmental unit. In fact, as set forth in the chart at the end of this article, Ohio is one of many states which have not adopted this section of Revised Article 9. In fact, California adopted this section with its own language, but amended the statute to go back to the prior wording in place before Revised Article 9.

Although Ohio, like several states, has not adopted Revised Article Sec. 9-109(c)(2), there were many decisions and well regarded authorities which held that the notice provisions of UCC 9-406 (and its predecessor section 9-318) apply to state governments and governmental units. Although Ohio has not adopted Revised Article 9-109(c)(2), it adopted the official comments to that section, which reinforces the rule that Article 9 should apply to security interest created by states or governmental units unless there is a specific law to the contrary.

Although it is clear that Revised Article 9 and old Article 9 did not have any intention to exclude state governments or governmental units from

the notice provisions, the factor was still faced with the classic sympathy problem of the notice provisions-requiring an account debtor to pay twice. In this case, there were no sympathetic facts in the record which would reflect that Cleveland State University was duped or tricked into paying the wrong party. Rather, the University simply paid over notice. However, the factor was still faced with Ohio Supreme Court Justices, on a state payroll, effectively requiring their team to pay twice.

The Ohio Supreme Court based its decision, without any analysis on a dictionary meaning of the word transfer, which defined a "transfer" as: the conveyance or removal of something from one place, person, or thing to another. The Court further determined that the word transfer was unambiguous and therefore there was no need to look to the official comments, which would have dictated that the court rule in favor of the factor.

All factors who purchase invoices of account debtors who are state governments or governmental units in any of the states which do not follow Revised Article Sec. 9-109(c)(2), should be aware of this decision. Although the case was wrongly decided and contained several analytical flaws, there is a risk that other judges, who are state employees, may pick up on this trend.

For those who do not want to wade in these waters, the simple solution is to not purchase state government or governmental unit invoices.

If you decide to purchase such invoices, one may obtain a form of an [CONTINUED ON PAGE 12](#)

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estoppel letter, which essentially states the entity received the goods or services from the factor client and promises to pay the factor client. This creates a contract in favor of the factor where payment to the factor client results in a breach.

Many state governments or governmental units have their own internal procedures which will ultimately result in the direction of payment to the factor. In a bureaucratic world, this makes perfect sense. Compliance with these procedures creates an enforceable contract in favor of the factor.

Some states may have procedures which are similar to the Federal Assignment of Claims Act, which if followed, result in payment to the factor and an obligation which the factor can enforce.

If the factor has its client's cooperation, the actual agreement between the factor client and the state or the governmental unit can provide that all payments be made to the factor. Provided that there are no state specific assignment of claims provisions which must be complied with, this results in the factor being a third party beneficiary to the actual contract who can enforce a claim for nonpayment, independent of the UCC assignment provisions.

One final suggestion, is to have a choice of law provision in the agreement (or invoices) between the factor client and the state or governmental unit which calls for the law of a state which has adopted Revised Article Sec. 9-109(c)(2). Revised Article 1-301(c) allows the parties to choose the law of any state, regardless of whether or not the transaction bears any relation to the state. If the state has adopted Revised Article 1-301(c) and you can get your factor's client's cooperation by at least inserting a proper choice of law clause into an invoice, this may be a way around the Cleveland State University decision. If the state has not adopted this section, then the transaction must bear a reasonable relationship to the chosen state (UCC Sec. 1-105). One caveat about using this tactic is that conflict of law rules can be quite complicated and a court being sympathetic to the plight of its ultimate employer being forced to pay twice on the same invoice, can always find a reason not to apply the contractual choice of law provision as it violates some state policy. At the end of this article is the list of states which have adopted revised UCC Sec. 1-301(C).

The Cleveland State University decision requires that those who transact business with state governments or governmental units be quite vigilant and aware of the rules and playing field they are dealing with. If the state where the government account debtor has adopted Revised Article Sec. 9-109(c)(2), then the playing field becomes more even. If the state has not adopted this section, then one must exercise caution and hopefully the suggestions set forth above will be of some assistance. Or course, the ultimate reality is that when dealing with state or governmental unit account debtors, you are asking a court to cause its ultimate employer to pay twice on the same invoice,

which is a rough task. Finally, further verification and monitoring of these accounts are the best method to prevent problems of this sort.

