

The Commercial Factor

Newsletter for the Factoring Industry

Volume 4 • Number 5 • Winter 2002



International
Factoring
Association

In This Issue

- Due Diligence - A Public Records Approach [page 3](#)
- Factoring News Flashes [page 4](#)
- Increasing the Production of Your Sales Force ... [page 4](#)
- Stop The Bleeding [page 5](#)
- What Went Wrong [page 6](#)
- Factoring Conference [page 9](#)
- How to Use a Private Investigator to Win a Lawsuit [page 10](#)

A Publication of:

**The International
Factoring Association**

555 Chorro Street, Suite B

San Luis Obispo, CA 93405

805-544-8327 x20 • 800-563-1895

www.factoring.org • info@factoring.org

News from the IFA

April 2003 will mark the International Factoring Association's fourth year in operation. Since its inception in 1999, the IFA has grown to offer many services, and its membership list includes more than 700 factors from around the world. In order to continue offering services and to add future services, the IFA will begin charging a membership fee of \$200.00 per company per year.

Services that the IFA will continue to offer to paid members include the following:

FactorSearch - This popular service is designed to let businesses that are seeking a factoring firm to e-mail specifics regarding their business to IFA members. Only those factors that meet the search criteria will be notified. We have been averaging more than one quality lead per day through this service with quite a few deals being booked each month. The FactorSearch feature is listed on several of the major search engines under Factoring, and was recently featured in INC Magazine. FactorSearch can be accessed by Members through the IFA website.

Yahoo Discussion Group - This group allows IFA members throughout the world to communicate in an open forum. The group is open exclusively to IFA members. Members can post messages and receive responses which are e-mailed out to all group members. This has become one of the most interesting offers of the IFA, with various factor related topics being discussed each week.

IFA Web Site - www.factoring.org
IFA members have exclusive access to all areas of the IFA website.

In the **Forum section**, you can share information about several different topics with other IFA members.

- **Operational Issues** allows you to share operational ideas or post questions to other factors.

- **Credit** is designed to allow your credit manager to post or gather credit information on businesses.

- **Looking for Participants** is where you'll find Factors looking for participants on deals.

- **Looking to Buy/Sell Portfolios** lists Factors who would like to buy or sell portfolios.

The **Membership Directory** lists all IFA members and includes their company information, specialties, and links to their web sites. The database is searchable by Category, State/Province, Country, and Keyword and will allow you to search for Factors in a specific industry or area of the country.

The **Vendor Directory** lists vendors of interest to the Factoring industry, including attorneys, UCC search firms, funding sources, and many more. The Vendor area is also searchable by Category, State/Province, Country and Keyword. In addition to providing a list of qualified Vendors, you will also see **IFA Endorsed Vendors** who will offer discounts or preferred services to IFA members.

Factoring Conference - The IFA in conjunction with Distinctive Solutions hosts an annual Factoring Conference in the spring of each year. This is the largest conference dedicated solely to companies that offer financing through factoring. The two-day conference features an impressive array of speakers of interest to the factoring industry.

This year, IFA members will receive a \$50 conference discount for each member of their firm that attends the conference.

Conference Calls - The IFA offers educational conference calls, hosted by attorneys or companies offering services to Factors. Conference calls are held approximately 8-10 times per year. Members will receive a discount on all conference calls.

IFA Logo - Use of the IFA logo is available to Members to use on their advertisements or websites. This logo will provide credibility to your organization and shows potential clients know that you adhere to the IFA Code of Ethics.

[continued on page 2](#)

The Commercial Factor - All IFA Members will receive our quarterly newsletter, The Commercial Factor, via e-mail. This newsletter publishes articles of interest to the Factoring industry written by attorneys and other vendors.

One of the first new features the IFA will be offering is a shopping cart feature on the website. This will allow you to download forms, order audio CD's of teleconference calls or the Factoring Conference, and purchase other items of interest to members. This should be implemented during the first quarter of 2003.

In order to join the IFA, you can visit our website at www.factoring.org and download an application or call 800-563-1895 and we will fax one to you. You can also join the IFA when you sign up for the 2003 Factoring Conference. Visit the conference website at www.factoringconference.com. When you register for the conference from the website, your \$200.00 membership fee will be automatically added to your total. If your company chooses not to join the IFA, you will no longer have access to exclusive IFA benefits as of February 28, 2003.

Any questions or comments regarding this change can be directed to the IFA at info@factoring.org. We look forward to a successful future in the IFA.

The Commercial Factor

Newsletter for the Factoring Industry

The International Factoring Association

555 Chorro Street, Suite B

San Luis Obispo, CA 93405

800.563.1895

Publisher

Bert Goldberg

Editor

Karen Ross

Board of Directors

Wayne Coker

Advantage Business Capital

Bert Goldberg

Distinctive Solutions

Randy Ontiveros

Resource Business Partners

Gail Schulte Coulthead

Abingdon Business Capital

Ken Walsleben

The Hamilton Group

Carlos Weil

Capital Solutions

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.

To receive this newsletter via e-mail, please send e-mail to listserv@factoring.org and type the words "subscribe IFA" in the subject line.

To stop receiving this newsletter via e-mail, send an e-mail to listserv@factoring.org and type the words "unsubscribe IFA" in the subject line.

