

THE COMMERCIAL FACTOR

Newsletter for the Factoring Industry



Volume 3 Number 1
Winter 2001

IN THIS ISSUE

- The Advantages & Limitations of Guarantees by D. Brent Wells page 3
- Factoring News Flashes page 4
- A Fraud Caught in Time by Ken Walsleben page 6
- Closing Clients Electronically by Pat Stiehm page 9
- Stop the Bleeding by Ron Winicour page 10
- Foreign Credit Reports page 13

A Publication of:

The International Factoring Association

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Enjoy Phoenix

The 2001 Factoring Conference will be held in Scottsdale, Arizona on April 4-7, 2001. The conference promises to be the best one yet, with a great line-up of speakers and a location that can't be beat.

In addition to some of the conference favorites, including Bob Zadek, Mike Ullman, and Dr. Ed Seifried, an economist, our speakers this year also include the Secretary General of Factors Chain International, Jeroen Kohnstamm, and attorneys speaking on subjects such as restraining orders, temporary injunctions, collecting receivables, and litigation. Gil Weiner with KPMG will speak about how to retain top employees and low cost benefits packages. Robert McGee, CEO of KBK Financial, will be talking about the problems of taking a factoring firm public and securitization. We will also have a fraud panel and a talk about how to value a factoring firm. In addition to the great line-up of speakers, the conference will feature more than 20 diverse exhibitors. For more detailed information on the conference program, please visit www.factoringconference.com.

The site of this year's Factoring Conference is the Radisson Resort and Spa in Scottsdale. This four diamond resort has 318 rooms, all with private patios or balconies, oversized beds, sitting areas, honor bars, voice messaging service, hair dryers, irons and ironing boards. The resort boasts three restaurants, four swimming pools, 21 tennis courts and the 20,000 square-foot Mist Spa. The entrance fee to the spa has been waived for conference attendees. Enjoy full use of the spa facilities including steam, sauna, whirlpool, relaxation lounge, fitness room, etc. For a charge, the spa offers treatments such as massages, facials, body treatments, and salon services. For more information about the Radisson, visit www.radisson.com.

The banquet dinner on Friday, April 6th will be at the historic Tonto Bar & Grill at Rancho Manana. Rancho Manana is located in Cave

Creek, about a 20-minute drive from Scottsdale. We will be enjoying cocktails and appetizers on the poolside patio, complete with background music and telescopes for stargazing in the desert night. Dinner will be served buffet style in the rustic southwest style restaurant. Tonto Bar & Grill's chef was awarded the People's Choice Award at the 1998 Scottsdale Culinary Festival. To view the menu, visit www.factoringconference.com.



Scottsdale and the Greater Phoenix area, nicknamed the Valley of the Sun, offer a multitude of recreational and cultural activities. With an average rainfall of 7.66 inches, and approximately 300 sun-filled days per year, it's no wonder Phoenix is home to 190 golf courses and many other outdoor activities. It has been named one of the world's top five golf destinations. The golf tournament for the Factoring Conference will be held on Wednesday, April 4th at Stonecreek Golf Club. For more information about the tournament, please visit www.factoringconference.com.

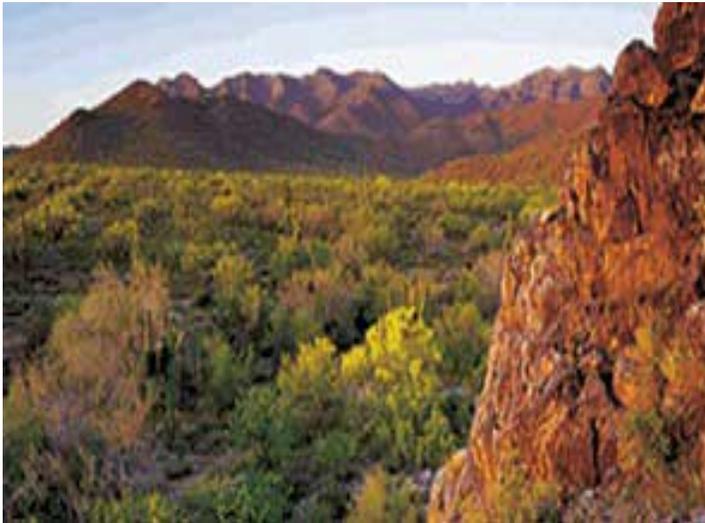
If you have extra time to spend in Phoenix before or after the conference, there are several areas to visit nearby or a short day trip away. Downtown Phoenix is an exciting area to visit with several attractions including the Bank One Ballpark (home to the Diamondbacks), the America West Arena (home to the Phoenix Suns and Coyotes), the Arizona Science Center, the Orpheum Theater, the Phoenix Museum of History, the Heard Museum, the Phoenix Art Museum, and the Arizona Center, an outdoor mall with several shops, restaurants, bars, and a 24-screen movie complex. South of the downtown area is South Mountain Park, the largest municipal park in the world. The park is 16,500 acres and home to more than 300 specimens of plant life. Another area to visit is the Papago Park area. The park features several hiking

[continued on page 2](#)

PHOENIX continued from page 1

trails, picnic areas, and a golf course. Nearby is the Phoenix Zoo, with 1,300 animals, including 200 endangered species, and the Desert Botanical Garden, displaying one of the world's most extensive collections of desert plants. Just south of Scottsdale is Tempe, home to Arizona State University. Visit the campus and take a walk down Mill Street, with its many restaurants, bars and shops.

The Valley of the Sun also boasts several hiking trails in its urban parks. In addition to those already mentioned, you can try hiking up Camelback Mountain, North Mountain, or Squaw Peak. Some of these hikes are strenuous, so you will want to visit the hotel concierge for more details. Other activities enjoyed by visitors to the area include horseback riding, desert jeep tours and hot-air ballooning. The hotel concierge will be able to assist you with these activities too.



Greater Phoenix is also home to numerous sporting events including The Tostitos Fiesta Bowl (college football), Arizona Cardinals (NFL), Arizona Diamondbacks (MLB), Phoenix Suns (NBA), Phoenix Coyotes (NHL), Arizona Rattlers (arena football), and the Phoenix Mercury (WNBA). Phoenix also hosts three pro golf tournaments: The Phoenix Open (PGA), the Standard Register Turquoise Classic (LPGA) and The Tradition (Senior PGA). In addition to those events, the greater Phoenix area is home of the Cactus League, spring training for seven major league baseball teams during the month of March. The Diamondbacks will have their home opening series against Mark McGwire and the St. Louis Cardinals right after the conference on April 6, 7, and 8th.

Since Phoenix is centrally located in the state, it is a convenient location to begin day trips. The Apache Trail is a graded dirt road which will take you through miles of desert and by beautiful lakes formed in desert canyons. The trail was built at the turn of the century to transport construction materials to the Roosevelt Dam, your final destination on the Trail. Driving this trail will take about four hours round trip.

