The Commercial Factor

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Newsletter for the Factoring Industry

International Factoring Association

In This Issue

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Welcome to our New Board

The International Factoring Association has just completed another successful year. Membership is growing continuously and we are proud of the fact that we are able to offer our members so many services. Our main focus, the IFA web site was redesigned this past year and is now experiencing approximately 1500 hits per week. FactorSearch, has become a huge success. We've heard from several factors that the leads they are receiving are some of the best they have seen. Circulation of The Commercial Factor continues to grow with each issue.

A new feature from this past year has been our free Discussion Group. This group allows Factors throughout the world to communicate in an open forum. The group is open to companies that provide financing through the purchase of accounts receivable and currently there are about 65 members. All members are factors or attorneys. People post messages to the group, and they are e-mailed out to all group members. To sign up for the Discussion Group, follow the link on the home page of the IFA website.

We'd like to thank our 2001-2002 Board Members for their time and effort. Those members are: Wayne Coker from Advantage Business Capital, Bert Goldberg from Distinctive Solutions, Randy Ontiveros from Resource Business Partners, Tobi Wilkins from Quantum Corporate Funding, Debra Wilson from Vertex Financial, and Ron Winicour from Gibraltar Financial Corporation.

Our new Board of Directors for 2002-2003 includes three returning Board Members from last year, Wayne Coker, Bert Goldberg and Randy Ontiveros. In addition, we have added Gail Schulte Coulthread from Abingdon Business Capital in San Jose, California, Ken Walsleben from The Hamilton Group in Syracuse, New York, and Carlos Weil from Capital Solutions in Ft. Myers, Florida.

Wayne Coker is a Founding Director and President of Advantage Business Capital, Inc., formed in 2001 as a subsidiary of Central Bank, a Houston, Texas based community bank. Active in the Factoring industry for 17 years, Wayne served the last seven years as Senior Vice President and Director of Advantage Finance Corporation. Prior to entering the Factoring industry, Wayne was the owner of several companies in the Houston area. He graduated Summa Cum Laude from the University of Houston Business College.

Bert Goldberg is President of Distinctive Solutions, the nation's leading software provider for Factors. Bert has been associated with Distinctive Solutions for over 17 years. He holds an MBA degree from California Polytechnic University-San Luis Obispo and a B.S. degree in Accounting Information Systems.

Randy Ontiveros is Vice President and founding member of Resource Business Partners, Inc. in San Jose, California, started in January 2000. Prior to this, Randy spent 30 years as a private investigator, chasing down difficult debtors and collecting bad debts, as well as locating missing persons. He has also focused on conducting nationwide internal theft investigations for banks, retail stores and manufacturing companies, turning up in excess of $20 million in cash and stolen property for his clients. Randy has lectured at UC Berkeley in abnormal human behavior and the gentle art of interviewing, and has spent 14 years as a reserve police officer.

Gail Schulte Coulthread is President of Abingdon Business Capital and has been involved in factoring for over 20 years. Originally working for a start-up factoring company, she then formed her own company, Astra Financial, Inc. which was the original Beta site for Distinctive Solutions software. In addition to managing and marketing her current factoring company, Abingdon Business Capital in San Jose, California, Gail also provides operations training to management and staff of factoring companies and banks. She is a past Board member of the National Association of Women Business Owners, Silicon Valley Chapter, is a member of Hewlett Packard's "Tactical Mentoring Team," is a member of the Industry Council for Small Business Development and provides short-term corporate planning training for NAWBO.

Ken Walsleben is Principal and co-founder of The Hamilton Group. Hamilton was started in 1994, and has enjoyed rapid growth since. Active in the commercial finance industry since 1983, Ken has been employed in the banking industry (as a lender and Bank Officer with Marine Midland Bank, N.A.), the equipment leasing industry (as a VP of Financial Services for United Computer Capital Corp., and Manager of Debt Programs for CIS Corp.), and currently, the factoring industry. Well known in Central New York, Ken has served as a Director of the Syracuse Executives Association for the last 5 years, and is currently their President. Ken holds a B.A., Economics from Syracuse University, 1983.

Carlos Weil is CEO of Capital Solutions in Ft. Myers, Florida. He was born in Buenos Aires, Argentina. After obtaining his MBA, Mr. Weil was recruited by Phillip Morris, Intl. where he quickly rose through the ranks as assistant to the CFO. He subsequently worked for Simko S.A. as the head of the International Trading department. It was then, in 1986, when Mr. Weil was first exposed to the basic concepts of factoring (in this case, the international arena). In 1989 Mr. Weil was transferred to the U.S, where he was in charge of all operations relating to the opening of the U.S market for sales of Agricultural commodities for an

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important Far Eastern Group. For the next few years, Mr. Weil was the man in charge and responsible for all aspects of bringing into the U.S millions of pounds of raw materials for Fortune 500 companies. Four years ago and after very thorough research, Mr. Weil together with his partner started Capital Solutions. Mr. Weil has participated in numerous seminars related to the factoring field.

We are all looking forward to another successful year of the IFA. Please remember, this association is here to serve you. Any suggestions and/or feedback would be greatly appreciated. E-mail us at info@factoring.org, or call 800-563-1895.

Karen Ross is the editor of The Commercial Factor. She can be reached at 805-544-8327 x20 or karen@dissol.com.

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Publisher
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Karen Ross

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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Chapter 11: Do You Know Your Debtors' Signals?

How can we tell, in today's business environment, when a company is on the verge of bankruptcy? It is not easy. In fact it is downright difficult.

While twenty years ago it was only necessary to look at a company's financial information and their payments trends to determine if the firm was creeping closer to a bankruptcy filing, today's financial executives need more information. Today's executives need to be able to stay on top of their debtors like never before.

Information, information and more information! That is what is needed in order to be able avoid shipping a debtor that could file a bankruptcy petition tomorrow or several months down the road.

You need to know (and not necessarily in this order):

1) Have any judgements or liens been filed against the debtor?

Judgments can be as insignificant as a $5,000 judgment brought against a company for a customer slipping and hurting himself on the debtor's premises or as important as a $100 million judgment brought against a company for anything from illegal advertising/marketing practices and defective products to toxic cleanup, etc. Judgments should be viewed in context with the size of the company. A $2 million judgment on a company with $5 million in sales could be catastrophic, however, a $2 million judgment against a $10 billion firm will not affect their bottom line as significantly.