TABLE 1: TREATMENT OF GOVERNMENTAL TRANSFERS UNDER REVISED ARTICLE 9

Jurisdictions (U.S. States and D.C.)	UCC Section 9-109(c)(2) Adopted	Cite
Alabama	No	ALA.CODE S 7-9a-109
Alaska	No	AK 45.29.109(d)(14)
Arizona	No	AZ ST s 47-9109(D)(14)
Arkansas	No	ARK.CODE s 4-9-109(d)(14)
California	No	CA COML CODE s 9109
Colorado	No	CO ST s 4-9 109
Connecticut	No	CT ST s 42A-9-109(d)(14)
Delaware	Yes	DE ST ti 6 s 9-109
District of Columbia	Yes	D.C. CODE s 28:9-109
Florida	No	FL ST s 679.1091(4)(n)
Georgia	No	GA CODE s 11-9-109
Hawaii	No	HI ST s 490:9-109(d)(14)
Idaho	Yes	IDAHO CODE s 28-9-109
Illinois	No	810 ILCS 5/9-109(d)(13)
Indiana	No	IND. CODE s 26-1-9.1-109
Iowa	Yes	IA CODE s 554.9109
Kansas	No	KAN. U.C.C. ANN. S 9-109
Kentucky	No	KY ST s 355.9-109(4)(q)
Louisiana	No	LA REV. ST s 9-109
Maine	Yes	ME ST t 11 s 9-1109
Maryland	Yes	MD COML LAW s 9-9109
Massachusetts	Yes	MA ST ch. 106s 9-109
Michigan	No	MI ST s 440.9109(4)(m)
Minnesota	Yes	MN ST s 336.9-109
Mississippi	No	MS CODE s 75-9-109(d)(13)
Missouri	No	MO St s 400.9-109(d)(14)
Montana	No	MT ST s 30-9-129(d)(m)
Nebraska	Yes	NEB. REV. STAT s 9-109
Nevada	No	NV ST s 104.9109 (4)(n)
New Hampshire	Yes	NH ST s 382-A:9-109
New Jersey	No	NJ REV. STAT. s 12A:9-109(d)(14)
New Mexico	No	NM STAT. ANN. S 55-09-109(d)(14)
New York	Yes	NY UCC LAW s 9-109
North Carolina	Yes	N.C. GEN. STAT. s 25-9-109
North Dakota	No	N.D. CENT. CODE s 41-09-09(4)(m)
Ohio	No	OHIO REV. CODE s 1309.109(D)(14)
Oklahoma	Yes	OK ST t 12A s 1-9-109
Oregon	Yes	OR REV. STAT. s 9-109
Pennsylvania	Yes	13 PA C.S.A. s 9109

Jurisdictions (U.S. States and D.C.)	UCC Section 9-109(c)(2) Adopted	Cite
Rhode Island	Yes	R.I. GEN. LAWS s 6A-9-109
South Carolina	No	SC CODE s 36-9-109
South Dakota	No	SD CODIFIED LAWS s 57A-9-109(d)(13)
Tennessee	Yes	TENN. CODE s 47-9-109
Texas	Yes	TX BUS & COM s 9.109
Utah	Yes	UT ST s 70A-9a-109
Vermont	No	VT STAT ANN. TI 9A s 9-109(c)(14)
Virginia	Yes	VA CODE Ann. 8.9A-109(e)
Washington	No	WA REV. CODE s 62A.9A-109(d)(14)
West Virginia	No	WV Code s 46-9-109
Wisconsin	Yes	WI ST s 409.109
Wyoming	No	WY ST s 34.1-9-109(D)(xiv)

TABLE 2: STATES WHO HAVE ADOPTED 9-103(c)

[20 States] [1 District] [1 Territory]			
DELAWARE	DIST. OF COLUMBIA	IDAHO	IOWA
MAINE	MARYLAND	MASSACHUSETTS	MINNESOTA
NEBRASKA	NEW HAMPSHIRE	NEW YORK	NORTH CAROLINA
OKLAHOMA	OREGON	PENNSYLVANIA	RHODE ISLAND
TENNESSEE	TEXAS	U.S. VIRGIN ISLAND	UTAH
VIRGINIA	WISCONSON		

 Steven Kurtz of Levinson Kaplan Arshonsky & Kurtz, APC can be reached at 818-382-3450 or email him at skurtz@levkaplawyers.com.

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The IFA Training courses continue to be phenomenally successful. Our Fall 2005 courses broke new ground for the factoring industry and attendees of both courses had rave reviews.