Sedona and Oak Creek Canyon is another of Arizona's beautiful drives. The area is full of red rock formations and natural monuments. Plan time to visit Slide Rock State Park, where Oak Creek has worn the rocks into a popular water slide. The Factoring Conference is offering a Spouse Tour to Sedona and Oak Creek Canyon on Thursday, April 5th. The drive to Sedona will take you approximately two hours. Arizona's most famous feature, the Grand Canyon, is about a five-hour drive from Phoenix, but you'll want to plan two days to visit this natural wonder.

We hope to see everyone at the conference. For more information or to register for the conference, visit www.factoringconference.com or call 800-563-1895. For more information about Phoenix and the Valley of the Sun, visit www.phoenixcvb.com.

The Commercial Factor

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The International Factoring Association

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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 the 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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THE ADVANTAGES AND LIMITATIONS OF GUARANTEES

by D. Brent Wells

1. INTRODUCTION

As long as extension of credit has driven commerce, creditors have been wary of accepting naked promises of payment. In ancient times, the taking of hostages gave greater assurance that promises would actually be performed. In more modern times, the concept of taking hostages has evolved into practices of taking contractual enhancements to minimize the chance that the creditor/lender will suffer the consequences of an unpaid or unperformed obligation. One of the most popular of these contractual enhancements is the guarantee. Guarantees are relevant in factoring transactions either to support collectibility of the factored account or to protect against default on the part of the client-borrower.

II. CONCEPT AND LEGAL ISSUES

A guarantee (or "guaranty") is a promise to answer and be liable for the debt of another person or party. State Statutes of Frauds generally require guarantees to be in writing and signed in order to be enforceable against the guarantor. The original debtor remains liable for the debt, but the guarantor is a co-debtor. Guarantees may be conditional or unconditional, unlimited or limited, continuing or for a specified term. Some states regulate the form and effect of guarantees. For example in Kentucky, a guarantee must be limited to a particular dollar amount and timeframe in order to be legally enforceable.

A "guarantee of payment" is an absolute guarantee making the guarantor principally liable to the same extent as the primary debtor. A "guarantee of collection" creates a secondary liability conditional on reasonable diligence on the part of the creditor in endeavoring to collect payment from the primary debtor. See UCC 3-419(d).

Because guarantees make parties liable for the subject indebtedness who would not otherwise be legally liable, they must be supported by independent valuable consideration. This element may consist in the conferring of a benefit or the suffering of a detriment. It is good and prudent drafting practice to make the consideration express and obvious on the face of the guarantee instrument. For example, if a parent corporation owning all of the shares of stock in the debtor subsidiary corporation guarantees its subsidiary's account, debt, or contract liability, the guarantee instrument should recite the parent/subsidiary relationship and the benefit that will inure to the parent from an extension of credit to the subsidiary. Likewise, the creditor's reliance upon the creditworthiness of the guarantor in extending the credit should also be made explicit.

III ENFORCEMENT

Demand and suit can be directed against the guarantor for non-payment of indebtedness, the same as the primary debtor. However, guarantors can defend the debt action by challenging the underlying transaction or by challenging the guarantee contract itself on the myriad grounds that any written contract might be challenged. While guarantees have the virtue of expanding the universe of potentially liable parties whose assets are available to respond to a demand, suit, or judgment, guarantors can go bankrupt or be judgment-proof, just as primary obligors can.

A. Contrasted with Article 9 (UCC) Security Interest

A well-perfected security interest, under Article 9 of the Uniform Commercial Code, in goods, equipment, accounts receivable, contract rights, etc., is a commitment of specific assets to satisfaction of your claim. It is a property right in the collateral and not merely a right to expect payment. Subject to the rights of competing secured creditors in the same assets, the Article 9 lien interest is well respected in bankruptcy. You are always theoretically entitled to the

property right of realizing upon the benefit of your lien, its value, or its "indubitable equivalent." See Section 361 of the U.S. Bankruptcy Code. A guarantee, on the other hand, is not a specific commitment of any particular assets, but simply a right to sue and pursue recovery from another obligor with a (hopefully) larger universe of assets. If both the debtor and the guarantor go into bankruptcy concurrently, as is sometimes the case, the Article 9 secured creditors of both will come ahead of the unsecured creditor holding only a guarantee.

B. Contrasted with Assignment of Accounts

An assignment of accounts receivable has many features of an Article 9 security interest, including the commitment of specific assets (i.e. the subject accounts) to satisfaction of your claim. Since a guarantee is not a commitment of specific assets, but simply an opportunity to "pin the tail on another donkey," its value in any given relationship is not readily liquidated or measured.

C. Contrasted with Letters of Credit

Like guarantees, letters of credit are obligations of a third-party committed to pay from its own assets in the event certain prescribed conditions precedent are met. However, unlike guarantees, letters

A guarantee . . . is not a specific commitment of any particular assets . . .

of credit commit cash in a specific amount, providing a readily exercisable and measurable quantum of protection. Institutional parties such as international banks issuing irrevocable letters of credit typically present less of a risk of bankruptcy or insolvency than a private commercial obligor.

IV. IMPLICATIONS OF BANKRUPTCY'S INSOLVENCY

As long as the guarantor stays out of bankruptcy, a bankruptcy on the part of the primary debtor creates no obstacle to pursuing recovery under the guarantee. Although the automatic stay of Section 362 of the U.S. Bankruptcy Code precludes non-bankruptcy action to collect from your primary debtor the liability of the guarantor under the guarantee is independent and not protected by the automatic stay.

Prior to the Bankruptcy Reform act of 1994, a quirk in the U.S. bankruptcy law known as the "Deprizio Rule" created a problem for creditors who took guarantees from "insiders" of the debtor (which would include an officer or director), if the debtor filed for bankruptcy protection. In preference actions brought under Section 547 of the U.S. Bankruptcy Code, such creditors would be subject to a one-year look-back and disgorgement periods rather than the usual 90 days. Although you could pursue recovery against your non-bankrupt guarantor, any payments received from your debtor during the one year before bankruptcy were subject to being characterized as a voidable preference. Fortunately, as of October 22, 1994, this ridiculous rule was abolished. Now you should be happy to take as many enforceable guarantees (from officers, directors, parents, affiliates, or other creditworthy "insider" parties) as you can get.