A tax lien however, especially a federal tax lien, could have more severe consequences.

Lets look at the state tax lien first. Some state tax liens are issued for failure to file franchise fees. This is often not as significant as a lien filed against a firm for not pay its sales tax. In fact, any sizable state tax lien (again depending on the sales volume of your debtor) could have a significant impact on the way your debtor would pay you.

Federal tax liens on the other hand are generally larger than state tax liens and often have more of an impact on a firm. The reason they are often larger is because many federal tax liens are often a result of companies failing to pay their 941 employee payroll taxes. These often accumulate to large amounts and by the time the federal government actually attaches a lien against a debtor, often six months or more have gone by since the feds first having notified the debtor they had to pay—and the amounts kept piling up. So by the time the lien is actually filed by the federal government the company can often be in dire straights. Other tax liens, for not paying corporate taxes, 940 taxes, franchise taxes, etc., can at times, also be significant. But the ones that you want to watch out for are the ones that are the larger federal tax liens.

2) Have any lawsuits been filed against the debtor?

Just like judgments, lawsuits can be meaningful or not. A $5,000 lawsuit against Wal-Mart Corp., as result of a bar of soap falling off a shelf and hitting a customer in the head is not nearly as significant as a $500,000 lawsuit filed against a biotech firm that has been in business only three years, has little capital and has sales of only $3 million.

Putting the lawsuit in perspective, however, is imperative. Why was it filed? Who filed the lawsuit? Was it one of its competitors? Was there any type of trademark, copyright or patent infringement? Was the lawsuit filed by a trade creditor? This is important for obvious reasons because you could be next on the list to not get paid. In fact, when you see several lawsuits being filed against a debtor, look at the most recent financial information. If it contains derogatory information these can be invaluable signals as to whether that debtor is on the verge of filing for Chapter 11 protection.

3) Is the debtor having any inventory control problems?

For some companies a poor inventory turn can be a death knoll.

This of course depends on the severity of the problem however it can certainly have a significant impact on the company's financial results. Analyzing the company's inventory ratios and comparing it to industry standards is also a useful approach to beginning to understand your debtors inventory situation.

You can get a good idea if the company is having inventory control difficulties by reviewing its purchasing habits on a historical basis. Comparing this with sales and then reviewing your debtor's credit exposure with its primary lenders (and also discussing this information with the debtor's bankers—although in many cases obtaining information from a debtor's lender is like pulling teeth) could furnish positive results. If a retailer, for example, is known to have outdated inventory and their inventory purchases increase so to as include more updated inventory, you know two things: the company will discount its own inventory to move it out the door and as a result revenues and earnings will be affected and the company's cash flow will be affected as a result of its drawing on its credit line to purchase newer inventory. This is assuming internal cash flow is not sufficient to handle, carry and pay for old and new inventory. Its also always worth knowing if the products your debtor has in inventory is simply outdated. Pharmaceutical companies and biotech companies are one example where, if their products are not moved within a specific time period, they will simply have to be discarded. Beyond this, knowing your debtor's products and their shelf life is imperative.

The Bridgestone/Firestone Tire Co. and Ford Motor Co. tire debacle is one of the most recent catastrophic examples of inventory affecting a company's bottom line. The recall of so many millions of Bridgestone tires certainly resulted in inventory problems for both Firestone and Ford. The ramifications of this had a snowball effect causing earnings shortfalls and a number of large charges on their balance sheets.

Some inventory difficulties could be so severe so as to cause a company to consider restructuring its operations or even file for Chapter 11 protection as a result of its inability to pay off its debtload because of its immediate needs to purchase more inventory.

Today's executives need to be able to stay on top of their debtors like never before.

4) Has the debtor's sales declined?

This is often a key. While a sales decline may not be as important for companies that are selling off certain divisions or assets so they can concentrate on their core business operations, firms that have remained intact but still see their sales decline (especially at greater percentages than the industry they are operating in) should raise a red flag.

Further, look at sales historically. Have quarterly and fiscal sales declined on a steady basis? Or is the decline taking place in a quarter that is known for such declines. The retail industry, as an example, often gets a higher percentage of its sales during the fourth quarter of the year than during the first quarter. The holiday season and the return of merchandise after the first day of the new year often result in a dropoff in sales during most retailers' first quarters. You should generally, however, be concerned if sales have declined on a year-to-year basis and for the same periods. Smaller companies are obviously affected more than larger companies.

It is also sometimes important to understand the difference between net sales and gross sales. While knowing the distinction is not always necessary, there are often times that gross sales may not adequately reflect the revenue from the operations of the firm. In fact, the recent trend of companies reporting "pro forma" financial statements and their desire to show their best side, through the use of these statements, has caused many credit/financial executives to be much more cautious when evaluating financial information.

5) Has the debtor's earnings declined, or if a loss was reported in the most recent fiscal quarter or year, has the loss widened from the same period one year earlier.

Just because a company reports a loss does not always mean that it is on the verge of bankruptcy. Similar to what was discussed in declining sales, if there is any decline or loss reported it must be compared with the same period one year earlier.

Many industries have down periods and this should always be taken

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Factoring News Flashes

Metro Financial Services has acquired **Main Factors, Inc.**'s 41-client portfolio and selected assets, effective May 1, 2002. In addition to purchasing the client portfolio, **Metro** has hired nine of the highly talented personnel formally employed by **Main Factors**. Historically **Metros** client base has been primarily focused in the servicing industries of staffing, transportation and food processing. They have significantly expanded their client industry base with the acquisition of **Main Factors'** portfolio, which includes the traditional factoring industries of primarily garment/ apparel-related, furniture, carpet, textiles, and toys. In addition to the purchase of **Main Factors'** portfolio, and as part of its continuing growth plan, **Metro Financial Services** has acquired the portfolios of three other entities since 1997: Heller Financial's Small Business Factoring Division (1997); Allstate Financial Services (1999); and Alpha Financial Services (2001).
Dallas, May 31, 2002