DSC Consulting Services Become Industry Standard

Streamline your Operation

Increase Operating Profits

Increase Customer Satisfaction

Gain Unique Perspectives

Stop Overstaffing
and/or Redundant Responsibilities

Contact Darla Hill for info
805-544-8327 x28
consulting@dissol.com



DISTINCTIVE SOLUTIONS
THE COMMERCIAL FINANCE SOFTWARE COMPANY

Rely upon Distinctive Solutions 20 years supporting the Factoring Industry. Darla Hill has over 10 years experience in Commercial Lending and has trained and consulted for over 100 Factoring Firms ranging from 1 to 100 employees.

Due Diligence - A Public Records Approach

by Lewis Eakins

Many factoring companies, venture capitalists, financial institutions, and risk managers today are taking a closer look at the companies and individuals they are contemplating establishing an alliance with. This has come about in light of the published fraudulent and unethical practices of several corporations and their corporate principals.

But this is not the only reason for instituting greater scrutiny. There is now an abundance of public records that are accessible by the general public that will provide information on commercial, operational, financial, and legal factors.

Due diligence, loosely defined as "devoting a certain expected degree of attention and doing what is required or adequate in a given situation," has traditionally focused on a target company's financial records, inventory, machinery and equipment, intellectual property, etc.

However, depending upon the information that may be available, a search of relevant public records will develop valuable information on a company's integrity, hiring practices, and even its safety record.

The primary focus of due diligence using public records generally involves the review of civil court records, and records maintained by regulatory agencies. Even though there are other sources of public information, these are the two that will provide the most information on an individual or company that will not likely be volunteered or found in credit and business reports.

... a search of relevant public records will develop valuable information on a company's integrity, hiring practices, and even its safety record.

Civil Court Records

Civil court cases can provide a chronological history of how well a company is meeting and has met its financial obligations. There

should be cause for concern if there are a considerable number of civil lawsuits filed against a company for defaulted bank loans and breach of contracts. The company may be seeking to establish a relationship with a factoring company to obtain additional capital to stem the tide of lawsuits, to settle pending litigation, and to pay creditors. And for every civil lawsuit filed, there are several more plaintiffs who are contemplating litigation.

An example can be given of a large manufacturer in the Midwest United States. The manufacturer was in the process of entering into a long-term contract with another company to outsource maintenance at four of its facilities. The target company's financial records were intact, and the references provided by the company gave positive recommendations.

However, a review of civil court records produced two (2) lawsuits that had been filed against the company within the past five years.

The first suit was filed against the maintenance company by a bank in a South American country. Court records revealed that the bank had provided capital funding for a contract the company was awarded in the same country with another manufacturer. The amount owed was just under \$300,000. The company made only one payment on the note. A letter from the Comptroller to the bank stated that the company was waiting to be paid on another contract before they could bring the note current which was more than three months delinquent. This never occurred and the civil action was taken.

The second suit was filed against the company by an accounting firm to the tune of more than \$50,000 for services rendered. According to court documents, the maintenance company had agreed to make three (3) payments. But as was the case in the bank lawsuit, the company only made one payment.

The maintenance company had established a track record of failing to meet its financial obligations. A factoring company armed with this

information should institute stringent safeguards or reconsider entering into a business relationship with a company with a recent history of this nature.

The following is a sampling of some of the other information that can be obtained from civil court records:

- Age and sex discrimination in hiring practices and promotions
- Regulatory agency civil action
- Labor issues
- Deceptive business practices
- Class action suits resulting from environmental issues (chemical spills and toxic emissions)
- Breach of contracts and lease agreements
- Intellectual property piracy or theft
- Injunctions and restraining orders to stop unethical business practices

Published accounts of scandals that abound today in companies all over the world has made it clear that some type of due diligence is needed on individual corporate principals beyond the scope of a basic credit bureau report.

A civil court search conducted on key personnel in a corporation can provide a wealth of information to include their management style, work experience, and integrity.

Another example is given of a manufacturer in the United Kingdom that was conducting due diligence pertaining to the acquisition of a distributorship in the United States. Research was conducted on the corporation and on four of the corporate principals.

Several lawsuits involving one of the corporate principals were reviewed. One of the lawsuits was filed by the corporate principal against a former employer for "wrongful termination." A review of the case folder

[continued on page 7](#)



2003 Factoring Conference

Join us for the 9th annual
Factoring Conference

April 2-5, 2003
The Grand American Hotel
Salt Lake City, Utah

Visit www.factoringconference.com
for more information

Sponsored by:



International Factoring Association



DISTINCTIVE SOLUTIONS
THE COMMERCIAL FINANCE SOFTWARE COMPANY

Factoring News

L
a
s
h
e
s

Gary A. Eisenberg, who ran **Advance Finance Inc.** and **Advance Finance Holding Inc.**, was sentenced to 63 months in federal prison and ordered to pay \$12.7 million to his victims. Earlier this year he pled guilty to fraud charges for taking money from more than 200 investors. He told his investors that their money would be used for factoring. In the Ponzi scheme, he falsely claimed the partnerships loaned money to Fortune 500 companies such as Home Depot and American Express.

December 16, 2002

City News Service

The Industrial and Commercial Bank of China has officially been ratified to handle factoring business for qualified domestic and commercial enterprises. This is the first time that a state-owned commercial bank has been allowed to handle factoring. The **ICBC** has already done some factoring for large companies in the telecommunications industry on a trial basis.

December 11, 2002

Asia Pulse

A federal judge was not persuaded by a financing company that its reliance on a chief financial officer's approval of a factoring agreement was justified and warranted summary judgment on a

fraudulent misrepresentation claim. Due to the ordinances of a county, the alleged seller of the receivables did not address the issue of verification, the judge concluded a genuine question of material fact existed as to whether the financing company reasonably relied on the officer's statements.

