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Between the amazing growth of our annual conferences and the continued growth of our association, the IFA continues to be the place that Factors and Asset Based Lenders turn to for news, information and training regarding the receivable finance industry.

The IFA added 60 new members this year, showing that the factoring industry is still strong and growing. Our annual conference and classes continue to show growth, with record numbers of attendees and exhibitors at our various events.

This year’s annual conference at the Fairmont Scottsdale has more sessions, speakers and networking opportunities than ever before. Located at the 5 diamond Fairmont Princess, it’s no wonder that the annual conference has become the industry event for the entire Factoring and ABL industry. With over 25 sessions and over 40 hours of dedicated networking time, the conference has truly become a world class event.

There have been new challenges to the factoring industry that the IFA and AFA continue to monitor. The item that is most concerning to us is the pressure from Fintech companies and the increasing likelihood of regulation for US-based factors. The AFA is taking the necessary steps to safeguard and shield members of the IFA and AFA. To keep up to date, take a look at Allen Frederic’s article on page 28 in which he discusses the history and future of the AFA. If you are a factor or someone who works with the factoring industry, we highly suggest becoming involved with the AFA.

This year the IFA will continue to show their leadership and innovation by implementing items such as a new website, new training courses, updates to the certification program, our new factoring study guide and legal compendium.

Thank you for your support of the IFA, AFA and the entire factoring industry. I look forward to meeting you in Scottsdale or at a future IFA event.
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 about 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.

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Bert Goldberg

Published by
The International Factoring Association

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The Commercial Factor is published bi-monthly by the International Factoring Association. To subscribe, please email info@factoring.org.

The Commercial Factor magazine invites the submission of articles and news of interest to the factoring industry. For more information on submitting articles or advertisements, email news@factoring.org, or call 805-773-0011.

The views expressed in the Commercial Factor are those of the authors and do not necessarily represent the views of, and should not be attributed to, the International Factoring Association.

**News**

**Industry News**

**Tax Guard Launches New Customer Portal**

Tax Guard launched a new customer portal and monitoring platform. The updated portal streamlines day-to-day operations for Tax Guard customers, offers additional insights regarding the federal tax compliance of commercial lenders’ customers, and provides scalability in response to customer growth. The new portal offers significant user experience enhancements including easier order processing, customization of user preferences, and improved data manipulation and reporting capabilities. Users now also enjoy a more intuitive interface, convenient ordering widget, and additional resources to make new user training more efficient. To learn more about Tax Guard or to request a demo of the new portal, email info@tax-guard.com or call 877-550-6325.

**Utica Leaseco, LLC Announces Its Expanded New Headquarters in Michigan**

Utica Leaseco, LLC announced the opening of its new, expanded headquarters in Rochester Hills, Michigan. Due to continuing growth, Utica has relocated to expanded office facilities at 905 South Boulevard, Rochester, Michigan 48307.

**New Player in the Freight-Bill Factoring Field Emerges**

Express Freight Finance, an independent factoring company specializing in transportation clients, has recently launched its freight-bill factoring services for truck fleets, owner-operators, and freight brokers nationwide. Express Freight Finance is launching with an initial capital base of more than $30 million and is backed by Adelphi Capital, a merchant bank with a strong track record of equity investment in factoring and other financial services for transportation companies in the United States.

**Quickpay Funding Announces the Launching of First-in-the-Industry Live 24-7 Factoring Services That Helps Small Businesses**

Quickpay Funding, LLC announced the launching of a first-in-class feature that will help promote the growth of small and mid-sized companies throughout the country. This live service offering greatly expands Quickpay Funding’s already strong value proposition for small business owners in Transportation, Distribution, Produce, Services, Marine, Cross Border Trade, and other industries. Quickpay Funding clients benefit greatly by having access to immediate funds on a 24-7 basis nationwide. Starting March 1st, Quickpay Funding will purchase invoices and process fundings round-the-clock, fund 50% fuel advances for all approved freight carriers for a small flat fee, process supplier payments for approved distributors, provide 100% bilingual service in English & Spanish, issue debtor credit approvals, provide system access & reporting, complete carrier packages (for clients in transportation), and receive new client applications.

**CapitalPlus Equity Wins Factoring Clubs 2016 Best Construction Factoring Company Award**

CapitalPlus Equity has been awarded the Factoring Clubs 2016 Construction Factoring Company Award. Award winners were selected based on user feedback, factoring agreement terms.
and conditions and were awarded in several categories. You can access the full list of award recipients at https://factoringclub.com/top-factoring-companies-2016/.

Liquid Capital Express Adds ABL to Products Suite
Liquid Capital Express, LLC a non-bank commercial financing company, launches an asset-based lending (ABL) program to meet businesses growing needs to have more financing options. The ABL facility provides business funding secured by several different business asset classes. The line of credit can be used to finance short term assets (such as accounts receivable and inventory) and long term assets (machinery, equipment, and real estate).