Bay View Capital Corp. plans to sell its factoring subsidiary to a group of investors led by the unit's management team for an undisclosed amount. The profitable unit has about $25 million in receivables. Since it's loss of $326 million in 2000, largely due to subprime lending, **Bay View** has been shedding its non-core business lines.
The American Banker, June 7, 2002

Lehman Brothers' controversial $5 billion bid for **Tyco International Ltd.'s CIT Group Inc.** was withdrawn after it came to light on CNBC on May 24th. Critics are claiming that **Lehman** had a conflict of interest in making the offer and that the lower bid may cost **Tyco's** underwriters a chunk of lost fees. **Lehman** is one of the co-lead underwriters on the upcoming CIT IPO. Bankers and analysts say **Lehman** had a conflict of interest when it made the bid. Also, **Lehman** did not consult co-lead underwriter **Goldman Sachs** before making its bid. There is nothing illegal about **Lehman's** actions, however an underwriter that is distributing securities cannot buy those securities at the same time for itself. But that is not the situation here. **Lehman's** $5 billion bid is substantially lower than the $6.5 billion **CIT** shares were expected to get. Critics say this could signal to investors that the financial services unit that **Tyco** tried to spin off is worth less than the $6.5 billion public offering was supposed to gross.
IPO Reporter, June 10, 2002

The officers of **AGM Development Corp.**, a defunct Virginia Beach construction company, were indicted on federal charges of bank fraud, theft from their employees' retirement plan and money laundering. Michael R. Agnew and his wife, Barbara M. Agnew are charged with defrauding **Resource Bank** by seeking millions of dollars in payments for work it hadn't done. **AGM** submitted fraudulent invoices to **Resource Bank** of 13 construction projects. **Resource** reported a net loss in late 1999 of $2.65 million on losses from its "Cash Flow Maximizer" factoring program.
Virginian-Pilot, June 13, 2002

HPSC, Inc. announced that it discovered that an employee of it's subsidiary, **American Commercial Finance Corporation (ACFC)**, committed a defalcation by which approximately $5 million was diverted over the past four to five years. The defalcation involved transactions with a single factoring customer, and the employee is no longer with the company. **HPSC** will restate their financial statements for the periods effected. Part of the loss is expected to be recovered through insurance and possible recovery of assets. These payments would be recognized in the period they are received.
Business Wire, June 17, 2002

If you have any news items you would like to include in the next issue of The Commercial Factor, please e-mail them to info@factoring.org.

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into account. If it is a down period, how does it compare with the industry's downturn—if there is one. If there is no industry downturn then you should be concerned. If the company has experienced a loss during this down period, does the loss come at a time when revenue has declined as well. If the net loss for the period includes a significant operating loss then you should be even more concerned. Many net losses can be explained through sizable restructuring charges or other nonrecurring charges. Operating losses, however, are a "horse of a different color". Further, when you combine operational losses with revenue declines of more than 10%—this should definitely raise a red flag.

So watch for companies that have operating losses or sizable net losses that continue from quarter to quarter. Watch for companies whose net losses are a sizable percent of sales.

You also have to be aware of the industry your debtor is operating in. In biotech industries or in other technology firms, you may have losses that are significantly higher than revenue. Using pharmaceutical manufacturers as an example, these companies may be awaiting approval from the FDA for a new drug. As such they could be expending money that they obtained through public offerings or other financial backers—yet they're reporting negligible or even zero revenues. In cases like this, it does not always mean that the debtor is on the verge of bankruptcy. What you need to know, in cases like this, is how strong the financial backing is behind your debtor. You may be able to obtain this information by contacting the debtor's primary lenders—whether it be commercial finance companies, venture capital firms, traditional lenders, etc. If the company you are dealing with needs your product or services that badly, then the financial backers of your debtor would want you to know that the company they are putting their money into is solid AND will pay its suppliers.

If management is leaving, for whatever reason, you should be concerned.

6) Has there been a recent change in the debtors management? If so how severe? Has it been a wholesale exodus of top management?

This is always a tough one to gauge. If the company has seen a lot of its top management leave the company within a short period of time you, as a supplier, should be concerned. You should be concerned if the CEO has resigned. If the CFO has left the firm. If the COO has left the company within the past quarter. If the company is changing its board of directors. If management is leaving, for whatever reason, you should be concerned.

If the CEO of twenty years, however, decides to resign for "personal reasons" and the company is experiencing a slight downturn similar to what it experienced in the past—don't jump the gun. Investigate, investigate and investigate before thinking that the CEO "jumped ship".

7) What's happening in your debtor's industry? Is it positive or negative?

This is always an important one. The recent problems in the airline industry and the recent terrorist attacks have caused not only many layoffs within the industry but concerns among its thousands of suppliers. Wholesale cutbacks are taking place throughout the industry and beyond. Here's an example of why you have to understand industry events and their "ripple affects".

If a company that sells to United Airlines comes to you with a new, sizable order, look at it twice, look at it closely. Who were they getting the products or services from previously? Why did they stop doing business with that company? Was it because they were not paying them and they are looking for new suppliers to also—not pay?

Be aware of not just the industry happenings but also of industries

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USA Patriot Act

by Bert Goldberg

In our post September 11th world, there are various changes that are taking place that affect our lives. One new change that will affect the factoring community is the USA Patriot Act.

The Act's purpose is "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept an Obstruct Terrorism."

One new change that will affect the factoring community is the USA Patriot Act.

The IFA has been contacted by the US Treasury Department requesting assistance in developing guidelines for the factoring community to comply with this Act. There is no question about whether or not the Act applies to Factors. The Treasury Department in no uncertain terms said that it does. The Treasury Department is looking for guidance in what steps factors should take to comply with the Act.

The entire Act may be found at http://www.epic.org/privacy/terrorism/hr3162.html. Section 326 & 352 are the portions that apply to Factors. They are reprinted here for your convenience:

SEC. 326. VERIFICATION OF IDENTIFICATION.

(a) IN GENERAL.—Section 5318 of title 31, United States Code, as amended by this title, is amended by adding at the end the following:

"(l) IDENTIFICATION AND VERIFICATION OF ACCOUNTHOLDERS.—

"(1) IN GENERAL.—Subject to the requirements of this subsection, the Secretary of the Treasury shall prescribe regulations setting forth the minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at a financial institution.