We held our **Factoring from A to Z for the Salesperson Course** on October 17th & 18th. This course was designed for a salesperson who wanted to learn more about how to sell a factoring product. Our trainers for this course were Tom Siska from FactorHelp and Tyler Grady from LSQ Funding Group.

This course was a huge success. Comments from the attendees were:

- "The entire training session was very helpful."*
- "Good program. I will apply several new concepts that I learned in this course in my day to day activities."*
- "Very good program. The speakers both did an excellent job."*
- "Both instructors did an excellent job explaining in detail both the operations and sales side of factoring! Great job."*

October 27th & 28th was our **International Factoring Training Course**. This was the first time a course on International Factoring was held in the United States and it was another home run. Each of the four instructors complimented the others perfectly while enhancing the program. The background and knowledge of each of the presenters were apparent during the entire presentation. Some of the feedback from the attendees were:

- "Very well laid out, i.e. general overlay, insurance, P/O. Good knowledge by speakers."*
- "All the speakers compliment each other, drawing on the expertise of their peers."*
- "This was a very informative class. The speakers stayed on their topics well & did not lag on a topic for extended time- handouts provided & case studies were interesting."*
- "Great mix of speakers & topics."*

Our spring courses will offer both a repeat of some of our more popular courses as well as a new course.

May 25th & 26th will be our **Sales & Marketing Training Course**. The instructors will be Tom Siska from FactorHelp and Peter Aransky from The Hamilton Group. This has been one of the more popular courses that we offer. This course offers sales and marketing staff many new and interesting ideas on how specifically to sell the factoring product.

Comments from previous attendees of this course are:

- "Excellent! I have been in factoring direct sales and sales & marketing management for 20 years. This course re-emphasized forgotten ideas and gave me some refreshing new ideas as well."*
- "Great course, great presenters! Training presented successfully through the Marketing concepts, experience, examples and ideas and answers were put on the table for us to digest and take with us to apply to what we do and who we are."*

Due to the nature of the Sales & Marketing course, we do not create or distribute attendee lists.

Our second course is the extremely popular **Loan Officer / Account Executive Training** and will be held June 8th & 9th. This course continues to be our most popular offering. This course is designed for those that are newer to the factoring industry or for those just wishing to see how other

factors operate. Attendees will leave with a well rounded knowledge of how factors operate. Instructors for this course are Jay Atkins from Bibby Financial and Darla Auchinachie from Liquid Capital. Comments from previous attendees of this course are:

- "The content is excellent for this program! I really benefited from this course."*
- "All speakers for me are excellent & experienced in many areas. I learned so much valuable information that will provide me with value to my position as an account manager."*
- "This particular seminar I found to be very helpful & informative. I believe the topics covered will be very useful especially on the operational side. This has been one of the best seminars I have attended."*
- "Very good Presentation. Extremely well organized & professional. Speakers were knowledgeable in their respective industry."*

June 12th & 13th will be a repeat of our **Transportation Factoring Training Course**. Our last course was a complete sell out, so if you are interested in attending, we suggest signing up early. Our presenter for this course will be David Jencks, Esq. This course will cover all aspects of transportation factoring, from operations to marketing. David is an excellent presenter and has the knowledge to cover all topics in great detail.

Comments from the attendees were:

- "A must seminar if you purchase any type of transportation receivables. You will learn information that will reduce losses and improve your bottom line, guaranteed."*
- "I'm so happy the IFA presented the transportation seminar. It addressed all the major issues impacting transportation factoring."*
- "I think this program was extremely beneficial. The info was great and the networking in this smaller environment was excellent."*

Our final course for the spring will be a new course for the IFA. We will be concentrating on how to Factor Niche Industries. Held June 14th – 16th, this three day course will cover various factoring opportunities such as:

- Temporary Agencies
- Agriculture
- Credit Card Funding
- And more
- Construction
- Lawsuit Funding
- Real Estate Commissions

This should be both an interesting and informative course for those looking for more information on industries that they currently factor as well as for those looking to enter new niches. Specifics regarding this course will be announced soon.

All of our spring courses will be held at the Monte Carlo Resort and Casino in Las Vegas, NV.

Mark your calendars - The Presidents and Senior Executives meeting will be held August 10th & 11th at the Hilton Los Cabos Beach and Golf Resort. Details on this meeting will be available soon.

For additional details or to sign up, please visit our web site at www.factoring.org or call the IFA at 800-563-1895.