INDUSTRY TRANSACTIONS
Utica Leaseco, LLC Closes and Funds $1,100,000 in a New Transaction during the Third Week of March, 2016
Utica Leaseco, LLC announced the completion of a Capital Lease transaction in the amount of $1,100,000. Utica closed and funded the transaction for a CNC Ordinance Manufacturing company that is headquartered in the Cape Canaveral, Florida area. This brings the cumulative funding that Utica Leaseco has provided for this customer to $1,700,000. Utica was able to provide the needed working capital by unlocking the equity that existed in the company’s manufacturing equipment.

TAB Bank Provides Funding to Two Companies
TAB Bank provided working capital funding to two companies located in Florida. The first transaction is with a communications equipment distributor. TAB provided them with a $250,000 revolving credit facility that will support working capital needs and fuel the company’s growth. The second transaction is with a temporary staffing firm. TAB provided them with a $750,000 revolving credit facility to support their ongoing working capital needs.
North Mill Capital Funds $10 Million Accounts Receivable and Inventory Credit Facility
North Mill Capital announced the funding of a $10 million accounts receivable and inventory credit facility for GMT Corporation. The funds were utilized for corporate restructuring, paying out the prior lender, as well as providing a line compatible for growth based on the company’s ongoing working capital needs.

Loeb Term Solutions Provides Financing on Over $7.4 Million Dollars Worth of Industrial Equipment
Loeb Term Solutions provided financing of over $7,400,000 dollars’ worth of equipment to a Southeast metal-working facility which has experienced substantial growth over the past 8 years. The financing is helping the

The Interface Financial Group (IFG) Announces Closing of Growth Capital Round of Funding with an International Investment Firm
The Interface Financial Group (IFG), one of the North America’s largest alternative funding source for small to medium-size enterprises (SME), has announced the closing of a growth capital round of funding with an international investment firm backed by a European family office and specializing in global finance. The new funding will be used to fuel the company’s rapid global growth and to expand its products line. In addition to the growth, Martin Andersson and Carl Janglin, principals of the investment firm, have joined IFG’s Board. George Shapiro, CEO and Chairman of IFG said “This equity capital infusion will allow us to continue aggressive build-up of our marketplace platform and to finalize the transfer of IFG products to digital invoice finance system”.

The Commercial Factor | March/April 2016

Canada Chapter Events

April 13-16, 2016
IFA Annual Factoring Conference
Scottsdale, AZ

May 10, 2016
The Art of Negotiation

June 7, 2016
PO Funding

August 9, 2016
Summer Gathering - Golf
Angus Glen Golf Club

September 13, 2016
Legal Cases: Update

October 18, 2016
Utilizing Technology: Update

November 15-16, 2016
2 Day Seminar

December 13, 2016
End of the year gathering

Meetings Location:
Mississauga Living Arts Centre
Scotia McLeod Room
4141 Living Arts Drive
Mississauga ON L5B 4B8

For more information, contact Oscar Rombolà at 
(905) 603-6284 or orombola@accutracapital-itc.com.

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The Commercial Factor | March/April 2016
facility, which specializes in steel and aluminum mounting products for the solar industry, restructure their debt and refinance the existing leases on their machinery.

GCBC Starts New Year Off with a Bang by Funding 15 Deals in January
Amongst the 15 new client relationships there was a $3 million working capital facility to a Texas-based manufacturer and distributor, a $500,000 working capital facility to a Louisiana-based oilfield service company, a $300,000 working capital facility to a California-based transportation company, and a $90,000 working capital facility to a Kansas-based staffing company.

PERSONNEL
Crestmark Announces Promotions at Corporate Office in Troy
Crestmark Bank recently announced the promotions of ten individuals at its corporate offices in Troy: Timothy Pavkovich in credit; Anthony Filice, Bill Nowak and Joel Russell in IT; Colin Madole in the Joint Ventures Group; Stephen Clayton in marketing and communications; Heather Weir in operations; Megan Murray in risk management; and Jamie Carpenter and Linda Sun in special projects.

Summit Financial Hires Andrew Wilhelmy as Vice President, Business Development
Summit Financial hired Andrew Wilhelmy as Vice President, Business Development. He will represent Summit in the Colorado, New Mexico, Arizona, and Wyoming markets. Andrew comes to Summit from his role as Principal at Titan Business Capital.

Crestmark Equipment Finance Announces Promotions of Chase, McNamara and Buchanan
Scott Grady, President of Crestmark Equipment Finance (CEF), announced the promotions of three staff members: Christina Chase, Jodi McNamara and Jamie Buchanan. Christina Chase has been promoted to assistant vice president, documentation manager. Jodi McNamara has been promoted to assistant vice president, lease account manager from senior accountant. Jamie Buchanan has been promoted to senior tax accountant.

Bibby Financial Services Appoints Sam Cirelli to Senior Vice President, Business Development
Bibby Financial Services hired Sam Cirelli as Senior Vice President, Business Development. Sam is based in the company’s New York offices. Sam’s location, combined with 25-plus years of industry expertise, will support ongoing efforts for expansion with the company’s asset-based lending offering.