"(2) MINIMUM REQUIREMENTS.—The regulations shall, at a minimum, require financial institutions to implement, and customers (after being given adequate notice) to comply with, reasonable procedures for—

"(A) verifying the identity of any person seeking to open an account to the extent reasonable and practicable;

"(B) maintaining records of the information used to verify a person's identity, including name, address, and other identifying information; and

"(C) consulting lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency to determine whether a person seeking to open an account appears on any such list.

"(3) FACTORS TO BE CONSIDERED.—In prescribing regulations under this subsection, the Secretary shall take into consideration the various types of accounts maintained by various types of financial institutions, the various methods of opening accounts, and the various types of identifying information available.

"(4) CERTAIN FINANCIAL INSTITUTIONS.—In the case of any financial institution the business of which is engaging in financial activities described in section 4(k) of the Bank Holding Company Act of 1956 (including financial activities subject to the jurisdiction of the Commodity Futures Trading Commission), the regulations prescribed by the Secretary under paragraph

(1) shall be prescribed jointly with each Federal functional regulator (as defined in section 509 of the Gramm-Leach- Bliley Act, including the Commodity Futures Trading Commission) appropriate for such financial institution.

"(5) EXEMPTIONS.—The Secretary (and, in the case of any financial institution described in paragraph (4), any Federal agency described in such paragraph) may, by regulation or order, exempt any financial institution or type of account from the requirements of any regulation prescribed under this subsection in accordance with such standards and procedures as the Secretary may prescribe.

"(6) EFFECTIVE DATE.—Final regulations prescribed under this subsection shall take effect before the end of the 1-year period beginning on the date of enactment of the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001.".

(b) STUDY AND REPORT REQUIRED.—Within 6 months after the date of enactment of this Act, the Secretary, in consultation with the Federal functional regulators (as defined in section 509 of the Gramm-Leach-Bliley Act) and other appropriate Government agencies, shall submit a report to the Congress containing recommendations for—

(1) determining the most timely and effective way to require foreign nationals to provide domestic financial institutions and agencies with appropriate and accurate information, comparable to that which is required of United States nationals, concerning the identity, address, and other related information about such foreign nationals necessary to enable such institutions and agencies to comply with the requirements of this section;

(2) requiring foreign nationals to apply for and obtain, before opening an account with a domestic financial institution, an identification number which would function similarly to a Social Security number or tax identification number; and

(3) establishing a system for domestic financial institutions and agencies to review information maintained by relevant Government agencies for purposes of verifying the identities of foreign nationals seeking to open accounts at those institutions and agencies.

SEC. 352. ANTI-MONEY LAUNDERING PROGRAMS.

(a) IN GENERAL.—Section 5318(h) of title 31, United States Code, is amended to read as follows:

"(h) ANTI-MONEY LAUNDERING PROGRAMS.—

"(1) IN GENERAL.—In order to guard against money laundering through financial institutions, each financial institution shall establish anti-money laundering programs, including, at a minimum—

"(A) the development of internal policies, procedures, and controls;

"(B) the designation of a compliance officer;

"(C) an ongoing employee training program; and

"(D) an independent audit function to test programs.

"(2) REGULATIONS.—The Secretary of the Treasury, after consultation with the appropriate Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act), may prescribe minimum standards for programs established under paragraph (1), and may exempt from the application of those standards any financial institution that is not subject to the provisions of the rules contained in part 103 of title 31, of the Code of Federal Regulations, or any successor rule thereto, for so long as such financial institution is not subject to the provisions of such rules.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect at the end of the 180-day period beginning on the date of enactment of this Act.

(c) DATE OF APPLICATION OF REGULATIONS; FACTORS TO BE TAKEN INTO ACCOUNT.—Before the end of the 180-day period beginning on the date of enactment of this Act, the Secretary shall prescribe regulations that consider the extent to which the requirements imposed under this section are commensurate with the size, location, and activities of the financial institutions to which such regulations apply.

The IFA Board Members are in the process of drafting a set of guidelines that factors should follow to be in compliance with the Act. Once the board completes the draft, it will be submitted to the Treasury Department for their approval.

If any members of the IFA have any comments regarding the implementation of the Act, please direct them to info@factoring.org.

Bert Goldberg is an IFA Board Member and President of Distinctive Solutions. He can be reached at 805-544-8327 or bert@dissol.com.

Verifying Identities

by Gail Schulte Coulthread

The verified identity of each of our clients will become paramount in the months to come. The U.S. Treasury Department is heavily involved in implementing the U.S. Patriot Act which may affect each of our businesses. The U.S. Secret Service is seriously involved with identity fraud, particularly the financial side of it. Having done some exploration on the internet, I did find that the Secret Service would only be interested in cases involving large amounts of money, not unlike our local District Attorneys. Each one of us probably believes that with a U.S. Population of over 281,000,000, "a client committing identity fraud won't happen to our factoring company." When someone seizes an identity the person whose identity has been stolen, has prolonged legal issues to re-establish his/her good credit and relieve him/herself of the additional debt that may have been incurred . The best way to prevent this horrendous and destructive crime from being perpetrated against you or your clients is simply, **CHECK PERSONAL CREDIT REPORTS** frequently…at least twice yearly. If anything unusual is happening, have your client contact the three credit bureaus, Equifax, Experian and Trans Union immediately. A fraud alert can be placed on their credit report. Remember that identity theft can occur against your clients in many forms, not just the use of credit cards, but also through ATM, checking/savings accounts, loans, securities, internet/email, new accounts with utility companies and through government documents and benefits. Be aware of anything unusual happening with your client's account(s).

Be careful about the content of what you throw away.

Be careful about the content of what you throw away. You and your client's financial information can be used to infiltrate additional business information and financial and banking relationships. Our reliance on computers, technology and the internet has created opportunities for hackers and thieves that is difficult to imagine. The American Bankers Association provides website sources for personal information including: http://www.anybirthday.com, http://www.knowx.com, http://www.searchbug.com, http://www.invisibleweb.com, http://www.findlaw.com/directories/reverse.html, http://www.ssa.gov/search/index.htm (use the search term "highest group issued" to get latest SSN numbers.) Please view some of these sites as they provide information for identity verification. Many are by subscription, however, you can see what they provide.