December 5, 2002

Commercial Lending Litigation News

A federal judge found that **Dresses for Less Inc.**'s claim that a group of factoring companies conspired to deny credit to certain garment manufacturers, established both a conspiracy and a competition-related injury as required under the Sherman Antitrust Act. When an affiliate of **Dresses for Less** filed for bankruptcy, factoring giant **CIT Group/Commercial Services Inc.** refused to extend credit to the manufacturer. **Dresses** was unable to obtain credit from other factors and claims it lost millions of dollars in sales before **CIT Group** eventually decided to re-extend credit. The manufacturer claimed that **CIT Group** and several other factors illegally operated as a single entity known as **Uptown Credit Group Inc.**, and held secret biweekly meetings to discuss highly confidential information about various vendors and manufacturers, including their reasons for denying credit and refusing to perform credit checks.

November 1, 2002

Commercial Lending Litigation News

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.

Increasing the Production of Your Sales Force

by David Rains

During good times when business is booming, when sales are rolling in and the referrals to the next deal are everywhere you turn, the sales force might have the tendency to get a little laid back, even sloppy in their work habits. It is not just in the factoring industry but in all industries that require a strong sales effort. So, what do you do about that top BDO who produced 4 million year before last and barely covered his overhead this past year? How do you keep your sales people on track and producing in good times and bad?

Setting Goals

The proven method of getting the highest production is to set specific, measurable goals and track the numbers. As in all sales, numbers are the key to success. Each sales contact brings you closer to the next closed deal. In order to maintain a consistent sales effort, reasonable goals should be set for the sales force and followed up on a weekly, monthly, and quarterly basis.

If the goal of 3/4 million of new business is set for each quarter, that must be broken down into weekly goals. Twelve weeks are in a quarter, therefore this would be approx. \$62,500 of new business each week. That would be the weekly goal and this is the easy part. Just divide the annual goal by the four for the quarter goal which is then broken down into 12 weeks.

Now, the next portion of goal setting is a little bit more difficult as you will need to answer some of the following questions.

For last two year's production, do the following for each salesperson.

Make a list of the deals that were completed in each of the years.

Throw out the top 10% and the bottom 10% because they skew the averages.

Add up the total amount of the monthly outstandings.

Add up the total number of deals that you used.

Divide the total monthly outstandings by the number of deals booked.

This will give you the average deal size the BDO is booking. This is a very important figure for you numbers calculations. This will tell the BDO how many deals it takes to make his quarterly goal.

Now for some evaluation of history and further number crunching.

How many calls did it take for a salesman to get a package to turn in for processing?

How many packages did it take for a funded deal?

How do we get these figures? If the annual production is at 3 million and the number of deals is 42, then the average deal size is 71k. If the BDO turned in 3 packages for every funded deal and he had to make 15 calls to get a package, then an average of 45 calls must be made to book a deal.

So, by breaking this down into measurable numbers, you can set the following reasonable and measurable goals for your BDO.

1890 calls annually divided by 4 equals 472 calls per quarter divided by 12 equals 39 calls per week.

Something should be noted about tracking numbers and setting goals. You will probably get resistance as salesmen hate to deal with paperwork and being "controlled", however it is a proven formula for success. When you take care of the numbers and you have specific and measurable goals to meet on a weekly basis, production and sales increase.

By setting and tracking these sales goals, you will do many things but the most important is to bring in the business. Jack Welch's philosophy at GE was simple, "Take care of the quarter (make your numbers for the quarter) and everything else will take care of itself". Any BDO knows that it is a numbers game and it is easy to get lazy and put things off.

Dave Rains is one of the nation's foremost recruiting professionals. With over 27 years of sales/recruiting experience and an honors graduate of SHSU, he has earned a reputation as an expert in the placement of Business Development and Operations professionals in Commercial Finance. Throughout his career, Dave has been recognized as a top performer within the MRI family of over 1,000 offices. He has been awarded 16 national and regional awards including "Southwest Account Executive of the Year - 2001". He consistently ranks in the "Top 10 in the Nation" of the vast MRI family of over 5000 recruiters.

Stop The Bleeding



by Dr. Ron

Remember the old Abbot and Costello skit "Who's" on first, "What's" on second and "I Don't Know's" on third? If you don't remember the skit it's only because you weren't old enough or even around in 1951 to view it. (Yes, there was television way back then.) It remains a classic case of confusing identities. If you have no recollection and want a good laugh, go to <http://www.abbottandcostello.net/>, and you'll see what I mean.

What does this have to do with factoring? An interesting situation was communicated to several IFA members recently through the IFA's YAHOO! Discussion Group. Here is a synopsis of the problem and ensuing discussion.

A small manufacturing company applies to a factor; let's call that company "Applicant". It was operated by two people, Tom and Mary. Before working for Applicant, Tom used to work for a different company, let's call it "Predecessor". Predecessor went down the tubes not too long ago and, guess what, when Predecessor went belly-up, it did so owing the Internal Revenue Service a wad of cash.

Predecessor and Applicant had other things in common besides Tom. Their business lines were similar. Both companies had very similar d/b/a's, or trade styles. Their phone numbers and locations were the same. Their customer lists were almost identical. Certain of Predecessor's invoices were donated to Applicant as start up capital.