V. THE STRENGTH OF THE GUARANTOR

A. Financial Statements

Since the value of a guarantee is your ability to rely upon the creditworthiness of the guarantor in extending credit, then you should assess such creditworthiness hypothetically as if the guarantor were the primary obligor. This means having in hand and analyzing the guarantor's audited financial statements as scrupulously as you would the primary debtor's. Be careful to assure yourself that the financials

FACTORIZING NEWS

L A S H E S

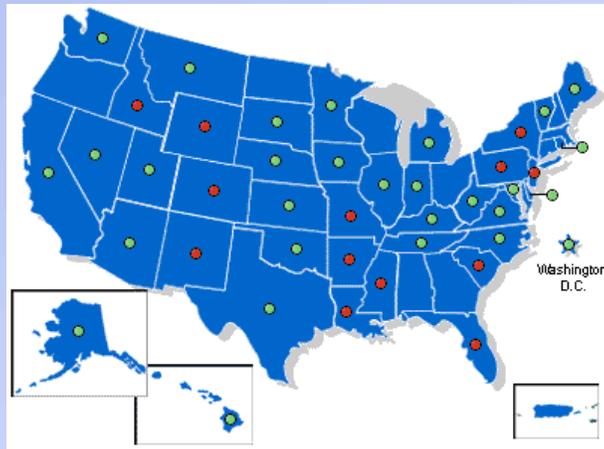
An executive with a Little Rock, AR factoring company, **Southwest Financial, Inc.** plead guilty to conspiracy and eight counts of fraud in schemes which cheated investors out of more than \$13 million. **Mike McNew** was charged with conspiracy, four counts of wire fraud, two counts of mail fraud, one count of bank fraud and one count of making false statements. **Southwest Financial** was using investors' funds to factor false invoices from **Starkey Electric Co.** in Tyler, Texas. Several banks were also defrauded in the scheme including **First Commercial Bank** (now **Regions Bank**), **OneBank** in Little Rock, the **Bank of Mulberry** and **Pinnacle Bank**.

Arkansas Democrat-Gazette, December 8, 2000

Finova Group Inc.'s shares rallied after the Wall Street Journal reported that **Berkshire Hathaway Inc.** bought several hundred million dollars of the finance company's high-yield bonds. **Finova** shares started the year 2000 at \$34, but traded at under a dollar for several weeks after a series of bad loans came to light. **Berkshire Hathaway's** purchase brought the shares up 45% to \$1. **Leucadia National Corp.** announced a bailout deal with **Finova** on November 13, 2000 in which the firm would gain 70% of **Finova** for an ultimate investment of \$375 million.

Bloomberg News, December 11, 2000

Revised Article 9 by State



● - Passed = 29 ● - Introduced (Pending) = 13

Map and information courtesy of Intercounty Clearance Corporation - www.intercountyclearance.com

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.

in question are in fact the financials of the guarantor and not some other entity or combination of entities. So-called "consolidated" financial statements can be very misleading.

B. Loan Applications

Depending upon how extensive they are, loan applications can either enhance the information obtained from a current income statement and balance sheet, or be a substitute for such financials. For example, applications can verify whether or not there is any bankruptcy history, ferret out the true corporate relationships between and among the factoring entity and the parent or any involved affiliates, require identification of individual corporate officers, directors, and decision-makers, and unearth similar relevant details which can be very useful in evaluating the benefit of a guarantee.

C. Due Diligence

The more you know, or can learn through due diligence, about the operating history of your guarantor, including its payment patterns, and its reliability in servicing its trade debt, the better off you are. If published credit ratings exist for your potential guarantor, then you have a greater degree of objective assurance about the degree of risk that you are taking on with any particular transaction. However, published ratings should only be used to establish your credit-granting guidelines and criteria; they are not a "guarantee" that the guarantor will actually perform upon the default of the principal debtor. If a "guarantee" of your guarantor is the type of certainty that you are looking for, then consider buying a credit insurance policy to insulate yourself from market effects on guarantor creditworthiness. Of course, such insurance often comes with an un-economic pricetag which may not be feasible for your routine transactions.

Part of your diligence in evaluating the guarantor is to know the entire universe of guarantees to which it is obligated. Corporate financial statements (especially unaudited statements) cannot always be relied upon to candidly disclose the number of guarantees which a guarantor may have taken on for its affiliate(s) or subsidiary(ies). Your comfort level obviously increases if you are one of but a few creditors protected by a guarantee, as opposed to being one of many.

VI WEAKNESSES AND LIMITATIONS OF GUARANTEES

If the guarantor is financially strong, as assessed by your diligence in marshaling the relevant base of data, your analysis of the pertinent financials, your review of ratings, and/or credit scoring, and if the universe of potential contingent liabilities of the guarantor is relatively small because the guarantor has given guarantees but sparingly, then a default, bankruptcy, or insolvency of the principal obligor (whether borrower or factored account debtor) may affect you but minimally because you can look with confidence to the guarantor. By the same token, if the guarantor is no stronger than the

principal obligor, has weak financials, ratings, or scores, and has given guarantees left and right to any creditor who asks, the protection of the guarantee can be virtually non-existent.

VII. CONCLUSION

Guarantees are but one option in your "bag of tricks" and must be used with awareness as to how they compare to and contrast with other potential security devices. No one strategy to minimize credit risk will make sense in every factoring transaction or relationship. This is particularly true of the guarantee, which may be crucial to your lending decision in one transaction, but merely "gravy" in another. However, by being more aware of the possible use of guarantees, it is hoped that you will be able to do a better job of protecting your company's investment in the loan. Be aware that since guarantees have legal legitimacy because of state contract and creditors' rights laws, there are nuances which vary from one state to another.

Consult an attorney who specializes in creditors' rights law with your unique and particular problems, circumstances, and relationships, in the states and jurisdictions in which your company operates.

D. Brent Wells

Attorney/Mediator/Arbitrator

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Houston, Texas 77002

(713) 222-1281

Certified—Creditors' Rights Law— American Board of Certification

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371.065

Requirements for valid, enforceable guaranty.

(1) No guaranty of an indebtedness which either is not written on, or does not expressly refer to, the instrument or instruments being guaranteed shall be valid or enforceable unless it is in writing signed by the guarantor and contains provisions specifying the amount of the maximum aggregate liability of the guarantor thereunder, and the date on which the guaranty terminates. Termination of the guaranty on that date shall not affect the liability of the guarantor with respect to:

(a) Obligations created or incurred prior to the date; or

(b) Extensions or renewals of, interest accruing on, or fees, costs or expenses incurred with respect to, the obligations on or after the date.

(2) Notwithstanding any other provision of this section, a guaranty may, in addition to the maximum aggregate liability of the guarantor specified therein, guarantee payment of interest accruing on the guaranteed indebtedness, and fees, charges and costs of collecting the guaranteed indebtedness, including reasonable attorneys' fees, without specifying the amount of the interest, fees, charges and costs.

Effective: July 13, 1990

History: Amended 1990 Ky. Acts ch. 28, sec. 1, effective July 13, 1990. - Created 1986 Ky. Acts ch. 485, sec. 1, effective July 15, 1986.

UCC 3-419(d)

(d) If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if:

- (1) execution of judgment against the other party has been returned unsatisfied;
- (2) the other party is insolvent or in an insolvency proceeding;
- (3) the other party cannot be served with process; or
- (4) it is otherwise apparent that payment cannot be obtained from the other party.