Rodney Greth Joins Veritas Financial Partners as Senior Vice President
Veritas Financial Partners announced the appointment of Rodney Greth as Senior Vice President. Rodney will focus on structuring, underwriting and closing new financing transactions in the Northeast and nationally. He brings nearly 30 years of financing expertise to Veritas. His prior experience includes serving as a senior underwriter for Ares Direct Lending Group. •
Public records searches miss 60% of outstanding tax liabilities. Tax Guard can show you what you’re missing.

See Tax Problems Before You Fund

Tax Guard reports provide 10 years of borrower tax compliance with missing tax returns, tax deposit verification, and lien filings to measure your risk prior to funding.

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Solve Tax Problems So You Can Fund

Our tax experts offer transparent resolution strategies for you and your borrower to ensure no disruption to the funding relationship.
eCapital, LLC works with businesses across a variety of industries, helping them turn accounts receivable into immediate cash through factoring. Throughout the last 10 years, Wells Fargo Capital Finance has supported eCapital’s growth and expanded their credit facility along the way from $12 million to $65 million.

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“As our business has innovated and grown, they’ve been right there with us.”

Bruce Bentel and Richard Sarif, Directors of the Board, eCapital, LLC

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Military Service Prepares Factors for Success

In 2014, I was fortunate to be invited as a guest to the 53rd Armed Forces Gala & Gold Medal Dinner, sponsored by the United Service Organization (USO). This gala was held at NYC’s famous Javits Convention Center.

BY DANNY FRANK

Despite the Javits Center’s massive floor space, the attendance was overflowing. The guests of honor were five people who had distinguished themselves in military service. Among these were:

- **Corporal Kyle Carpenter of the United States Marine Corps**, who was awarded the Medal of Honor for bravery and valor in Afghanistan.

- **Technical Sergeant Brian Williams of the United States Air Force**, who was awarded the Bronze Star Medal, the Purple Heart, and the Air Force Combat Action Medal.

A number of prestigious financial and Wall Street firms were supporters of this occasion, buying tables, journal ads, and the like. At the end of the evening, a number of these corporate leaders rushed over to the military people who were being recognized. Each of the honorees was offered a career opportunity on the spot by the executives.
The financial services business leaders immediately recruited the officers because their accomplishment, their courage, and their heroism meant that they had been tested. Obviously, each of them had gone through a very rigorous process, demonstrated diligence, and earned performance success. United States military service turned each of these people into a valuable asset in terms of what they could bring to a company. Most likely, office peers, clients or customers would be inspired by their on-the-job presence.

In looking over “the soldiers” of the commercial finance sector, there are several who have transitioned into factoring from a military career. There are more who served in the military for a defined term. In both cases, these people will acknowledge that the experience they gained through military service served them well as they entered commercial finance.

Earl Harper of Austin, Texas, a senior vice president at RMP Capital Corporation, (www.rmpcapital.com) features his military service in his background information on the RMP website. It is not uncommon for Harper to refer to his military experience while he is putting together a transaction and a solution for a client.

As a young junior college student, Harper enlisted in 1966 with the intent to serve in the Vietnam War. He felt the United States Army would be able to provide him with some career direction.

He trained for the infantry at Fort Dix, New Jersey where he was accepted to officer’s candidate school in Fort Benning, Georgia. Upon graduation, he volunteered for the Army’s special forces, going to airborne school where he became a Green Beret.

He was assigned to a special forces group as an A-team executive officer. By 1968, he was sent to the Central Highlands section of South Vietnam as an A-team commander and an intelligence operations officer.

Like many military veterans, Harper’s service provided him with the opportunity to obtain his Bachelor’s degree at Iowa Wesleyan College. Upon graduation, he returned to the Army as a full-time employee while also serving in the National Guard. He retired in 1990 with the rank of Colonel.

Harper developed his learning curve on government construction finance to add to his experience in procurement with contractors and vendors selling to the Army. Harper worked with suppliers, commanded a training center at Fort Dix, and dealt with a lot of government contractors. He was responsible for inventory management, acquiring millions of dollars in high-tech equipment and spare parts.

Leaving the military, he initially went to work in the life insurance field, with stints at John Hancock and New York Life. He relocated to Texas because of this work in 1995. Harper
was selling long-term care insurance along with a special disability/health/life combination policy for hourly workers in the construction industry receiving fringe benefits.

In Houston, he launched his own firm in funds administration employee benefits which was acquired by Resource Management Partners, forerunner to RMP Capital Corporation, Islandia, New York.

Harper is convinced that his military career effectively prepared him for what he has encountered in factoring for construction contractors and subs engaged in public works. “I view a building project very similar to a military operation,” Harper explains. “In the Army logistician, combat arms, and personnel management assignments were all support roles pointing me in construction budgeting projects,” he recalls.

He explains, “Today with public works factoring I am preparing vendors properly for projects, guiding the performance of the contractor. I help emerging small and mid-sized contractors with their ability to successfully manage and follow through to completion. This includes minority contractors. The biggest reason they are unable to succeed is lack of access to capital. Once that issue is resolved, I focus on their ability to perform.”