The questions arising are many. Is Applicant an "alter ego" of Predecessor? Is Applicant responsible for Predecessor's debt to the IRS. Can the IRS lien Applicant for those debts? Did the donation of invoices constitute a fraudulent conveyance? The responses ranged from "absolutely, yes" to "I'm not sure but who wants to take the chance?" The conclusions, however, were universal. Do not take an unknown risk; do not do the deal.

Many times, we as factors are presented with situations wherein a company has failed leaving unpaid debts, and the old owner wants to start up again but needs factoring services to augment cash flow. What might constitute an "alter ego" situation between the two companies? A better question might be, when is a successor company not an "alter ego" of the first company? When is it safe to proceed? I'm not sure it ever completely safe to proceed, but if the braver of you want a checklist, try this.

1. The old and new companies ("Oldco and Newco") should have no ownership in common; the fewer relatives involved the better.
2. Their customers should be different; if that is impossible, at the very least obtain fresh purchase orders directed to Newco
3. Newco and Oldco should operate from different locations; if impossible, at least get a copy of a new lease between the landlord and Newco.
4. Newco should have meaningful capital contributed to it and you must have proof of this in your files.

5. The employees, the phone numbers, the equipment used, should all be different.
6. The orders filled by Newco should be clearly distinct from those of Oldco.

The maxims of this business never seem to change. Use common sense. Don't reach for business. And remember Dr. Ron's adage, "Let yourself be governed by two emotions, fear and greed. But be sure to let fear win out." Otherwise, you are liable to wind up like the two guys in the center of this photo. (I think that the two fellas on the outside are from the IRS.)



To subscribe to the IFA's YAHOO! Discussion Group, go to www.factoring.org, scroll down on the home page and click on "Discussion Group". It's worth it.

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.

Attention Top Producers...

If you are a top producer of factoring and account receivable deals and would like to be in business for yourself, contact Ron Winicour at Gibraltar Financial, 847-272-9659 x 222. We have the cash and the back room expertise to get you up and running in your own business. Best of all, we take no ownership position in *your* company.

Confidentiality guaranteed.

GIBRALTAR FINANCIAL CORPORATION
Providing Factoring & Financial Services Since 1951

Web: www.gibraltarfinancial.com
Email: ron@gibraltarfinancial.com

What Went Wrong?

by Wayne Coker

Had any phone calls you would rather forget lately? Like the one where your client is crying uncontrollably, saying he can't bear to face you again and has no reason to live? I hope not. But in case you have, one of the first things you say, after you pick yourself up off the floor, is... "What went wrong?"

Whether your crisis was something this dramatic, or something more typical, like finding out you just got stuck with a bad invoice with no one around to back up their carefully drafted, legally perfect written guaranty, the inevitable thought comes to mind: "What went wrong?"

If, after extensive soul searching and prayer, you still desire a career in this industry, you will inevitably analyze your transaction to determine the cause of the problem. Having gone through this exercise more times than I care to remember over the last seventeen years, I have noticed that, more times than not, the answer to this question is a variation on a common theme: Overlooking obvious weaknesses in a transaction in order to fund the deal, or breaking your own policies and procedures in order to keep a client happy or to at least to keep them from leaving for another suitor. Often you've just gotten sloppy because of your comfort with the client, it's manager or owner. The worst part (maybe not always the worst part) is that you just feel so stupid for allowing something to happen when, looking back, you can see an obvious point where you could probably have either prevented or at least severely cut your losses. That feeling can take a long time to disappear.

There are two basic human conditions that get in the way of our good judgment and the skills we've developed at the annual IFA and CFA Conventions, the Bob Zadek Secured Lending Seminars, and other assorted training classes we've had: Greed and Pride. Ancient scriptures say that the love of money is the root of all evil, and that pride goes before a fall. Yet here we are today, making the same old mistakes, often with disastrous results. At least one great book has already been written about how to conquer the evils of loving money and being full of pride, so I'll focus on just a few simple reminders that might help you survive in the action packed, stress filled world of daily decision making that is factoring.

Being anxious to book a deal often causes us to overlook some potentially dangerous weaknesses in the transaction. Because we are in a hurry, and decisions are asked for within minutes of being introduced to a new prospect, we immediately open ourselves up for mistakes to happen. Perhaps it's a staffing company and we require proof of payment of payroll taxes before we can fund the deal. How easy it is to just accept a copy of a Quarterly 941 filing and think we are safe. Or to file an IRS 8821 form and then assume we'll always get copies of any tax notices the client receives for as long as the form specifies. But what happens if someone else (like another factor) files a new 8821 form? In that case, our form is rescinded and we no longer receive the client's notices, though we aren't notified of that fact and have no automatic way of knowing we are out in the dark. Or maybe the Quarterly Filing is accurate, but because it is not due for 30 days after the end of the month, you don't know that the principal was paid late and has incurred severe penalties and interest. Both of these can and will hurt you, unless you have a policy requiring proof of payment for all taxes and then stick with your policy when the going gets tough. My point is not that you have to know all the tricks of funding staffing companies, for example, but that there are certain fundamental risks associated with each industry. Your policies should address those risks and then be followed as religiously as you can bear, even when the client is breathing down your neck, realizing that nothing is a guarantee against a crook who is out to steal your money.

Review your written policies regularly to see if they are realistic, complete and fit your current business model. If they are, then ask yourself the hard questions in advance about how far you should be willing to go to break those policies for a chance at adding a few more dollars to your bottom line. Thinking long term is very hard to do in this business. However, if you don't want to be like some of your clients who never make it to their fifth year in business, you'll force yourself to plan for major decisions that are likely to come at any time. These days every deal has hair on it and policies seem like they are made to be broken, but do so only with a well thought out plan for mitigating the risks involved.