Upcoming Events

Tele-Conference Call

Thursday, January 18, 2001 at 1:00pm PST

Steven Kurtz from Greenberg & Bass

How Fraud Impacts your Factoring Deals and Discharging such debts in Bankruptcy

Fraud is an issue that Factors need to be on a constant vigil against. We will be discussing various fraud related topics, how they apply to Factoring and discharging those fraud related debts into bankruptcy.

Mr. Kurtz has extensive trial experience in bankruptcy and state court as well as appellate work before the Bankruptcy Appellate Panel, the District Courts and Ninth Circuit Court of Appeals. He will also be the moderator of the Fraud Panel at the Factoring Conference.

The fee for this call is \$40.00

Register at: info@factoring.org or call 800-563-1895

A Fraud Caught in Time And the Lessons Learned...

by Ken Walsleben

Introduction:

On Wednesday, October 4, 2000, I received a promising call from a broker introducing a New Jersey based prospect. The prospect, Betty Crocker, was purportedly a government contractor working with the Department of Defense. The broker wondered if we would be willing to work with a client selling its receivables due from the US Government. Who wouldn't look into such a prospective deal?

From this innocuous phone call, I began a 10-day period of investigation unlike anything I'd ever been involved in. This experience, and the conclusions I've drawn from it, should prove useful to anyone calling himself or herself a factor.

Betty's Sting:

On Thursday, the 5th of October, I faxed to Ms. Crocker a copy of our firm's application, and a list of documentation that we would need to commence our due-diligence. In a phone conversation she explained her situation (all of which would later prove to be false). She explained that she did business as "Penell" and was a WMBE Contractor working under bonafide 5-year contracts with 2 military bases in New Jersey. Located in northern NJ, her company provided janitorial, grounds & maintenance, and food service labor to Fort Dix and MacGuire AFB. She explained that the government advertises open bids on the Internet for such services, and while different contractors may win successive bids, the on-site workers stay the same. Going forward, employees simply get a new paycheck from the new winning bidder.

She provided a 174-page official government request for bid, and subsequent award showing that she was the successful contractor with a bid of \$120,000 monthly. A government contract office called "JAMS/DOD" also based in northern New Jersey managed the contract. It was awarded to a firm called "Penell Limited". It showed that her contract had commenced in early 2000. The document further cited the name and phone number for a Ms. Molly Haynes as the relevant contract officer charged with contract oversight responsibilities.

Betty's completed application was returned using an "S" Corporation name of "Penell Limited Corp." and was completed in normal fashion. She explained that she was in a BIG rush to conclude this transaction (aren't they always?). Her problem was that one of her employees had not billed the DOD for her August activity. Normally, that bill would have been paid during the first week of October. Only upon asking Ms. Haynes (on 10/3/00) about payment status, did she find that August was not billed. Additionally, her September activity had not been billed in the ordinary course until early October as well. As stated, her worry was that she would be unable to make payroll on 10/13 because she now had 2 monthly invoices in play, but no cash in hand. Therefore, she was looking to factor both monthly invoices totaling \$240,000. Sensing a potentially nice account, I promised her quick action once she provided the documents I requested. Hamilton's checklist of requested items is little different than any of the rest of our industry. We require financial disclosure, Articles of Incorporation, By-Laws, Certificate of Incorporation, A/R and A/P aging, etc.

Up to this point, Betty's scam was flawless. However, from this point forward, Betty made a number of minor mistakes. Any one of these errors could be explainable, but the sum total quickly aroused our suspicions and eventually led to her downfall. Her mistakes were as follows:

- She never delivered to me a complete package; everything was "piece-mealed" only after I requested the items repeatedly.
- She delivered internal, unaudited financials on "Penel Limited" (the second variation of the name she used in her application). She explained this away as a typo.

• Her financials purported to show *actual* results, but upon scrutiny they didn't hold together too well and had way too many numbers that were rounded off to the nearest thousand. Upon asserting that I suspected that these numbers were projections, she plead ignorance and deferred to her accountant, who (surprise!) was out of town indefinitely.

• Her Articles of Incorporation and By-Laws were eventually delivered using the name "Penel Limited" and bore a computer generated stamp from New Jersey dated "1993". She claimed that the stamp was garnered from New Jersey's on-line system and that 1993 was the year of incorporation. She further explained that she subsequently changed the name of the company to "Penell Limited Corp." sometime later because she preferred the way it sounded compared to the original version.

• She voluntarily (and optimistically) forwarded wire instructions to me on letterhead that showed the name "Penel Limited" (this scam artist couldn't keep her bogus names straight!). Betty explained this away by saying that it was old letterhead from years earlier that was mistakenly used.

Clearly, at this point, I was rather suspicious, but I was frankly lured by the strength of the government contract. So I pressed on. On Monday, 10/10/00, I arranged to meet Betty in New Jersey for lunch. She was continuing to press me for cash, but I explained that given the irregularities to date, I felt that we should meet to clarify the name confusion. Further, I wanted to meet Ms. Haynes (the government contract officer) and see the JAMS/DOD offices. Betty agreed to try to arrange it.

At lunch on the 10th, I met Betty and found her to be a well-spoken, earnest-seeming young woman. She was rather personable and delivered to me original copies of her two monthly invoices. She

[continued on page 8](#)

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2000 Factoring Conference

Cassette Order Form

Robert Zadek, Esq., Buchalter, Nemer, Fields & Younger

Current Factoring issues, Revised Article 9 of the UCC Code, Dealing with other Factors in takeovers, participations, sharing transactions and re-Factoring

Mike Ullman, Esq., Ullman & Ullman

Can you claim invoice payments your client deposited in their account? Update on usury and it's implications in Factoring

Marketing Panel

Panel discussion on how to use new marketing techniques to grow your portfolio

Dr. Bill Carner – University of Texas

Lewis Faber – Yale Capital Group, Ltd.

Laurence Pino, Esq. – Pino Training Organization

Melinda Murphy, IRS

Working with the IRS in relation to your clients

Funding Panel

Panel discussion on different funding options.

Larry Meek – Capitol Resource Funding

Paul Cottone – Summit Rediscount Finance

Andrea Petro – Transamerica Financial Services Funding

Matt Gravelle, FBI

Investigation of fraud claims

Dr. Edmond Seifried, Lafayette College

Economic analysis and projections

Gary Miller, Esq., Boyar & Miller

Purchase and sale agreements, Participation agreements

Okorie Ezieme, Deloitte & Touche

David Lowenkopf, Deloitte & Touche

Risk management and controls, Operational pitfalls, Improving efficiencies, Limiting exposures, The importance of audit oversight

Arnie Cavazos, Esq., Cavazos, Hendricks, Poirot & Dewey

Your clients file bankruptcy, what are your rights? DIP financing, how is it done?