Harper confirms that: “There is opportunity in commercial finance for many military officers currently in the process of exiting the armed forces. These are workers very used to showing up every day on time, on schedule. They understand work with high-level intensity, true process, and analytical requirements. They are computer literate. They possess all of the skills and mindset which fit into today’s world of finance. The military has made them more than just lenders. They’ve been given the understanding on how to drill down into these companies helping them to execute whatever the project...”.

All the expertise people acquire through the military really serves them well, according to Michael Haas who is Senior Vice President, Business Development Officer at the Glendale, Arizona office of IFA member, Wells Fargo Capital Finance. (wellsfargocapitalfinance.com). Before beginning his career at Wells Fargo in 2003, Haas served in the United States Army from 1998-2002. He attained the rank of E-5 Sergeant and was a 19 Delta CAV Scout. He performed reconnaissance offense training at Fort Irwin, California.

Meanwhile, Robert Beveridge is a cross-sell development officer at the Boston office of Wells Fargo Capital Finance who continues in the United States Army Reserves. Beveridge studied at the University of Maryland and enlisted in the reserves through Howard University’s Reserve Officer Training Corps program. Within several days after graduation, he was commissioned as a field artillery officer assigned at Fort Sill, Oklahoma.

For five years, he fulfilled a variety of duties at Fort Carson, Colorado including fire direction officer, fire support officer, platoon leader, and executive officer with the brigade reconnaissance troop. Officer Beveridge was deployed north and east of Baghdad, Iraq in the spring of 2003 as part of “Operation Iraqi Freedom”. Toward the end of 2003 he came off of active duty.

A job placement agency used by junior military officers lined up ten corporate interviews for him, one of them at a bank in Florida. After a period (while the bank had merged), Mr. Beveridge returned to Colorado, taking a job with Wells Fargo Business Banking. About a year ago, he moved into Wells Fargo Capital Finance.

The Army learning curve and experience Mr. Beveridge has developed on risk identification, evaluating risk, and risk mitigation has been an important asset which he applies to his work at Wells Fargo. “Dealing with a client’s requests is not unlike an Army officer carrying out orders in a clear, set approach,” Beveridge describes. “Military background becomes a very good fit for activities in commercial finance.”

IFA members should consider outreach to veteran’s organizations and outplacement units within the military in fulfilling their HR needs. The training, experience, and work ethic which American soldiers can bring to a commercial finance workplace offers invaluable potential. •

Danny Frank of NYC has been a public relations, marketing, sales promotion consultant to a number of commercial finance companies for more than 25 years. He can be reached at (802) 362-4034, (212) 279-1041 or at DannyFrank@comcast.net.
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5/18
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6/8
Digital Invoice Delivery and Payments
Webinar, 1pm - 2pm PDT

6/13-14
The Law & Business of Factoring Training Course
Planet Hollywood, Las Vegas, NV

6/16-17
AE/LO Training Course
Planet Hollywood, Las Vegas, NV

7/18 - 19
Credit & Collections Training Course
Paris Hotel, Las Vegas, NV

9/15 - 16
Transportation Factoring Meeting
JW Marriott, Indianapolis, IN

10/17-18
Successful Transportation Factoring Training Course
Planet Hollywood, Las Vegas, NV

10/20-21
Small Factors Meeting
Planet Hollywood, Las Vegas, NV

10/27-28
Best Practices from Best Factors - Advanced Training Course
Planet Hollywood, Las Vegas, NV

1/25-27
President’s & Senior Executive’s Meeting
Casa de Campo, La Romana, Dominican Republic

4/5-8
Annual Factoring Conference
Omni Fort Worth, Fort Worth, TX

These training courses have been approved for CAEF credits. For information on approved programs and courses, please contact Terri Baker at 805-773-0011 ext. 303.
Reflections on a Factoring Career

I am honored to write this article for The Commercial Factor’s conference edition. I have not written about small ticket factoring for this publication for the past three years, and I appreciate this opportunity.

BY JEFF CALLENDER

The last article I wrote was a farewell to the magazine’s readers, as I passed the baton of writing the column on to Don D’Ambrosio of Oxygen Funding, who has done a commendable job. Perhaps ironically, this article will serve as something of a farewell of its own, though the factoring community will not be completely rid of me just yet.

I have been involved in factoring since 1994. I began in January of that year as a broker, and that August, I started purchasing small invoices from a few very small clients. I have continued doing this for most of the past 22 years, with a brief hiatus when I worked for a large factoring company as an Account Executive.

I started my companies, Dash Point Financial and Dash Point Publishing, in 2001 and have worked both businesses steadily ever since. In 2004, I co-founded FactorFox Software, which has also continued steadily since that time and has grown into one of
the premier software platforms for factors today. I couldn’t be prouder of what my staff colleagues have accomplished, and continue to accomplish, with this company and its products.

Since I turned 65 last September (the magic number for retirement age, I’ve always thought), and I’ve been having a few health challenges in recent years, the time has come to make a few changes. Thus on May 1, I will turn the reins of Dash Point Financial to my brother-in-law, John Gregg, of Tucson, Arizona. John is a seasoned business owner, savvy entrepreneur, and truly a great guy. I know I am leaving the reins of my factoring business in very capable hands. I hope those of you who meet him at this year’s conference in Scottsdale, or afterwards in the course of daily business, have a chance to chat with him, get to know him as I have, and welcome him to the industry. He will be an excellent addition to the community.