On a personal note, loss of a wallet or purse provides a thief with pretty complete personal information about you: ie: your Social Security number can be on your Social Security card or your Medical Insurance coverage card or on your Driver's license; your home address, your bank and checking account numbers are on that spare check in your wallet; your credit cards are right in your wallet. Think about what you carry with you and evaluate whether it is all necessary. The Federal Trade Commission suggests the following action if you lose your wallet or purse: file a police report immediately and keep a copy of it. Cancel every credit and charge card, call the fraud departments of the credit reporting agencies mentioned earlier, check your credit reports often, change your bank account numbers and ATM cards, report your missing Driver's License to the department of motor vehicles, and change the locks on your home, car and office if your keys were also lost. Also, you can file a complaint with the Federal Trade Commission by contacting their hotline at 1-877-438-4388. For more in depth information, about identity fraud, check the Federal Trade Commission website. With the age of the internet solidly upon us, it seems that our most valued birthday gifts will be personal shredders.

If you like mysteries for enjoyment, and want a cyberspace thriller about social engineering and information theft through the internet, pick-up a copy of Jeffrey Deaver's book The Blue Nowhere. Not that I am receiving royalties from its sale, but this book contains some shocking realizations.

These issues are not just personal. This problem is even more serious for businesses, both ours and our clients. For information about social engineering (generally agreed to be: to gain unauthorized access to systems or information in order to commit fraud, network intrusion, industrial espionage, identity theft, or simply to disrupt the system or network.), check the website www.securityfocus.com. This website will tell you how easy it can be for identity thieves and computer hackers to get the information they need to penetrate computer system's security and obtain secret or restricted documents. Their work can begin with activities as simple as dumpster diving and involve and reach the heights of impersonating corporate officers.

We now need to be even more concerned and vigilant about the information we receive from our clients and that we make available to our clients via the internet through our systems. We need to be sure that our employees are aware of potential security problems and that they, too, are vigilant.

Gail Schulte Coulthread is an IFA Board Member and President of Abingdon Business Capital. She can be reached at 408-227-5898.

Stop The Bleeding

The Spaghetti Terminations

by Dr. Ron

Sounds like a Ludlum novel doesn't it? "The Spaghetti Terminations". I enjoy coming up with stuff like this to take the boredom out of our business. The real subject of today's article is early client terminations. But what can be more boring, even depressing, than early client terminations? It's always easier to talk about unpleasantness when we put a little suspense, a little fun, in it. Why call it the Spaghetti Terminations? You will see soon enough. For now, let's just say that the analogy to early terminations is like trying to eat spaghetti. You want to get plenty (of fees) on the spoon but if you try for too much, you can make a mess of things. So put on your bibs and grab your utensils, here goes.

Clients often want to terminate their factoring contracts early, although I cannot imagine why. So be it. We must respond to their request. I can hear my friend Zadek in the background (a tiny, animated figurine of Zadek actually sits on my shoulder while advising and admonishing me as I write these articles), telling me that no, we may not be required by law to respond if our contracts are written properly. But I think, as a practical matter, that we must respond. The challenge is to respond in a way that maximizes our return without jeopardizing our investment.

There are many types of responses and the response that we choose depends on several dynamic factors that work together in intriguing and sometimes dangerous ways. How long has the client been with you? In what regard do you hold the client? Is this a client you want to retain? Maybe you would not mind so much if the client "got out of Dodge". Maybe this is a client you are ready to be rid of, even put into liquidation. Is your collateral position a strong one, or are you willing to take a shave and a haircut if necessary? So, how do we maximize our exit fee while minimizing our risks and preserving our reputation? Let's give these different types of client each a descriptive name so we can keep them straight in our minds.

Let's take the client that is the good performing, well behaved, good looking, strong client, and call this client "Eastwood Manufacturing". Eastwood is a client that is under contract to you and wants to leave simply to get a better deal. But you want to keep this client. You are well collateralized, the client has decent financials, and you lowered your rate to get this client in the first place. Now the client is trying to deny your rightful earnings.

Next we have the client that is sometimes a well behaved, decent client, but a client that is sometimes a problem. Your feelings about this client are therefore ambivalent, changing from day to day depending on the client's behavior at the moment and the condition of the portfolio from time to time. Let's call this client "VanCleef Distributing".

Last, but certainly not least, we have the ugly client, a client that always asks for favors, has account debtors with less than sterling credit, has lots of delinquency in its portfolio and has maybe even "accidentally" deposited a check or two that were the proceeds of a factored invoice. Let's call this ugly client "Wallach Services". The stage, so to speak, is now set.

Let's take Wallach Services first since I think it is the easiest to deal with. You may recall from earlier Dr. Ron articles that I manage my own portfolio with two governing emotions, greed and fear. A little bit of both is a good thing. Too much of either is no good. But in this case fear should win hands down. We have a client that is not in good shape and of dubious character. He has tried to cheat you on several occasions, needs to be watched and may eventually get the best of you. I say cut this client loose like a high plains drifter. Take your payoff, waive any early termination fees and run like the outlaw Josey Wales. And by the way, don't say too much to the new lender, if there is one. And certainly re-assign your existing paper without recourse and without any warranties or representations, whether expressed or implied.

Next up, Eastwood Manufacturing. The decision here seems easy to me. You are definitely entitled to the benefit of your original bargain. You probably lowered your charges, raised your advance rate, increased eligibility parameters, waived guaranties, and did all sorts of things to get the client to sign up with you. The argument I most often hear is that the early termination fee is a large amount of money and is unreasonable especially since you will be relieved of your risk. The argument I use in return is twofold. Firstly, the early termination fee was not negotiated in a vacuum. There were all sorts of gives and takes in the contract negotiations, the early termination fee was only one of them. Secondly, we have a written contract. Period, end of argument. This is doubly true if the reason for the payoff is to change to a less costly lender. With Eastwood Manufacturing, there is no question that we are entitled to a fistful of dollars. Greed wins out.