Richard Worthy, Metro Factors

Making the transition from a small to a large Factoring operation

The full set of Speaker Cassettes is available for \$200.00. You may also order individual cassettes for \$20.00 each (Bob Zadek's cassette set is \$40.00). California and Texas orders, please include sales tax (CA 7.25% and Texas 8.25%).

- Robert Zadek, Esq.
- Mike Ullman, Esq.
- Marketing Panel
- Melinda Murphy
- Funding Panel
- Matt Gravelle
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- Gary Miller, Esq.
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Fax your order to: 805-544-3905 or order on-line at www.factoringconference.com

FRAUD continued from page 7

explained that her employees were sitting tight, but that she would not be able to delay the upcoming payroll for long. She also produced a form letter of Payment Assignment on stationary for "Penell Limited" that she asserted was acceptable to Ms. Haynes at JAMS/DOD. Betty then explained that the JAMS/DOD office was a secure facility and we would not be able to enter it. Incredulous, I pointed out that it was simply an administrative office. Betty explained that because blueprints of numerous military installations are housed there, that entrance was limited, and certainly not possible on short notice. However, she offered, she had arranged for Ms. Haynes to stop by our restaurant table to introduce herself and answer my questions.

With suspicions rising further, I informed Betty that I intended to verify Ms. Haynes' I.D, when she arrived. And indeed, I did so. Our visitor produced a photo driver's license showing her to be Molly Haynes. Ms. Haynes confirmed (1) that she was the contract officer in charge of Penell's contract, (2) the existence of the contract was legit, and (3) she verified the acceptance of Betty's two invoices. She further confirmed her acceptance of the assignment letter provided by Betty, and assured me that she would personally confirm that payment would be directly remitted to Hamilton. I told both ladies that I intended to take the two invoices back to Syracuse with me to copy them and would then forward them via overnight courier to the attention of Ms. Haynes.

After lunch, sensing that I was still uneasy and suspicious, Betty offered to take me to the building housing the offices for JAMS/DOD. We did so, and verified on the building directory that JAMS/DOD was located there. I queried Betty as to what "JAMS" stood for. She explained that she believed that it stood for "Judge Advocate Magistrate Service, or something like that".

I further informed Betty that I was still missing a Certificate of Incorporation from her firm, and prior to commencing a lien search, I would need it to finally ascertain the true legal name of the firm. I also reminded her that I had not yet received a copy of her last tax return and would need that as well. Upon my return to my office that evening, I found that Betty had faxed me a copy of a receipt from New Jersey indicating that NJ had processed a Certificate of Incorporation for "Penell Limited" back on 4/23/97. Yet, she was unable to locate the specific document itself. Late that evening, I overnighted the original invoices and assignment letter to Ms. Haynes and requested that she confirm receipt.

The next day (10/11/00) we commenced lien searches for "Penell Limited" as well as "Penel Limited". Still suspicious, I connected to New Jersey's web site that allows for corporate name searches. The site showed no record of any variation of "Penell", but did indicate that a "J. Crocker" had incorporated a firm named "Penel Corporation" on 4/23/97. Could our Betty be this same "J". Crocker? I called to inquire and Ms. Crocker explained that her given name was Janine Betty Crocker, and that the state of New Jersey must have lost/never processed her request for name change from Penel to Penell back in 1997. I then asked her "Why then, do you have a receipt showing the processing of a Certificate of Incorporation by New Jersey dated 4/23/97 concerning "Penell Limited"? She couldn't explain it other than to say that there must have been some bureaucratic mistake. (Upon closer scrutiny of this document, it appeared that the entry of "Penell Limited" on the receipt was cleverly forged to replace the original entry of "Penel Corporation".

At this point my worries of fraud were being confirmed, but why was she hiding the existence of Penel Corp. from me? Was the government aware of this?

Hamilton's Sting:

I needed her to stay 'busy' while I awaited the return of my lien searches. I forced her to contact New Jersey and put an express application through for the Penell name. Incredibly, she screwed this up by incorporating the name as "Penell Limited, Limited.". But it was of no consequence at this point.

The next day our lien search came back and confirmed our fears. A west coast factor had filed a traditional lien against Penel Corp. in June 2000. Using my IFA website connection, I looked them up, and called the contact. I identified myself, and started to mention circumstances. After about 30 seconds, he interrupted by asking, "Are we talking about Janine Crocker?" It turns out that, using the same scam, she had stolen about \$300,000 from his firm, and they had just figured it out about 10 days earlier. After further clarifying the situation, I explained that she almost got me, and perhaps we could cooperate on "removing her from circulation".

He told me that the investigative arm of the DOD, the Defense Criminal Investigative Service was looking into the matter. The DOD had also confirmed that they did not have an office in northern New Jersey known as JAMS/DOD. Was that a bogus entity too? I tried to involve my local FBI contacts, but as most of us know by now, that is usually a dead end. It was again for me. However, the DOD investigator seemed genuinely interested once I explained that Betty didn't know I was on to her scam. In a matter of 24 hours, he coordinated actions between the DOD, Justice Department, and the FBI to get permission for me to use government equipment for the purpose of recording further phone conversations with Betty.

By the next morning, a DOD representative was at my office and instructed me on the use of their equipment. Later that day, Betty/Jane/Janine completely incriminated herself on tape. Further, we did the same with Molly Haynes. But the DOD didn't want Betty to catch on that her scam was uncovered. They needed more time to pursue an indictment and arrest warrants. We elected to explain to Ms. Crocker that Hamilton had run out of money and our economic livelihood was threatened. Under those conditions, we could not move forward with her funding. Undaunted, she proceeded to immediately contact 5-6 of our competitors here in the northeast.

One of the unintended consequences of this was that she told each of them that we were going out of business! Still not sensing that we

[continued on page 11](#)



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CLOSING YOUR FACTORING CLIENTS ELECTRONICALLY

by Pat Stiehm

As we all know in the factoring business, we usually have a short window of opportunity to close and fund each client. That window of opportunity exists while the client is highly motivated, i.e., in need of cash. That need can evaporate overnight with a sudden influx of cash resulting from the payment of a large invoice, an investor coming to the aid of your potential client or a competing factor moving in and closing your client faster than you can. If you close your factoring transactions electronically, you substantially cut down on the chances of these things happening to you. Closing electronically is faster, cheaper and cuts down on paper.

What are we talking about when we talk about closing a factoring transaction? For purposes of my comments here, I define closing as, that process you go through, from the time you (the factor) have approved the financing, until you have made your first disbursement of money, i.e., purchased your first invoices. Closing electronically is nothing more than using technology to speed that process along.

There are six distinct tasks we perform in closing any factoring arrangement. They are: (1) doing the documentation; (2) filing the UCC-1s; (3) getting the searches; (4) getting the invoices in hand and then verifying them; (5) giving the required notices to the client's customers, (the debtors); and (6) purchasing the invoices.

DOING THE DOCUMENTATION

In my experience closing electronically produces the most significant time savings in getting your documentation, negotiated, finalized and executed. That is not to denigrate the importance of the other five tasks outlined above. They will each be addressed later in this article.