John will become president of Dash Point Financial, and the name, website, phone number, fax number, and everything pertaining to the company will remain intact. Dash Point will continue to specialize in factoring very small receivables (under $10k to start), continue to refer larger clients to larger factors, and continue to welcome small deals from other factors and brokers, just as it has always done. I will remain in an advisory position as long as needed, and Anne Gordon will continue with the company as well, giving her invaluable experience and personal warmth and wisdom to all. Meanwhile, I will continue as President of FactorFox Software and maintain the operation of Dash Point Publishing.

A time such as this naturally leads to reflection over the past couple decades. When I entered this field in 1994, small ticket factoring was practically non-existent, and factoring itself was known by almost no one outside the industry. If a business was too small for the existing (larger) factors in those days, there were virtually no alternatives. As a result, many small businesses closed for lack of capital.

Thankfully, this is not the case now, though I still speak with a number of prospective clients who are frustrated after talking to several factors who tell them they are too small to be funded. Factoring is much better known to the general public (though great numbers are still unaware of it), and prospective clients are much more versed in finding a factor themselves. The internet – barely in its infancy in 1994 – has made
Looking back on all of this, overall, it has been a good and enjoyable career. I have come to greatly appreciate that factoring is both highly risky and highly rewarding.

Everything, including small ticket factoring, a totally new world.

What else has changed in the factoring landscape? There is considerably more competition for factoring clients now than there was 22 years ago. Not only are there hundreds, if not thousands, of small factors, but big money has entered the playing field through online private lenders who are not regulated nor restricted as banks are, and who are making very serious forays into what has been the factors’ (and especially small factors’) marketplace: small business owners looking for capital. With deep pockets, slick websites, very fast approvals and first fundings, and no traditional contracts (or any contracts), these new players make surviving and thriving as a small factor more difficult. Whether they will stay in this space remains to be seen, but there will be no reason for them to leave as long as they find it profitable.

In addition to many new factoring and lending companies vying for the same clients, there are many new companies providing products and services to factors, compared to the mid-1990s. Then, there were one or two software packages offered; now there are many choices, all of which have rendered spreadsheets (commonly used back then) long obsolete for tracking accounts. With the cloud, factors and clients have enormously easy access to their data with just a few mouse clicks. The days of a client waiting for a factor to send his or her weekly update report are long over (or should be!). Awareness of potential or actual tax issues with clients and prospects is now easily available from companies that have sprung up in this time frame. These services have saved many factors from substantial losses with the knowledge of these previously unknown tax problems.

Lien searches and filings now take seconds, compared to waiting days or weeks for searches to come back and filings to be completed. Likewise, access to credit information, public records, and criminal background searches is now instant - and the data available is voluminous. Many companies not in existence then now provide boatloads of credit information. The days of searching for credit ratings in thick books provided quarterly by D&B and the like (that were out of date the day they were printed) are far behind us.

Yet some things remain the same. Many, many businesses continue to need money and always will. Some of them run into difficulties, even with factoring funds provided, and a few take unfortunate actions which cause their factors to lose money. Other unscrupulous people (commonly called “crooks”) intentionally defraud honest factors, and many get away with it, scot-free. Factors who have the misfortune of losing money to dishonest or opportunistic individuals become a bit more jaundiced with each experience, and revise their procedures to make repeats less likely. A few will suffer losses that will spell the end of their companies.

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Looking back on all of this, overall, it has been a good and enjoyable career. I have come to greatly appreciate that factoring is both highly risky and highly rewarding. I have been able to help a great many clients start and grow their businesses, and maintain their operations, in many cases, for years. I have certainly had my share of fraud and dishonest dealings; like most seasoned factors, I, too, have developed a somewhat jaded view of human nature, but I have learned that is just one of the hazards of the trade.

Above all, it has been my pleasure to know so many good, decent, hardworking people in this country, in the industry as a whole, and in the IFA specifically. I have been honored to be part of this community and will look back on my factoring days with a gratified smile and satisfied sense of accomplishment.

Thank you, one and all, for your part in making these years enjoyable, productive, and worthwhile. I feel most fortunate to have had so many years among you.

Jeff Callender has been President of Dash Point Financial (DashPointFinancial.com) and Dash Point Publishing (DashPointPublishing.com) since he started them in 2001. He has written many books and ebooks about factoring which can be obtained from the Dash Point Publishing website, the IFA website’s store, Amazon.com, and numerous online booksellers. He is also President of FactorFox Software (FactorFox.com), a cloud-based program used by factors of all sizes to track their receivables. You can reach him at (866) 432-2409 ext. 101 and at JeffC@FactorFox.com.
A Brief Look at Factors Under Early English Commercial Law

BY DAVID B. TATGE, ESQ. AND JEREMY B. TATGE

The business practices and laws which govern modern factors in America have their roots in early English commercial law. Most modern factors would be very surprised to learn that the term “factor” is first found in the English case law as far back as 1220. See Averment, Faits, Audiata querela, [1220] EngR 20, Jenk. 166, 145 E.R. 107,108(D) stating:

An appointment of auditors, or factor, or attorney, or arbitrator, or a license may be revoked by parol before they be executed, although they be by writing: for they do not give any interest; they are only authorities and powers.