Now for the toughest one, VanCleef Distributing. Generally, my posture is to take a tough stance initially but to let the client know that there may be a little room to negotiate. After all, depending on the condition of the portfolio at the time of payoff request, you might want to take the money and run, or you may want to try for a few dollars more. There are several methods I have employed through the years to achieve the maximum fee. One is just to stick to your guns and see what happens. Another is to compromise and accept less. A third is to take the full amount but spread it over time. If spread over time, it would be preferable but unlikely for you to retain a first lien position on any of the collateral. You will do well to retain a second position. However, in a case such as this we have been successful in the past in negotiating a weekly hell or high water payment coming directly from the new lender under an agreement that promises to pay you out of the first funding every week. In this manner, you are guaranteed payment unless your client winds up in boot hill.

Be careful, Matt.

To share your experiences or to seek the advice of the author, Ron Winicour can be reached by e-mail at ron@gibraltarfinancial.com or by snail mail to Gibraltar's corporate address, Gibraltar Financial Corporation, 60 Revere Drive, Suite 840, Northbrook, IL. 60062.

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KEEPING YOUR BEST PEOPLE ON BOARD

by David Rains

My mother went to work for a company and retired after 34 years. One job, one company, for all those years. Now, granted, she was not in factoring and it was a large corporation. However, she felt a loyalty to the company through good and bad. Even to this day, she supports her old company far more than I think she has reason to. Regardless, I cannot tell you how many times she has aid, "They put food on our table for all of our lives, and we owe them a debt."

That is not the way the marketplace is today with either employers or employees. Before Jack Welch went to GE, there was some loyalty from the company to the employee. It was not long before GE was known as a "churn & burn" organization - very good money and very good benefits, but you never knew when a rule would change and you would be out on the street.

So, as the years have passed, our culture and systems has evolved to one of very little loyalty in any direction. How, then, do you keep your best people in place? What causes a person to look at another field and say, "The grass is greener in that place."? As a recruiter, one of the first questions I ask is, "Why would you consider looking at another opportunity? What is happening in your current situation that makes you feel you would like to explore a change?" You would be surprised at the answers.

A happy employee is a more productive employee.

The main reason is **not money** and in fact, money is most often 3rd or 4th down the list of reasons people look at other options.

I have found the main reasons to be:

"Lack of trust and/or respect." Two very high producers left their positions this year and went to other companies for one simple reason. They had been promised something and it had not been done. The company did not keep its word; therefore, the perception was the company had lied and could not be trusted. One BDO was #1 in the nation for his company; the other was in the top 5%. They were secure in their abilities. When they felt betrayed, they were gone.

Both were heavily counter-offered by the companies for **more** money than they got by leaving; however, on both cases, they refused to even consider the counteroffer because they did not trust the company. In addition, they felt if they were worth what the counteroffer was **before** they turned in their resignation, then why were they not told before they had found another position. Again, the trust and respect was breached.

"Opportunity for advancement/challenge" is another big factor. You might hire someone who is relatively new to the industry, give them an opportunity, train them, and give them the tools they need to be successful in our industry. Naturally, you pay them entry level compensation to begin with; however, if they progress well, then it is essential that you provide them with a career path, ways and opportunities to advance. If you take them for granted, in more cases than not, you will lose them. It is easy to get in the mindset, "I made them what they are" or "I taught them everything they know." However, if they are a success, regardless of who trained them, they learned and became the success you were seeking; therefore, it only stands to reason they deserve to be compensated with a career path and the opportunity to move forward. They have a new value. Failure to do this will result in having to train someone new every few years.

"Poor and/or Inconsistent Management" Especially in smaller organizations the personality of the principals largely determines the working atmosphere. That is good in some situations, and in others it is not. If you are consistently losing good people, perhaps it is time to look inwardly to see if, in fact, it could be the management of the company. This would probably be the hardest thing for any of us to change (our ways and means of doing things) but the definition of insanity is to continue to do the same thing and expect different results.

So, a retention policy should be one of the strategies of your company. If you lose someone, probe why they are leaving. At this point, it is probably too late to try to salvage **that** person; however, by taking a little extra time to find out why they are really leaving, it might save you thousands of dollars down the road by identifying a problem for you to correct. Unless they are getting a 20% or more raise, though, don't accept the "more money" line, because it is usually just not true. Changing jobs and companies is a traumatic experience for a person, and unless it is a great amount of money, this is probably not the whole story. Find out and correct the problem.

Another retention strategy is to talk to your people and ask them what parts of their job they really like and what parts they dislike. This shows compassion for how they feel, and if you know this, you may have the capabilities of restructuring the position to some extents. You might then be able to put more of their preferred duties in place and reassign some of the others. A happy employee is a more productive employee. Even if you cannot restructure the duties, by showing empathy to that valued person, they at least feel appreciated for the effort they are expending.

When you add up the tremendous costs of hiring, whether or not you find the right person who is a good fit for the organization, the retraining, etc, the cost of retaining looks small. When you add the consideration that there may be a million dollars or more production difference between a good candidate and an excellent one, it is just smart business to stay close to your people, let them know you care about them and generate loyalties in them like my mother's company did 34 years ago. All new ways are not the best ways.

David Rains is the Sr. Account Executive and Team Leader of the ABL/Factoring group at MRI Sales Consultants of Dallas. With over 30 years in sales and marketing, and an honors degree in Psychology, he is a proven leader in the recruitment of top people in the ABL/factoring industries in the U.S. today. He can be reached at 972-203-6064.

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that are cyclical. We mentioned retailing previously. We know that for department stores and discount chains and even the big wholesale clubs, the first quarter of the year is generally the worst for sales.

We know that retailers specializing in selling durable goods (products that will last more than 5 years) are generally hardest hit in an economic downturn. However, keep in mind, there are times where one company in an industry will rise to the occasion and beat an industry or even an economic downturn. These often become the "shining stars" of the industry. Be there with these companies. Often they are the best managed and the most financially sound.

One such example is in the home improvement market. Home Depot started as a small Georgia firm. Even during times of economic downturn it still grew. It grew while many of its competitors were either in bankruptcy or closing locations. Home Depot was a star in its industry and nearly every industry has a star. Know who they are and why they're successful and know the market that they are selling to.

When a company reduces its workforce most of the time it is a sign of things to come.

10) If a privately-owned firm, with aging management, is there an automatic succession plan in place?