Remember also that it's pride that prevents you from seeking help from a business associate with more experience than you in a particular area, or, God forbid, from calling an attorney for legal advice before a deal is consummated, instead of after it has gone into the dumps. Don't be afraid to ask for help. It's a lot better than saying, once again, "What went wrong?"

A few years after I started in the factoring business, I looked back at the times where my principal was at serious risk of going away and discovered something that surprised me. Every problem, no matter what the industry or type of transaction, had occurred somewhere well into the relationship with the client, and only once on the first purchase. I found that I had usually gotten so comfortable with the client that I had been willing to make exceptions to policies, either out of a desire to keep them "happy" or, in my mind, to keep the client from self-destructing and possibly taking me down with him. These decisions were often made without having input from a credit support team or some other sounding board to bounce my decisions off of. Just remember that if two heads are better than one, three are even better.

I now have a team of professionals in whom I have great trust available to sign off on every major funding decision. There are specific levels of authority for individuals and groups of individuals within the organization. Those authority levels are strictly followed, forcing added procedures and additional "eyes" when warranted. Everyone can do this to some degree, no matter how large or small their company might be.

Lastly, and maybe most importantly, is to learn to say "NO"! Practice it. If you can't do it, hire someone who can and put them on the frontline. When your gut tells you something isn't right about a deal, when you realize you've been talked into going farther out on a limb than you ever envisioned, when you've followed the same procedure for a year but now something has changed and you haven't had time to reanalyze the risk.... Just say "no", or at least "not yet", and think carefully about what you are doing. It's better than saying "What went wrong?"

Wayne Coker is President of Advantage Business Capital, a subsidiary of Central Bank in Houston, Texas, and a member of the IFA Board of Directors. He can be reached at (713) 840-6100.

CONCENTRATION PROBLEMS? BANK LOAN MAXED OUT?

We will purchase a portion of (i) the larger deals, thereby reducing your exposure, or (ii) several of your deals, to provide you with capital so that you may continue to acquire new deals (while increasing the return on your employed funds through an override).

Thus, **Lenders Funding** offers a solution to the funding problems that factors periodically experience. **Lenders Funding** will enter into participation agreements with qualifying factors for up to 50% (sometimes even a higher percentage) of approved factoring or ABL transactions.

Once the participation agreement is signed, **Lenders Funding** can make funds available within 1-2 days. The goods news is:

- We are *passive*. You manage your deals without interference.
- We are professional and fully understand the marketplace.
- We are not a factor and will never be a competitor of yours.
- We will pay overrides.
- Any participation can be repurchased by you *at any time without penalty*, giving you great flexibility in managing your funds. Use us only when you need us.
- We participate for a fixed dollar amount, thereby avoiding the need for periodic payments to keep the participation "in formula".
- The participation agreement can be cancelled at any time without penalty.
- Once we have a participation agreement signed, our funds are available when you need them. No upfront fees *of any kind*.

If you would like more information, please contact Bob Zadek.
Lenders Funding LLC, 333 Market Street, Suite 2900, San Francisco CA 94105
415-227-3585; fax 415-227-3691; rzadek@abanet.org



Lenders Funding, LLC

found that this individual's termination resulted from his failure to maintain a work environment that was "free of drugs and sexual harassment." Statements from employees detailed wild parties at his residence and promotions based upon attendance at these gatherings. As further justification for the termination, the employer filed documents stating that as a result of his lack of control, several sexual harassment suits had been filed by employees with the Equal Employment Opportunity Commission (EEOC).

In this case, the lawsuit offered information on the management style of one of the corporate principals, and it provided information on his previous employment and termination. It is unlikely that his management style was going to be any different with the target company that was being considered.

In most locations, civil court records are open to the public for inspection, and copies of court records can be made for a nominal fee for documentation purposes.

There are databases available that will allow for research to be conducted in multiple jurisdictions and court systems. This is an excellent start for conducting research on companies that have branch locations and on individuals who may have a history of relocating frequently. However, before using a database, a check should be made to find out the jurisdictions covered and the frequency of updates.

The information provided by databases for civil court cases is generally limited to the following:

- Parties involved
- Nature of the suit
- Date filed
- Disposition and date
- Jurisdiction and court

Again, databases are invaluable and offer an excellent starting point. But due to the limited amount of information that is normally offered, it is imperative that a review be made of case folders to obtain the valuable information contained inside. In the last example given of the corporate principal who filed a lawsuit for wrongful termination, the case was titled, "Breach of

Contract." The nature of the lawsuit in no way gave any indication as to the information that was located inside the case folder.

Regulatory Agencies

For every industry and occupation there are probably at least 1-2 state or federal agencies that have oversight and licensing authority. These institutions regulate everything from the sale of securities to mining operations.

It is only a matter of ascertaining which agencies regulate the industry of a target company. Once this is done, the following questions can usually be addressed:

- Does the company have a license or permit?
- Is the license/permit current, and has it ever been revoked?
- How long has the company been licensed or has held a permit?
- What is the address of record for the business?
- Are there any branch offices listed?
- Have there been any complaints or violations and subsequent fines?
- Who are the principals of the company and their titles?

Using the example given of the maintenance company due diligence, a review of records maintained by the Occupational Safety and Health Administration (OSHA) produced several recent citations for safety violations at plant locations where the target company was providing

maintenance services. Some of the fines were severe and several investigations were ongoing.