(emph. added)

A. FACTORS GENERALLY

A “factor” under both early English and American law was simply a commercial agent of a merchant principal. Oftentimes, the factor, as sales agent, held goods consigned by his or its principal, often located overseas or domestically at a distance, for sale by the factor in the local markets, oftentimes in the factor’s own name. Factors often acted as financiers by making advances to their clients against anticipated sales proceeds once consigned inventory was in hand and they provided bookkeeping and collection services for accounts arising when the goods were sold. Beyond the role of commissioned sales agents, common law factors purchased goods
in local markets for their distant principals as well and bought and sold goods for their own account, unless barred by their principals via contract from doing so (as the East India Company did).

The fee paid to the factor for services was known as a “factorage”; variously a “commission.” Factors were active in all manner of commerce, in transactions involving goods such as boots, coal, cocoa, cotton, corn, fish, flour, grain, hops, indigo, jute, malt, oats, rice, silk, skins, sugar, tallow, timber, tobacco, wheat, wine and wool.

B. BLACKWELL HALL FACTORS
Among the best-known of the early English factors at common law were the wool and cloth factors who plied their trade at Blackwell Hall in London from medieval times until the early 1800’s. Like other factors of the period, Blackwell Hall factors sold their principal’s goods for cash or, more often, for a bill of exchange payable in several months’ time.

C. DEL CREDERE COMMISSIONS
In the early to mid-1700s, perhaps due to public complaints made by disgruntled clothiers against Blackwell Hall Factors in 1693 about, among other things, the clothiers having to bear losses from bad debts on accounts arising from the sales of their consigned cloth, factors in England started to receive supplemental del credere commissions. For a supplemental fee of 2.5% or so, beyond the normal factoring commission, a factor who sold consigned goods guaranteed to his or its client the solvency of the account debtors to whom the factor sold the consigned goods. See Scrimshire v. Alderton, [1743], 2 Strange 1182, 93 Eng. R 1114, referring to this “new” form of factoring commission:

The plaintiff, who was a farmer in the isle of Ely, sent up oats to Bear-Key [near London], consigned to one Hunt as his factor. The custom of the trade appeared to be, that formerly the factor had 4d. per quarter for selling them, and they gave immediate notice to the farmer of the name of the buyer, and the price: but this being inconvenient to the farmer at a distance, it had for many years past been customary for the farmer to allow 2d. per quarter more, upon the factor’s taking the risque of the debts: since which they ceased to inform the farmers of the buyers. The goods in the present case were sold; but the factor failing, the plaintiff (before actual payment) gave notice to the defendant (the buyer) not to pay the factor, which he did notwithstanding: and thereupon

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this action was brought.

The Chief Justice was of the opinion, that this new method had not deprived the farmer of his remedy against the buyer, provided there was no payment to the factor...

(emph. added)

Del credere commissions later came to New York City around 1814.5

An early English case with respect to a del credere commission was Grove v. Dubois, [1786] EngR42, 1 T.R. 112, 99 E.R. 1002. There, John Liotard, an insurance underwriter, had issued policies to defendant Dubois, an insurance broker, who had purchased them for foreign clients unknown to Liotard, charging his foreign clients a del credere commission. Upon Liotard later becoming bankrupt, Dubois paid his foreign clients the amount of the insurance losses that Liotard would otherwise have covered. When Liotard’s assignees in bankruptcy, Groves and another, sued Dubois for unpaid policy premiums on various policies that Liotard had underwritten, Dubois claimed a set-off for the amount of the underwriting losses he had earlier paid his foreign clients. At trial, a jury ruled for the plaintiff, subject, however, to confirmation by the court. In reversing the jury and ruling for the defendant factor, Lord Mansfield said, 1 T.R. at 115:

The whole turns on the nature of a commission del credere. Then, what is it? It is an absolute engagement to a principal from the broker, and makes him liable in the first instance. There is no occasion for the principal to communicate with the underwriter, though the law allows the principal, for his benefit, to resort to him as collateral security. But the broker is liable in all events.

Lord Buller said, in the same case, 1 T.R. at 115-116:

It makes no difference at the time of making the policy, whether the underwriter knew the principal or not: he trusted to the broker; the credit was given to him, and not to the other.

I agree that the notice of set-off is bad: but this loss may be proved and set-off under the general issue of the 28th section of the 5 Geo. 2, c.20 [dealing with mutual debts prior to bankruptcy].

Therefore we see by this section of the statute that the assignees could legally claim no more than the balance upon the account between the parties.