Your documentation will almost always include, a factoring agreement, (which usually doubles as a security agreement), one or more personal guaranties and one or more UCC-1s. Depending on the complexity of the potential transaction and your own practices and procedures, you may have other documentation as well. Today the fastest way to get your documentation into the hands of your client and your client's attorney is via e-mail. This gives your client and your client's attorney an electronic document to print out, review and actually make the redline and cross out changes that they feel are necessary to their doing the deal. With most of the factoring companies that I represent, my office does the initial draft of the documentation off of the company's boiler plate documents. We then deliver them simultaneously, via e-mail to our client (the factor), their potential client and the potential client's attorney. We send a complete set of the documents in both Word and WordPerfect. In the last five years we have found that about half of the offices we deal with have one of those word processing programs and the other half has the other program. It is easy for us to provide both versions and let them work off of the one they choose in making their desired revisions. Since we are sending out the original documents and the various revisions to several recipients, both a Word and WordPerfect version of each document goes out each time.

Only a few years ago negotiating and finalizing your documents, took at least six or seven days or in some cases several weeks. Using e-mail to negotiate and finalize your documents cuts that process to a fraction of the time.

You should insist that all changes be done on your master docu-

ments. This will be extra work for your attorney but it will insure that there are not any "inadvertent" changes that may creep in, because you relied on the other side to call all changes they have made to your attention.

When getting the factoring agreement and guaranty or guaranties as well as other documents executed you may find that you will need to rely, at least initially on fax signatures. The fact that you and the other party expect to be bound by the fax signature should be expressed in each document with what I call a "Fax Binding" paragraph. Several years ago I did a memo on the use of these paragraphs and I included several samples. That memo is at my web site and I urge you to take a look at it if you are going to rely on fax signatures for even a short period of time between your initial disbursement of funds and receipt of original signatures. The memo may be found at: <http://firms.findlaw.com/pstiehm>.

Simply go to my web sit, click on "Articles and Memos" and then click on the one entitled "Using A Fax Binding Paragraph In Legal Documents." Feel free to print it out and/or down load it. If you rather, you may simple e-mail me at: stiehm.law@juno.com and ask for the memo. I will send it to you by return e-mail. Please specify whether you want it in Word or WordPerfect.

FILING THE UCC-1's

Most states are allowing and in some cases even encouraging the use of the so called "National UCC-1" form. There is an electronic version of this form available in pdf format. That is the same format in which this article is being published and you can use the Acrobat Reader you used to pull up this article to pull up and print the form. You can not use the free Acrobat Reader program to fill in the form. For that you would need the full Acrobat program, which comes with an online price tag of \$249.00. A cheaper and far less expensive way to handle this is to create a template that will print over your already printed UCC-1, filling in the necessary blanks. If you want either the National UCC-1 in electronic form and/or the template, simply e-mail me at: stiehm.law@juno.com and I will send either or both. (There will, of course, be no charge.)

Once you have customized the template for the client you are putting on, just e-mail the UCC-1 to that client along with the template and instructions for printing the template over the UCC-1 and have them sign and overnight it back to you. (Sorry except for Texas, no electronic filing yet. But stay tuned!) I need to add a note of caution here. It is going to become increasing difficult in some states to fax the completed UCC-1 to your client and have the client sign it and send it to you for filing. There is some level of denigration of the copy of a document each time it is faxed and the states are getting more and more picky on accepting faxed forms for that reason. Try to get a fully printed original, if at all possible.*

GETTING THE SEARCHES

Suffice it to say that most if not all of us use agents for this purpose, as well as filing and they have been doing searches electronically to one extent or another for years. I suspect sooner rather than later we will all be able to do these searches from our desk top computer and will no longer need the agents. We are not there yet however.

GETTING INVOICES IN HAND AND VERIFYING THEM

Some factors are already doing this electronically. If you are not one of them, you should consider it. Any invoices you are considering purchasing you can have e-mailed to you in a format you can pull up and read. Indeed, in my judgement you should be insisting on this method of delivery. This tells you right away, everything you need to know about the invoice including whether, the notation of

[continued on page 12](#)
page 9

... closing electronically produces the most significant time savings ...

Stop The Bleeding



By Dr. Ron

Hello and a happy new year to all. The year 2001 promises to be a good year for new business. I wonder if 2001 will see a move towards the restoring of margins that have been slipping over the past few years. The economy is slowing and many lenders are tightening their belts. In our shop the month of December saw a marked increase in new applications and also saw an even larger increase in the size of our applications. But let us not forget that the beginning phase of an economic downturn usually brings with it problems in our existing portfolios, especially amongst our weaker clients.

In our last "Stop the Bleeding" article we discussed a default situation we were then two months into. I am speaking of the air freight forwarder that had gotten the best of us. At the time of default, we were owed a high six figure amount. Our outstanding balance on December 31, 2000 was in the low five-figure range, which included three months worth of collection and attorney fees. With any luck at all, we will see a very small loss or possibly even no loss at all.

Are we that good or are we lucky? While I cannot answer that, I can tell you what we did to improve our position. We made two significant moves the first week of default. Move number one: we made a deal with the client to send the client money after receipt of new invoices and after we verified these invoices, the verification often taking the form of a written unconditional promise to pay. Our ultimate advance rate on these new invoices was very low after screening out all verifications we were not one hundred percent certain of. We have since collected most of this paper. Move number two: concurrently with making the above deal we filed suit against the client and all guarantors. In addition, we were able to obtain a temporary restraining order against the principal to stop him from all debtor contact. (Yes, he was a little upset after he received service.) We have spent the last three months collecting the accounts with upper management participating in the process of collecting the larger accounts. To date, we have not filed suit against a single debtor, although we have turned over about one-third of the portfolio to a collection agency. Except for four or five debtor accounts, the remaining portfolio will also be turned over to the collection agency by the time you read this article. You may read more about this by clicking on the fraud section of the IFA Website.

Let us move on to topics of a more general nature. The first one is concentrations. We all know that when we take on a new account with a major concentration, the emotion of greed has conquered the emotion of fear. We have all done it, usually rationalizing to ourselves, "I know this client", or "If I verify properly, how much can I possibly lose?" This is definitely not the best of thinking. But is a concentration always a concentration?

The answer is "Yes, but."

If the credit of the account debtor concentration were anything other than rock solid, I would consider it to be untouchable in any event. But, if the credit is solid and the goods or services are delivered or performed at different account debtor locations, and the invoice verifications can be obtained directly from each location and from different people, the negative effect of the concentration can be greatly diminished. Participating out a portion of the account is another way to more safely book the business. Obtaining an "Agreement to Pay" letter, which reads more like a promissory note, rather than the typical "non-offset" letter, can also assuage the risk. Remember, non-offset letters are legally effective only when goods are involved, they are not effective against service invoices. My understanding is that such a letter will be effective against invoices for goods and services after July 1, 2001, when the Revision becomes effective. If you would like a copy of the Agreement to Pay letter that

Gibraltar uses, you may e-mail us at drron@gibraltarfinancial.com or fax a request to Dr. Ron at 847-272-9765.