The IFA would like to take this opportunity to thank all of the instructors and moderators for their time and for putting together such excellent programs. The IFA would also like to thank all of the attendees for helping to make these programs such a success.



STOP THE BLEEDING

By Dr. Ron

P15

PRODUCT DEVELOPMENT - THE KEY TO SUCCESS IN 2006 AND BEYOND

Part One...

Before you can stop the bleeding, you need to have some blood in your veins. In factoring parlance, that means you need to have income. Obviously, in order to have income, you must have deals on the books. I know that recently, more and more of Gibraltar's deals have a term loan component to them. Sometimes that component is secured by equipment, sometimes by real estate. Occasionally, we are forced to make an inventory advance to raise enough cash to get a deal done. It is my thinking that those of us that factor receivables, and only factor receivables, will fall by the wayside to other, more progressive, lenders that make loans in addition to factoring receivables. In addition to factoring receivables, we need to start lending money (as opposed to factoring) not only on receivables, but also on collateral other than receivables. In comparison, let us take a look at the asset based lending industry and its recent history.

Asset based lending seems like it has been around forever. We all know that asset based lenders lend on receivables, inventory, equipment and sometimes real estate. Over the years, mainly the past ten years or so, asset based lenders have seen their margins squeezed as competition for deals have increased. As asset based lenders know all too well, there is no longer much margin left to squeeze; rates in relation to the prime rate are about as low as they can get. Since one asset based lender has little rate advantage over another, asset based lenders have searched for new products to lend against in order to give them a competitive edge. We now see asset based lenders lending on intellectual property like customer lists, patents, etc. There now are lenders that specialize in second lien financing and we have even seen lenders do "air balls", euphemistically referred to as "cash flow loans", to get a deal done. Asset based lenders have developed new products in order to remain competitive. We factors must do the same. We need to develop new products and learn how to use them effectively if we want to grow and perhaps even survive. Nobody can be all things to all prospects, but we had better be all things to some prospects, or we will lose those prospects to lenders who can provide all types of funding. Most factors will have two major problems lending on new product lines, the expertise needed and adequate funding. However, before we talk about the problems in getting involved in new types of transactions, let us discuss the types of transactions we are talking about.

First and foremost, we need to be able to lend on receivables as well as factor them. Not all clients are willing to factor. Even if we do close a factoring deal, we are always subject to losing it later to a receivable lender. Next in line would be inventory financing, closely followed by terms loans secured by equipment. Many, deals now require all three of these lending elements to be present. Purchase order funding and real estate lending are often involved as well.

Now that we know what kinds of deals we will be doing, we can try to tackle the funding problem. Funding deals other than factoring transactions will be difficult for those of us who borrow from commercial lenders since most commercial lenders will not include assets other than receivables in their factors' borrowing base formulas. They may even have a prohibition against making any type of loan other than factoring receivables. If so, this forces you

to use precious equity. If you fund your company using private lenders, most private lenders will not tolerate a fundamental change in lending philosophy and once again, equity must be used. One alternative may be to start a new company to make loans on collateral other than receivables and fund it separately from the factoring company. Although doable, that is easier said than done. Perhaps the easiest solution is to refer that portion of the deal that you cannot do to another lender. In that way, you just might save the factoring deal for yourself.

Expertise is another problem. If you do not have it, it is difficult to get it unless you do so by hiring someone who has a proven track record with these kinds of deals. Personnel with experience and expertise in all the different types of products mentioned above are hard to find and expensive once you do find them. Without experience and expertise, it is my strong recommendation not to do a deal outside the norm no matter how strong your documents are or how much collateral you think you have.

The bottom line seems to be that in order to expand our product lines, we need to raise equity and we need to spend money in order to acquire expertise. Otherwise, we will be forced to parcel out the unfamiliar parts of our deals in order to fund the parts we can do ourselves. Or, maybe there is a new solution that will soon be available. In the next Dr. Ron Article, I will discuss an alternative to raising money and gaining the expertise that will allow you to expand your product lines and increase your income without undue expense; strategic partnerships that allow you to retain your identity with your client while using another lender's expertise and money.

Happy New Year to all. All of us at Gibraltar wish you a healthy and successful 2006.



To contact Ron Winicour, a/k/a Dr. Ron, or to request copies of documentation, past articles, etc., please send an e-mail to: rwinicour@gibraltarfinancial.com. In the alternative, snail mail your request to Dr. Ron at Gibraltar Financial Corporation, 60 Revere Drive, Suite 840, Northbrook, IL 60062.



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