Judgment for the defendant.
Thirty years later, in the House of Lords' ruling in *Morris v. Cleasby*, note 4, below, Lord Ellenborough rejected Lord Mansfield's earlier more expansive language in *Grove v. Dubois* above. See 4 M&S at 574-575:

In correct language, a commissio del credere is the premium or price given by the principal to the factor for a guarantee; it presupposes a guarantee. It is precisely stated in *Cumming v. Forester*, 1 M.&S. 495, “That the defendants in that case at the time of effecting the said policies for Hill guaranteed the solvency of the plaintiff and other under-writers on the policies to Hill, and sent the policies to Hill with their guarantee endorsed thereon and charged and were allowed by him a del credere commission upon them.” This term, however, commonly, though incorrectly, is used to express the guarantee itself. But whatever term is used, the obligation of the factor is the same; it arises on the guarantee. The guarantor is to answer for the solvency of the vendee, and to pay the money [owed on the policies for covered losses] if the vendee does not; on the [financial] failure of the vendee he is to stand in his place and make his default good....With all the respect which is due to Judge Mansfield and those judges [referring to judges who decided *Houghton v. Matthews*, [1803] 3 Bos. & Pull. 489, which followed *Grove v. Dubois*], we cannot accede to those propositions generally laid down without restrictions or qualification....

Both English and American courts hotly debated for years which Lord Mansfield's 1786 position in *Grove v. Dubois* but the learned Judge Story in America did not. In 1852 in *Courtier v. Hastie* the trial judge rejected Lord Ellenborough's position in *Morris v. Cleasby* in 1816 but this ruling was then reversed on appeal by both the Court of Exchequer Chamber, which ruling was affirmed in 1856 by the House of Lords (on other grounds) as noted in footnote 4 below. Ultimately, Lord Ellenborough's position was definitively accepted in *Thomas Gabriel & Sons v. Churchill*, 1 K.B. 449 (King's Bench Div. 1913), aff'd 3 K.B. 1272 (Ct. App. 1914.)

None of the later English or American rulings seem to focus on a fact in *Grove v. Dubois* which might have driven the decision, namely, that Dubois, the broker, had indemnified his foreign clients for their losses before he made his claim of set-off against the plaintiffs, the assignees in bankruptcy of Liotard. Even had Dubois been a mere guarantor, by performing under his guarantee, Dubois’ position would unquestionably have then ripened by subrogation into full legal ownership of the insurance policy and created set-off rights for that reason. Thus, the early English cases might be more easily reconciled than the many reported decisions suggest.

### D. FACTORS DEFINED IN THE EARLY ENGLISH CASE LAW

Perhaps the most comprehensive discussion of the term “factor” is found in *The Matchless*, [1822] Eng R 634, 1 Hagg Adm. 97, 166 E.R. 35. The case was an appeal from a ruling of the Vice Admiralty Court in St. John’s, Newfoundland (Canada then a British colony), condemning the cargo (flour, bread, apples and nuts) of a ship, *The Matchless*, which had sailed to St. John’s from Halifax, Nova Scotia, as having been illegally imported from America by persons not licensed to exercise the trade of merchants or factors in Newfoundland.

The Admiralty Court in England hearing the appeal stated, in relevant part:

[I] have looked to find the word factor as used in the statute, legally and authoritatively defined. [T]he word ‘factor’ is not a term of the Civil Law, it is not to be found in the language in which that system of laws is written. I believe it has a French origin in the word “facteur” and, in common parlance, it continues in a sense of great latitude to signify any agent whatsoever. In the northern district of this island, it is very generally applied to land stewards, bailiffs and managers of estates. It appears also to have a frequent reference to a residence in foreign countries (whence the word factor is derived), signifying a collection of persons residing in foreign stations for the sale of commodities sent to them from their native countries, which they are to dispose of either as actual partners in the house of trade which sends them, if they are partners, or as independent factors selling upon a certain commission, without sharing in direct profits...

But I take the real and established definition in our statutes to be, that a merchant buys and sells for his own direct mercantile profit, and the factor only buys or sells upon commission, and that when the merchant or factor are in any statute contra-distinguished and opposed to each other, as in the Navigation Act, that is the sense to be attributable to each distinction respectively.

### E. FACTORS AND BROKERS DISTINGUISHED

Chief Justice Abbott in *Baring v.*
came to England and Mico told other transactions. Later, Watkins principal, Watkins, from this ship and outstanding advances to his prin-
cipal; Watkins, he had contracted with.

At the time, Mico had significant shipment of logs to Hudson, a ware-
houseman he had contracted with.

received and offloaded a consigned

tion itself. There, Mico, a factor,

factors” from “brokers” as follows:

Now the distinction between a broker and a factor is not merely
nominal, for they differ in many important particulars. A factor is a person to whom goods are consigned for sale by a merchant, residing abroad, or at a distance from the place of sale, and he usually sells in his own name without disclosing that of his principal; the latter, therefore, with full knowledge of these circumstances, trusts him with the actual possession of the goods and gives him authority to sell in his own name. But the broker is in a different situation; he is not entrusted with the actual possession of the goods, and he ought not to sell in his own name. The principal, therefore, who trusts a broker, has a right to expect that he will not sell in his own name.

(emph. added).