As long as we have mentioned the Revision (Revision is capitalized here as it has taken on almost divine properties), it is not too early to start analyzing our portfolios to see if any existing clients need re-filing and/or re-documentation. It can be a time consuming job, and even if UCC's are prepared and sent for filing on time, there is no guaranty that a particular Secretary of State's office, like Delaware, for instance, will be able to handle the last minute volume. Filing UCC forms pursuant to the new rules can be done at any time although the filing will not become effective until July 1, 2001. If you properly re-perfect by July 1, 2001, the ultimate effective perfection date will be the date you perfected on your original filing(s) under the old rules. Taking a page from the late and great mayor of Chicago, our suggestion is to "File early and often". There are also some instances where you may wish to change your documentation language and UCC language. As an example the words "All Assets" will mean exactly that with some very limited exceptions. The use of this phrase may bring with it some marketing complications, but a good salesperson can convince the customer that this phrase is O.K. especially if certain types of assets are excluded instead of the other way around. In my mind at least, this is by far the better way to go.

Verifications were also mentioned earlier. I must confess that I do not like that word. It is negative, conveying the feeling that there is a lack of trust somewhere in the invoicing process. Instead, we like to use the phrase "Quality Assurance". Believe it or not, it works a lot better with both the client and the account debtor. We have had very positive results with it. The next step would be to charge for the service!

To share your experiences or to seek the advice of the author, Ron Winicour can be reached by e-mail to ron@gibraltarfinancial.com or by snail mail to Gibraltar's corporate address.

FRAUD continued from page 8

were on to her, she was telling each new target that they could call me for a good reference on her. Fortunately most did, and I was able to warn them off. The DOD officer asked me to re-contact these newly targeted firms to ask if they would be willing to assist in the prosecution. With one exception, all said sure. Incredibly, one party who was alerted to her scam by me completely refused to cooperate with authorities! Even though he had been potentially saved thousands of dollars in losses through the cooperation of other factors and legal authorities, he still wouldn't consider helping others to do the right thing...

One interesting postscript to this sordid episode is that Betty Crocker owns JAMS/DOD. It turns out that "JAMS" stands for Janitorial And Maintenance Supplies! In addition to scamming the West Coast Factor, and (almost) ourselves, she ripped off a fire equipment wholesaler using bogus DOD contracts. At last report, Ms. Crocker was the unhappy guest of the Federal Government. She is facing numerous charges adding up to over 8 years of hard time, and was unable to raise bail of \$100,000.

Lessons Learned:

In my opinion, there is no overriding lesson that stands out above all others here. One might be tempted to conclude that one should trust their instincts, or to cut and run at the first hint of irregularity. Yet we all know that if we did so, we would pass up a lot of good business. Rarely does a due-diligence effort go smoothly. In fact, if one did, I might be more suspicious that I'd stumbled upon a scam artist far more sophisticated than my former friend Betty. As I review my thought processes, I think that I was tempted by the existence of a big, clean government contract with an accessible contract officer. Because of that, I probably stayed with this one longer than I should have.

But the importance of good solid due-diligence cannot be underestimated. In many cases, it's our only defense. Insisting upon delivery (and scrutinizing) all requested documents is a good start. Betty's inability to come up with a genuine Certificate of Incorporation was the final straw in her scam career. Had I thought to check who the signatory was on my overnight package to Molly, I would have found out that Betty Crocker stupidly signed for it herself! I believe the overriding message here is: if the pieces don't hold together well, keep digging until you are either satisfied or you finally uncover the fraud.

Numerous people who are familiar with this saga are quick to commend me for detailed, steady due-diligence. But I quickly remind them that luck played its part too. I readily admit that if Betty were a little better with her initial documentation (remember the different name variations?), and we were the first factor in, then she might have had us. Remember, only after we discovered the existence of the west coast factor's lien did we have all of the pieces put together. The fact that the west coast factor got stung is not necessarily an indictment of their due-diligence, but perhaps their luck. They were the first party targeted...

Finally, allow me a moment to stand upon my 'soapbox'. Factors should take advantage of all the resources available. One tool that helped us uncover the scam was the Internet. Remember, I searched the State of New Jersey site to match names. But you should also check the IFA site as well for known frauds. I've been pretty diligent about posting frauds that I come across. I'm troubled by the relative scarcity of listings. I have no problem sharing fraud information with competitors. The factoring world is big enough for us all. It's about time that we started to act like a true industry that shares info for the common good of all members. I don't subscribe to the theory that by posting fraud leads, that I'm helping my competitors avoid losses...do you? I hope you'll join me in identifying fraudulent actors so that we can steer clear of them in the future.

For purposes of this article, names have been changed. For more details on this fraud, visit the Fraud Forum on the IFA web site at www.factoring.org, or call Ken Walsleben at The Hamilton Group (Delaware), Inc. He can be reached at 800-351-3066 or ken@hamiltongroup.net.



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ELECTRONICALLY from page 9 the assignment to you has been inserted on the invoice. The electronic version is easy to print out, make notes on and even reissue, if you need to. E-mail verification is also easy using the electronic version of the invoice as an attachment.

GIVING THE REQUIRED NOTICES TO THE CLIENT'S CUSTOMERS, (THE DEBTORS)

It is a short hop from electronic verification via e-mail, to giving notice of the assignment for the account by e-mail. As a matter of prudence, you should use this method of notice with the same caution and care as any other method. If it is included in your verification request and that item is responded to, the debtor would obviously be pretty hard pressed to deny receipt of the notice, especially if the response came from the accounts payable department. The law governing the adequacy of such notice may differ slightly from state to state. It is always wise to double check this matter with competent local counsel, especially if this is going to be your sole notice to the debtor. It is, none the less a method that is well worth considering.

PURCHASING THE INVOICES

I mention this aspect of closing electronically only for the purpose of covering the subject fully. I doubt that there is a factor in business today, at least in North America who does not disburse at least some funds electronically. I dare say wire transfers are probably the norm in our business and have been for years.

E-SIGNATURES

No discussion of electronic closing would be complete without some mention of the current status of e-signatures. Indeed in the last few months a fever of discussion of this subject resulted from new federal legislation purporting to give electronically signed documents the same legal validity as paper documents. The law, signed by President Clinton on June 30, was touted as opening the door to the possibility of billions of dollars of business transaction that would be "inked" with digital signature technology. The world was going to be transformed.

The new law certainly promises to change online commerce. But I suspect its effects on the factoring business are going to be more long term.