Most regulatory agencies will allow the public to research their records onsite, online, or through subscription. Others require that a written request be forwarded for information in accordance with applicable federal (FOIA) and state open records laws.

Conclusion

The amount and diversity of information that can be developed through the research of public records is vast and will vary from case to case, and from jurisdiction to jurisdiction. Such information in addition to data obtained from civil court records and regulatory agencies can include the following:

- Tax liens and judgments
- Criminal charges and convictions
- Real property holdings
- Equipment ownership and encumbrances
- Newspaper and magazine articles

As the factoring industry continues to grow at an impressive rate, fraud will be the industry's primary soft spot. Companies will continue to slip in an extra invoice for work or services that have not been provided with batches of legitimate invoices. In addition, there will be collusion on the part of companies and their customers. However, an inexpensive thorough review of relevant public records can uncover past instances of fraud and fiscal unaccountability on the part of many companies. Fraud tends to repeat itself.

Due diligence through public record research provides a mechanism for identifying issues that may not have been divulged, and it facilitates verification of data that is voluntarily disclosed. Public record research should be a cog in the wheel of every risk assessment done through due diligence.

Lewis A. Eakins is the president of Eakins Investigative Services, formerly known as Eakins & Associates, an international private investigations firm located in Houston, Texas. The firm has been conducting general civil investigations for corporations and government agencies since 1986. Mr. Eakins can be reached at (713) 995-0991, or by email at lewis@eakinspi.com.

The amount and diversity of information that can be developed through the research of public records is vast . . .

Being number one doesn't mean we're the best.
It means you are.

Distinctive Solutions factoring software is installed in more systems worldwide, helping more companies like yours become more successful.

Discover why we are the world's leader in factoring software systems.

DISTINCTIVE SOLUTIONS
THE COMMERCIAL FINANCE SOFTWARE COMPANY

555 Chorro Street, Suite B | Tel. 1 805 544-8327 | www.dissol.com
San Luis Obispo, CA 93405 | Fax. 1 805 544-3905 | e-mail: info@dissol.com

2002 Factoring Conference Audio CD Order Form

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

- Games & Defenses Account Debtors Use to Defeat Notification
- Techniques for Dilution-Proofing Your Portfolio
- The 1,000 Most Common Factoring Errors

John Murdock III, Esq., Boulton, Cummings, Connors & Berry, PLC

- Federal Tax Liens

Dr. George Lucas, U.S. Learning, Inc.

- Strategic Marketing - Creating Distinctive Capabilities in a Challenging Marketplace

Mike Ullman, Esq., Ullman, Ullman & Vazquez

John Kiefer, Capital Factors

- Factoring Temp Agencies

Kenny Greene, Esq., Carruthers & Roth, PA

- Subordination
- Intercreditor Issues

David Pearce Snyder

- Strategic Forecasting

Fraud Panel

- Discussion of Fraud Schemes Used on Factoring Firms
Jay Atkins - Bibby Financial Services, Inc.
George Thorson - Collateral Risk Advisors
Matthew Drake - FBI
Joe Ford III - FBI
Steven Kurtz, Esq. - Greenberg & Bass

Credit Limit Panel

- Discussion of Methodology Used to Set Credit Limits
Anne Kumins - Euler ACI
Al Niskala - TranCentral
Randy Ontiveros - Resource Business Partners
Debra Wilson - Vertex Financial

David Cohen, Investigative Resources of Texas

- Background Investigations

Jeff Wolf, Wolf Management Consultants

- Sales & Motivation

Fireside Chat

- A Fireside Chat About Enhancing the Attractiveness of Your Business
David Fink - Franklin Capital Network
Mark Quinlan - Textron Financial Services
Steve Troy - AeroFund Financial
Richard Worthy - Metro Financial Services

The full set of Speaker CD's is available for \$250.00. You may also order individual CD's for \$25.00 each (Bob Zadek's CD set is \$45.00). California and Texas orders, please include sales tax (CA 7.25% and TX 8.25%)

- All Speaker CD's
- Bob Zadek, Esq.
- John Murdock III, Esq.
- Dr. George Lucas
- Ullman/Kiefer
- Kenny Greene, Esq.
- David Pearce Snyder
- Fraud Panel
- Credit Limit Panel
- David Cohen
- Jeff Wolf
- Fireside Chat

Name: _____

Company: _____

Address: _____

City/State/Zip: _____

Phone: _____

Payment Method: Check enclosed

Please charge my: MasterCard VISA American Express

Card #: _____ Exp. Date: _____

Name on Card: _____ Subtotal: _____

Signature: _____ Tax: _____

Total: _____

Please mail to: International Factoring Association / 555 Chorro Street, Suite B / San Luis Obispo, CA 93405 / 800-563-1895
Fax your order to: 805-544-3905 or order on-line at www.factoringconference.com

Factoring Conference

The 2003 Factoring Conference is shaping up to be the best conference yet. We have an excellent and diverse line-up of speakers, which will include:

- Bob Zadek, Esq – Buchalter, Nemer, Fields & Younger – Bob is returning as the highest rated speaker from the 2002 conference with some new topics which will include: Factoring and Bankruptcy - The Treatise, Account Debtor Tricks to Deceive the Factor and Takeout Negotiations Between Factors.
- Mike Ullman, Esq. – Ullman, Ullman & Vazquez, PA – We have asked Mike to return to the 2003 conference after receiving excellent reviews for the last few years. This year Mike's topics will include protecting yourself when your client commits unspeakable acts and the legality of sending a broadcast fax.
- John Beckstead, Esq. – Snell & Wilmer – John is a highly regarded factoring attorney based in Salt Lake City. John will be discussing: Secret Liens, Arbitration and Forum Selection Clauses, Collection of Accounts by Subordinate Creditors and Take Out Agreements. John will be joined by other attorneys from his firm to help make this a lively and informative session.
- Richard Dennis – Federal Reserve Bank – Richard is an economist with the Federal Reserve Bank based in San Francisco. Richard will be discussing the state of the economy as well as his economic forecast.
- Kenneth Lawson – U.S. Treasury Department – Kenneth is the Assistant Secretary for enforcement for the Treasury Department. Kenneth will be discussing the recently implemented Patriot Act and what is required from the factoring community to comply with this Act.
- Kent Walker – U.S. Postal Service – Most Factors have a clause in their contract which allows the redirection of mail to the factor. Kent will be discussing the legality of this clause as well as the implications of opening confidential mail.
- Dan Axelrod – Adizes – Dan is a Senior Associate with Adizes and consults with companies around the world. He will be discussing the difficulties in restructuring a company from the entrepreneurial management style to a professional management style. This will be an excellent session for those factors looking to avoid pitfalls while growing their company.
- Mac Fulfer, Esq. – Author – Mac worked as an attorney for 22 years in Ft. Worth. Initially, Mac became interested in the practice of face reading for the purpose of jury selection. He will be sharing his discoveries with you and discussing how you can utilize face reading to help with your communication skills. Mac will also be available to read individual faces after his presentation.
- Jay Levy – Writer, Producer, Rabbi - Rabbi Jay Levy earned his B.A in Communications, and then went on to earn his J.D. degree from the New York University School of Law. He received his Rabbinic Ordination from the Rabbinical Academy in New York. Jay is producing a TV game show on ethics and will be discussing business ethics, an important subject given the recent occurrences in the business world.
- Gail Schulte – Abingdon Business Finance – Gail is President of Abingdon and has been involved in the Factoring Industry for over 20 years. She is passionate about the factoring industry and will be conducting a half-day Factoring 101 course for those attendees who are new to the factoring industry.

- Fraud Panel – This year's fraud panel will discuss real fraud situations that have been perpetrated against the factoring community. Members of this year's fraud panel will be: David Cohen, Richard Kort, Jerry Rozen & Ken Walsleben.
- Verification Panel – The verification process is of vital importance to the Factor. We will be discussing the pros and cons of the various methods of conducting verifications. The panel members will include: Robert Beard, Darla Hill, Steven Kurtz, Esq, and Ron Winicour.
- Marketing Options – Every successful factor must continually book new business. Our panel will discuss the various systems of implementing and utilizing a successful sales force. The panel members will include: Larry Pino, Esq., Neal Polshuk, David Rains, and Daniel Robbins.

The speakers are only one part of the factoring conference. The activities and networking are what help make the IFA's Factoring Conference the largest factoring event in the world. This year's activities will include:

- Ski/Snowboard transportation - Come experience the "Greatest Snow on Earth" during our Ski/Snowboard trips. We will be running busses to the local mountains on both Wednesday and Saturday.
- Golf – A regular event at the factoring conference, this year's Golf Tournament will be held Wednesday at the StoneBridge Golf Club.
- Welcome Reception – This is an excellent opportunity for the attendees to meet and socialize before the conference sessions begin. The welcome reception will be held Wednesday at the Grand America from 5 -7PM.
- Hospitality Suites – Thursday evening is the time for all of the attendees to get together after the first day's speaking sessions. This year's hospitality suite is sponsored by Dynetech.
- Banquet Dinner – One of the highlights of the Factoring Conference is the Friday evening Banquet Dinner. The dinner will be held at the Deer Valley Lodge in Park City. After the dinner, we will provide transportation to Park City and the hotel so that the attendees can experience the flavor of this wonderful city.
- Operations Round Table – Many attendees consider this to be the feature event of the entire conference. This session allows factors to informally discuss issues related to factoring with others attendees. This is one of the best opportunities to learn more about the factoring industry as well as methods to make your operation more efficient.

This year's conference will be held at the Grand America Hotel. Recently completed for the 2002 Olympics, this is a five star, world class resort. We have negotiated a rate of \$174 per night, an outstanding value for a property of this caliber.

This year we are offering an extra incentive to attend the conference by providing a \$50 per person discount to all paid members of the International Factoring Association. This discount coupled with the \$50 per person discount you receive by registering before January 18th, makes the 2003 conference a great value.

For additional information and to register, please visit the conference web site at www.factoringconference.com.

How To Use A Private Investigator to Win A Lawsuit

by David H. Cohen

Paula Paralegal has a desk full of unfinished business. Deadlines are approaching, problems are surfacing, and the stress is building fast.

First headache is Case #1 Johnson V. Scott: "We're going to need a miracle," Paula tells her boss, Attorney Ivan Fleecem. "The eye-witness, Henrietta Genevieve James, is believed to have remarried about five years ago and moved to Florida. We don't know her new married name, can't find her, and our case is toast without her...."

Next up on the worry agenda is Case #2 Hach V. Whitfield Home Owners Association: "This guy is a real ghost. He never leaves his house. The only activity around that place is the occasional appearance by his mother when she goes out for groceries. Looks like he hasn't driven his car since the accident. If we don't find something fast, WHA is going to pay through the nose," Paula tells Fleecem.