This one certainly requires your investigation skills and your knowledge of the company. In a family-owned business, is the son or daughter in line to succeed the father or mother? If so, what do you know about these individuals. Have either son or daughter worked in the firm? If so, how long? Does he have a solid reputation? In what capacity did he or she work?

All too often, we hear of relatives taking over a business when the founder retires and ends up running it into the ground. While this may not be in the majority of cases, nevertheless to those of us that have been stung by a bankruptcy filing or a liquidation when a relative takes over the helm of the business we always ask ourselves why we did not see it coming. Don't beat yourself up. It's not always black and white.

Not all privately-held firms are family-owned. Some companies are owned by a group of individuals that has not taken the company public. It is important to evaluate these owners as well as the company's management. Do they know the industry? How long have they been in the industry? Are the people running the company venture capitalists or financial people who may not know the industry as well as they should? Have they hired qualified management? What is their background? If a venture capital firm or another financial organization is backing this privately-held firm you are selling to or are considering selling to, what is their track record? Are they known for investing in a company and letting it grow or are they known for investing in a company, letting it grow, and then selling off the assets piece by piece?

More often than not, however, when it comes to family-owned firms, a succession plan is imperative—and this is something you should ask for. Remember, you are acting as a bank by extending credit, and any bank would want to have this information.

11) Have there been any layoffs at the company or are there any plans to layoff employees?

When a company reduces its workforce most of the time it is a sign of things to come. Granted when one company purchases or merges with another company there are often duplication of jobs and as a result the workforce is reduced according. This is for efficiency purposes. However, when such a consolidation takes place it should not be looked upon as "a bad thing". But when a company is having problems and begins to reduce its workforce—even if by five percent—that's something we should be concerned with. And when you combine industry and company trends with the cutbacks, this might be a harbinger of things to come.

In fact, quite often, before a company reports a loss they may announce anything from temporary or permanent plant closings, the shutting down of production lines, freezing salaries or even the laying off an unspecified number of workers. As a result of these cutbacks the company may report restructuring charges that result in losses.

Any such cutbacks should be looked upon by creditors as an attempt by the company to right itself or turn itself around. Any such move is often an attempt to either return to profitability or minimize revenue, earnings declines or even losses.

So, look at any cutbacks at a debtor's operations with a cautious eye. It may be a sign of things to come. But keep it all in perspective. If a debtor simply wants to run its operation "leaner", this could be a good thing. It could mean better cash flow and improved earnings over time.

12) Is the company carrying to much debt? Has the company defaulted on any of its debt or credit arrangements with its lenders?

These are questions that often are difficult to obtain. The reason is that many lenders will not report any defaults until that default is about to take place. Of course, if a public company, the debtor should be reporting their loan or credit line status on their quarterly reports with the SEC. That's why it is imperative to stay on top of a company's lending situation. Be aware of its overall debtload as well as its debt capacity. Know how much the company can handle based on its cash flow and other variables. Stay on top of whether a company is meeting its debt obligations and living up to its credit/financing arrangements with its lenders. Gathering this information may be hard work but it can truly pay off down the road.

Lenders do not always provide easy access to the status of a debtor's financing arrangements. Often, the only way to be able to get this information is through SEC filings (if a company is publicly-held). It is important to remember that when you are extending credit, if you are a supplier in any way, you are acting as a bank and your debtor's financial arrangements is information you should have access to. Know when the due dates are for any large balloon payments. Know when the arrangements expire. Know what percentage of credit lines have been drawn down or even used up.

If you are an important supplier this information may be easier to come by than if you are selling something of a lesser significance to a debtor. Nevertheless, it is information that you should, as a supplier, have access to.

13) How much of the debtor's credit line, with its bank and other lenders, has it used up?

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Similar to #12 this is an important one because it may determine how you get paid. If a company s unable to pay its operational debt (or even long term debt) through its internal cash flow it may be dipping into its credit line arrangements with its lenders. You should know this. Before this though, you should understand the debtors cash from a historical perspective.

It's also important to know what, if any, form of negotiation is going on between debtor and lender. What are the stages of those negotiations? How long have they been going on? Are the purpose of the negotiations to extend the debtor's outstanding credit line, to reduce it, to increase it or "call it"? If it is for the purpose of calling the credit line then you should find out if the debtor has any or is working on obtaining any additional means of financing. Who is the debtor working with? What is this potential lenders track record?

14) Analyze the debtor's cash flow historically. What are the trends? Is it sufficient?

We have already talked about cash flow throughout this educational series. It can never be overstated, however, the importance of analyzing it and having a complete understanding of a company's cash flow AND comparing it to industry standards. This is important as it is directly tied to the company's profit margins as it affects it's operational earnings or losses as well as its net earnings or losses.

In order to completely understand a company's cash flow, however, you have to understand the cyclical nature of both the industry and the company. Are some months or quarters better for cash flow than others? Has that historically been the case?

More importantly is the cash flow sufficient to run the internal and day-to-day operation of the company.

Understanding cash flow from a historical perspective as well as from an industry one will go a long way to helping you notice the signals that a company may display before becoming insolvent or having to file a Chapter 11 petition.

15) Have any of the debtor's management ever been involved with a company that has filed bankruptcy?

The reason for this is obvious, however, be aware of the ease in which a company can file bankruptcy and then, two months later, start up a new corporation. Finding this out can be difficult. That is why when you ask questions similar to this it is important to have the debtor sign a truth-in-lending notice stating (if this is a question on a credit application or other document) that all the information provided is correct to the best of his knowledge. Certainly, knowing if either the debtor personally filed bankruptcy or was involved with a company that filed either Chapter 7 or Chapter 11 tells you a lot. How many debtors will be honest with you is another story. If you ask them to explain the circumstances under which the filing took place, however, you may get a higher percentage to answer truthfully.

As many of the nation's top bankruptcy attorney's will tell you, it is not unusual to find a company filing for bankruptcy protection only to have its creditor's find out "after the fact " that the principals of the now bankrupt firm are the same individuals that were involved in a Chapter 11 or Chapter 7 filing several years before. That's all the more reason to make certain that the information you get on your credit application as well as through your credit reports contain a thorough background check on the officers, directors and stockholders of the company. If a company's stock is owned 100% by one individual and you are shipping significant amounts to that debtor, doing a thorough background check either through the credit bureaus or through a private investigator may well pay off. While a private investigator may charge anywhere from $500-$5,000 for such a background check, if you are giving a customer net

. . . be aware of the ease in which a company can file bankruptcy and then, two months later, start up a new corporation.