E-signature technology generally is based on encrypted mathematical codes that are attached through a series of mouse clicks to documents by the parties in a transaction. What appears on the document is a numeric code or in most cases what appears to be an electronic version of the real signature.

In fact, at the state level, laws recognizing e-signatures, either directly or implicitly, have been around for several years. Forty-nine jurisdictions have statutes dealing with e-commerce to one extent or another. Forty of those recognize e-signatures. There is a Uniform Electronic Transactions Act, which as of last summer had been adopted in twenty-two states making it the most common legislation at the state level in this field. The model act, issued by the National Conference of Commissioners on Uniform State Laws has many interesting features which appear to me to give electronic transactions the broadest possible scope and enforcement, just as if they were paper transaction. For example:

The statute defines an e-signature or electronic signature as follows:

"Electronic signature,' means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record."

In the comments to the act the Commissioners, made it clear that the idea of an e-signature is broad and not specifically defined. The purpose of the act is simply to assure that the signature may be accomplished through electronic means. No specific technology need be used in order to create a valid signature. A person can use a digital signature, a symbol, a combination of numbers or even a sound under the statute. The statute merely establishes, to the greatest

extent possible, the equivalency of electronic signatures and manual signatures.

Section 3 of the act, spells out its scope and reads as follows:

"SECTION 3. SCOPE.

(a) Except as otherwise provided in subsection (b), this [Act] applies to electronic records and electronic signatures relating to a transaction.

(b) This [Act] does not apply to ...;

(2) [The Uniform Commercial Code other than Sections 1-107 and 1-206, Article 2, and Article 2A];..."

From the point of view of our business, what the stature gives, it takes away. Though intending to be very broad in scope, it only includes those transactions under the Uniform Commercial Code covered by Sections 1-107 and 1-206, Article 2, and Article 2A and not Article 9, the only one that counts as far as those of us in the factoring business are concerned.

Interestingly enough the legislatures seem to be broadening that coverage. In Virginia for example, relevant parts of what is Section 3 of the Uniform Act read as follows:

"§ 59.1-481. Scope. —

(a) {same as above}

(b) This chapter does not apply to a transaction to ...

(2) Title 8.1 except §§ 8.1-107 and 8.1-206, Title 8.3A, Title 8.4, Title 8.4A, Title 8.5A, Title 8.6A, Title 8.7, Title 8.8A, Title 8.9, Title 8.10, and Title 8.11; ..."

For those of you not familiar with the Virginia numbering scheme Title 8.9 of the Virginia Code is its version of Article 9 of the Uniform Commercial Code. Let's hope all the states follow what Virginia has done in adopting the Uniform Act and include Article 9 in the scope of its coverage.

In summary, I think it is clear that the legal framework is in place to permit electronic signatures to be used in our transactions in the future. However, practice and the comfort level of the industry needs to catch up with that legal framework, before we should start relying on e-signatures in closing out factoring transactions.

* I am aware that some states still will not except the National UCC-1 Form and insist on their own. Those form are, for the most part also on line. If you have this problem, please e-mail me at: stiehm.law@juno.com and I will tell, at least in most cases, where to get the forms. Again this will be without charge.

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Mexico Credit Grantor's Fact Sheet

Background: Integral to acquiring information on Mexican businesses is interviewing representatives from those companies. Without interviews, agencies are not able to pick up details necessary to the continuation of their investigations, because third-party sources are both limited and scattered. Company fiefdoms necessitate the interviewer question different departments to get a clear picture of the whole company. Small company owners frequently travel and don't have accounting departments, so they may be difficult to contact. If the owners agree to release information, the agencies still may have to wait to get financial details from an outside accountant. The owner or his representatives need to be convinced releasing information will specifically help the company.

Banking Information: Banking information is difficult to get unless you know an account number and contact person at the company's bank. The bank contact person may call the company for approval to divulge information.

Financial Information: By law, all public company financial statements are available through the Comision Nacional de Valores (SEC equivalent). Privately held firms, not obligated to reveal their finances, are wary about sharing information with unknown sources, especially fearing US and Canadian competition post-NAFTA. If you use credit agencies, allow them to reveal your name to the companies.

Public Records: This data, vital for determining whether a company is being sued for nonpayment, is not computerized. Company registrations are sorted numerically, and if you do not have a company's designated number, it may take a while to locate the information you seek. Gratuities to government clerks to speed things up are not uncommon. Judicial bulletins and major Mexican newspapers list company liens and judgments. Filings do not have to be done in the county where the subject is located.

Personal Information: Personal information is skimpy by U.S. standards, because no repository exists for personal credit information. Agencies can usually verify information you provide, but reliable addresses and phone numbers of a subject and his or her employer are required.

Trade Payment Histories: Trade payment histories are almost nonexistent because there is no commercial repository for this information. Agencies rely on trade references supplied by the company, which often respond slowly.

Standard Terms: Letters of Credit are frequently used for new accounts. Credit insurance is popular to protect receivables and for financing purposes. Terms of 30 to 120 days are not unusual.

This Owens OnLine® Credit Grantor's Fact Sheet was originally published in the Aug. 1996 issue of The Credit Manager ©1996 Warren, Gorham and Lamont / RIA Group (NYC). The Credit Manager is an eight page, monthly newsletter serving the commercial credit and collection community. For subscription information call 800-950-1205.

Czech Republic Credit Grantor's Fact Sheet

Background: The amount of information to be released is entirely dependent on the discretion of the management of small Czech companies. Therefore, it is necessary that representatives of a subject company be interviewed. Often, you will have to "sell" the idea that releasing information will benefit their company.

Public Records: Details can be obtained from the Business Court and its Official Bulletin. The Statistical Office also provides information regarding each registered company. Many private firms provide bare-bones information for various company directories published throughout the Czech Republic.

Financial Information: Information is published in the Official Bulletin on all state-owned and joint stock companies. All limited liability companies and cooperatives with sales over 40 million CZK or equity greater than 20 million CZK must also release their financials. Interviews will help fill in the gaps.

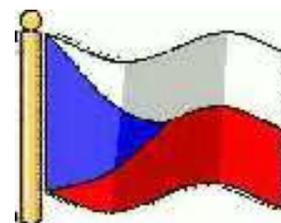
Banking: Banks provide information on their clients, but details are limited by bank law. The client's approval is usually required.

Personal Information: Personal information is strictly protected. After fifty years under various police states, an individual's privacy is highly valued.

Payment Histories: Trade references are rarely used. A private firm, NEFI, produces a monthly newsletter and database derived from creditors' listings that announce companies with debts sixty days beyond agreed terms. There are also public records of those debtors taken to court or that have had liens attached.

Standard Terms: Secured terms are still the norm, although less stringent and even open terms of thirty, sixty, or ninety days are no longer unusual. As Czech companies continue to prove their general trustworthiness, exporters are happy to reduce the paperwork that comes with letters of credit and the like. Other exporters start by offering only secured credit facilities, and then go to less severe terms after a few business transactions.

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