Will this day ever end, Case #3 Michael's V. Stinker's Shop Rite: Michael's had a miscarriage the day after she slipped on that lettuce leaf in the produce department," says Paula, shaking her head. "I don't know why, but I am so sure that something doesn't fit here. I just wish I knew what it was. We've got to advise our client by the end of this week, and I just don't know what were going to say..."

Enter Super Dave, licensed Private Investigator and all around terrific guy. Highly trained and up to date on cutting through the gristle and getting to the heart of the investigative roast. Super Dave regularly saves the day when it comes to a tough lawsuit.

Consider Super Dave's solution to Case #1: "You need to find a gal with the first name of Henrietta and the middle name of Genevieve?" he queries dimples, "and all you really know is that she moved to Montana with a new husband about five years ago? Hmm. Give me about ten minutes and I'll get back to you."

Countdown. 10-9-8-7-6-5-4-3-2-1- Ring.

"Her name is now Henrietta Genevieve Smithington and she lives at 123 Main Street Butte Montana and here's her current telephone number, too..."

Remember Case #2-the stealth disability king? "Let's see," says Super Dave, "nobody's been able to eyeball this Hach guy in six weeks and his medical bills for chiropractic treatment have passed the \$5,000.00 mark. Do I have that right? I'll get back to you on Wednesday."

Saturday, Sunday, Monday, Tuesday, Wednesday, Ring.

Hey, Paula. Reason you never see Hach is because he doesn't live at that address. That's the sister's house. Hach lives at 123 Main Street Dallas Texas, and he's doing heavy construction work for Mansfield Homebuilders," relates Super Dave. "He's using his brother's name and social security number. Wait till you see the film I got on him on Monday—swinging a sledge hammer and carrying a 100 pound bag of concrete."

Then there's Case #3, the retail-related miscarriage: "You've got no priors on Michaels, an eyewitness who states he saw her fall, and to top it all off she miscarried and lost her baby. Whew, sounds tough. I'm going to need about a week..." says Super Dave.

Day 1, Day 2, Day 3, Ring.

"This one wasn't as difficult as I thought it would be," Super Dave tells Paula. "Seems, as Sonya Michaels is also known as Sheila Michaels, Sheila Michael, Sonya Mike, Sophie Michel, and about ten other names. She fell down at nine other stores—maybe more—in the past twelve months. Would you believe that each time she lost her baby? Two of the stores are here in Texas; two are in Oklahoma, one in Kansas, two in Arizona, one in New Mexico and two in California. Oh, and her eyewitness, Fred Wright? He's actually her husband. And don't hang up, Paula, I've got lots more..."

A good private investigator that knows the tricks of the trade and stays within the law to find the smoking gun is worth his or her weight in gold. Search engines and online databases are varied, but Super Dave knew which one would do a first and middle name search and come up with a hit in less time than a typing a 106 order. Making the Johnson V. Scott case into a win.

Super Dave also knew enough to ascertain, within just a few hours, where Hach was living – and to follow through and find out where he was working and to get impeachable proof on video. Again, case solved.

Case #3, Sonya Michaels, was a slam-dunk. Super Dave recognized right away that he was looking at a professional slip/fall artist and knew exactly how to get the goods on her. Another triumph.

No two cases are exactly alike, but if a law office wants to win more cases than they lose and save more clients – or effectively mitigate damages by finding and clearly demonstrating the truth of a situation – that law office needs the services of a professional private investigator licensed by the Texas Commission on Private Security. They need me.

I have devoted my life to this business and take a lot of pride in our industry. We are held to a higher standard of professional conduct, liability issues and ethics than many lawyers, yet we charge less!

David Cohen is with Investigative Resources of Texas. He can be reached toll free at (877) 285-9519.

Did You Miss the Last Teleconference Call?

Audio CD's are now available of teleconference calls.

To order, visit
www.factoring.org
or call 800-563-1895.

IFA Membership Application

Company Name: _____

(IFA Membership will be per company)

Contact(s): _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Web site: _____ E-mail: _____

Specialization: (check all that apply)

- | | |
|---------------------------------------|--|
| <input type="checkbox"/> Agriculture | <input type="checkbox"/> Intellectual Property |
| <input type="checkbox"/> Apparel | <input type="checkbox"/> Medical |
| <input type="checkbox"/> Construction | <input type="checkbox"/> P.O. Financing |
| <input type="checkbox"/> Consumer | <input type="checkbox"/> Temporary Agencies |
| <input type="checkbox"/> Foreign | <input type="checkbox"/> Trucking |
| <input type="checkbox"/> Government | <input type="checkbox"/> Other: _____ |

Approximate Outstandings _____

Number of Employees: _____

Year Founded: _____

Payment Method:

Please charge the \$200.00 membership fee to my:

- VISA Mastercard American Express
 Check Enclosed

Card #: _____ Exp. Date: _____

Name on Card: _____

Signature: _____

Company Name: _____

Please return this form via e-mail to: info@factoring.org, or via fax to: 805-544-3905,
or mail to: 555 Chorro Street, Suite B San Luis Obispo, CA 93405

Membership must be approved by the International Factoring Association.

Our primary method of distribution for the newsletter is via e-mail.

To receive this newsletter via e-mail, please send a blank e-mail to listserv@factoring.org. Just type "subscribe IFA" in the subject line.

*To unsubscribe from the publication:
Send a blank e-mail to listserv@factoring.org and
type the words "unsubscribe IFA" in the subject line.*



555 Chorro Street, Suite B
San Luis Obispo, CA 93405