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30 day terms on a $100,000 credit limit or more, then the investment for that background check may be money well spent.

The detectives will go beyond checking what the credit bureaus or credit agencies check out as they often work with local police departments and other sources to make certain that there is no criminal activity by the principals. They also search through such data bases as Lexus-Nexus to determine if any officers/stockholders/principals were ever involved in any illegal action, been sued, etc. Also, remember that a high percentage of lawsuits are settled "out of court" and may not show up on any credit report. A private investigator may be able to find out such matters for you.

16) Is the debtor selling off assets? If so, which ones and why?

While a debtor selling off certain assets may not always be a bad thing. It is always something to watch for. If a company has decided to concentrate on its core operations or focus on what made it successful in the first place and it has decided to sell off assets that do not relate to its core business, many times this is a good thing—but not always. Keeping this in perspective, along with the financial condition of the debtor gives you a more complete picture.

Often firms unload certain assets which can be anything from machinery and equipment to plants and operational divisions, to help reduce its debtload. If this is the case, keep your ears and eyes open. The next thing that might happen, if the debtor does not obtain their asking price for the assets they are trying to sell or if they cannot find a buyer—the next step may be filing for bankruptcy protection.

Often, for larger companies, investment bankers or other commercial finance firms or merger and acquisition houses will be hired to either dispose of certain assets or find buyers for them. Be aware of who these outside brokers are and what their fees are. Feel free to contact them to obtain as much information as possible. Also, become familiar with the websites of the brokerages/investment bankers or finance companies that may be involved in any such asset sales. Surprisingly this often can give you a wealth of information.

By asking the right questions and making use of some of the tips outlined above, you may stay ahead of other creditors when it comes to noticing the red flags that companies throw up prior to their filing for bankruptcy protection.

For additional information on any of your bankrupt accounts call the U.S. Business Journal at 1-800-407-9044 and let them research this information for you.

"Chapter 11-Do You Know Your Debtors' Signals?" is a copyrighted publication from April, 2002 and written by Stephen Bastien. Mr. Bastien in a turnaround specialist and publisher of the U.S. Business Journal, the Internet's oldest daily e-newspaper that specializes in reporting on distressed companies. To subscribe to the U.S. Business Journal or to receive a free sample, call 1-800-407-9044 or e-mail steve@creditnews.com OR visit their website at http://www.creditnews.com to view all of their business publications.

2002 Factoring Conference

The 2002 Factoring Conference in Memphis was a huge success. Attendees enjoyed all aspects of the three-day conference at the beginning of April. The following are comments from some of the participants.

• "Excellent. I am very impressed. Excellent content and speakers. This is the best conference I have been to – period! "

Tyler Grady, LSQ Funding, Orlando, FL

• "Great conference! My first and I will definitely make it an annual "must attend." Networking was fabulous and topics were relevant."

Ken Earnhardt, KLT&J Inc., Mt. Pleasant, SC

• "I liked it better than other *Commercial Finance Conventions*. Good interaction with people who are involved in small factoring operations. Enjoyed the Friday night festivities, especially the dancing."

Fred Fenn, Commercial Capital, Baton Rouge, LA

• "This was my first conference and I am going home with so much information. What a wonderful learning experience. Thank you!"

Kristen Reamy, US Funding Corp., Hackensack, NJ

• "As a war review analyst for a factoring operation, I learned plenty of new things that I can apply to my analysis process. Keep up the good work!"

Abbay Robinson, Capital Factors, Boca Raton, FL

• "Excellent opportunity to meet peers and discuss mutual problems. The conference is well organized and the sessions are informative."

Ted Price, K.W. Receivables, Humble, TX

• "Would recommend to anyone in the industry, lots of beneficial information. This was a very well thought out and planned event."

Sherri Elder, COMDATA, Brentwood, TN

• "I've been in factoring for 5 ½ years and this is the first factoring conference I've attended. I found it extremely beneficial and enlightening. The ability to network with others in the same business was great."

Robin Gutierrez, Gulf Coast Business Credit, New Orleans, LA

• "Conference was extremely well run and organized. A pleasure to attend."

Bob Sormanti, Domestic Bank, Cranston, RI

Commercial Collection Agencies

by Roxanne Melerine

A commercial collection agency can play a valuable role in recovering funds for a factoring company and their clients.

They offer a broad range of expertise and training necessary to effectively handle recovery issues, accounts receivable management and mediation.

To compliment these efforts, a network of attorneys and private Investigators are able to handle assignments in a majority of global settings.

They can act as a consultant to your factoring clients that have receivable problems and guide them into getting those issues under control by planning a cleanup of their past due receivables for a contingency fee. In many cases they can assign a credit trained consultant to go to their place of business and assist with a hands on approach in that process and offer advice for future handling of their accounts.

In addition any unpaid receivables, that are becoming problem issues for the factor can be handled by the agency, by first sending a demand for payment, followed by a series of telephone calls by a trained credit professional that is not effective the agency can then use a field investigative to make direct contact with the debtor and hand deliver a demand letter, also provide an onsite inspection of the business (noting assets, condition of property with pictures or video if needed.)

These efforts will be handled with the utmost urgency and a status report with updates of the progress made on the account will be sent to the factor within 30 days or sooner depending on their specific needs.

In addition all funds collected will be directed to the factors lock box, and the agency will invoice for the contingency fee.

In addition many companies have a credit service division that can provide pre-lending background investigations or asset and liability investigations for recovery, on a national and international level. In todays shaky economy this can be a valuable service.

Always use an agency that is a member of the commercial collectors Association and the commercial law league.

I hope this will be helpful information in making the recovery of past due receivables an easier process. The agency can work as an extension of your inhouse efforts.

Please feel free to contact me for further information on collections and investigations for factoring companies.

Roxanne Melerine is an investigative consultant with C & R Credit Services Inc. in Metaire, LA. She can be reached at 800-283-0909 ext 3006.

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