F. THE FACTOR’S LIEN

English factors were not permitted to pledge consigned goods to secure their own indebtedness; they could only sell the goods. They did, however, have a lien on the goods for certain purposes. In Kruger v. Wilcox, [1755] EngR 14, Amb. 253, 27 E.R. 168, reversing prior case law to the contrary. English courts recognized that ordinary factors held a lien on consigned goods in their possession as security for their open advances, unpaid fees and costs arising from the factoring transaction itself. There, Mico, a factor, received and offloaded a consigned shipment of logs to Hudson, a ware-
houseman he had contracted with. At the time, Mico had significant outstanding advances to his prin-
cipal, Watkins, from this ship and other transactions. Later, Watkins came to England and Mico told

Hudson that Watkins might contract with him. Thereafter, Hudson did so and sold the logs to plaintiff Kruger, who paid part of the sales proceeds to Watkins. Now suspicious of Watkins’ financial status, Mico then directed Hudson not to disburse more sales proceeds to Watkins without the factor’s consent. Ultimately, defendants Wilcox and others, assignees of Watkins, now in bankruptcy, agreed Kruger could interplead the balance of the sale price. Ruling against the factor, the court said:

Two things are to be considered:

1st, What lien a factor gains on goods consigned to him by a merchant abroad, and whether Mico gained such lien in this case?

2d, If he did, Whether he had done anything to part with it?

As to the 1st. All the four merchants, both in their exami-
nation in the cause, and now in Court, agree that if there is a course of dealings and general account between the merchant and factor, and a balance is due to the factor, he may retain the ship and goods, or produce, for such balance of the general account, as well as for the charges, customs, &c., paid on the account of the particular cargo. They consider it an interest in the specific things, and make them articles in the general account. Whether this was ever allowed at trover at law, where the goods were turned into money, I cannot say; nor can I find any such case. I have no doubt it would be so in Court, if the goods remained in specie; nor do I doubt of its being so, where they are turned into money.

To 2d Question. I am of opinion [sic], Mico has parted with his right, and that it is for the benefit of trade to say he has.

All the merchants agree, that although a factor may retain for the balance of an account, yet if the merchant comes over, and the factor delivers the goods up to him, by his parting with the possession he parts with the specific lien. Such is the law of the land as to retainers in other cases (Snee v. Dawson, MS [1 Atk. 245].)

Question. Whether this case amounts to the delivery up of the logwood to the principal? I think it does. Mico suffers Watkins to employ a broker, and tells the broker that Watkins intends to sell them himself, to save commission. Mico gives orders to the ware-
houseman to deliver the goods to the broker. The broker sells them, and makes out bills of parcels to Watkins, and takes no notice of Mico. It amounts to the same thing, as if Mico had delivered the goods in specie to Watkins.


Twenty years later, English case law recognized that the factor’s lien extended to collected proceeds so long as they were in the factor’s hands, at least if the subject sale had taken place prior to any act of bankruptcy by the factor’s principal. Drinkwater v. Goodwin, [1775] EngR 35, 1 Cowp. 251, 98 E.R. 1070. Accord Houghton v. Matthews, 1803 Eng. R 652, 3 Bos. & Pul. 485, 489, 127 E.R. 263:

Where a factor is in advance for goods by actual payment, or where he sells under a del credere commission, whereby he becomes responsible for the price, there is little doubt that he has a lien on the price, though he has parted with possession of the goods. If he acts under a del credere commission he is to be considered between himself and the vendee, as the sole owner of the goods.

(emph. added).
The 2016 Cumulative Supplement to *AMERICAN FACTORING LAW*, due for publication in December, 2016, will further discuss these and other points of interest arising under English factoring law.

Finally, while modern factors today are commercial financiers who no longer sell from consigned inventory or provide sales advice to, their factoring clients as at English common law, but instead contract to buy client accounts directly (which common law factors did not purport to do), this article illustrates how today's factors still offer the same financing, bookkeeping/collection and credit protection services (when accounts are purchased without recourse) that common law factors provided their clients under English common law. Modern factors can be justly proud of their industry and its most interesting historic business roots.

1The term “commission merchant” was apparently not used in early commercial parlance as it first appears in the English Reports in *DeTastet v. Sharpe and Others*, [1818] EngR 173, 3 Madd. 51, 56 E.R. 428(B). Likewise, the first reference in reported American case law to a “commission merchant” came during the 1820s. See e.g., *Harpers v. Patton*, 28 Va. 306, 1829 Va. LEXIS 27, 1 Leigh 306. Some American courts found the terms interchangeable. See *Lehman, Durr & Co. v. Pritchett*, 84 Ala. 512, 513, 4 So. 2d 601, 602, 1887 Ala. LEXIS 268 (“The business, duties and liabilities of factors and commission merchants are substantially the same, the terms being ordinarily used interchangeably.”)

2Blackwell Hall was ultimately torn down in December, 1819.

3See a much more extensive discussion of the factors at Blackwell Hall near Athens who chartered a ship in January, 1848 to sail to Salonica (a city in Northern Greece, then under the Ottoman Empire) and load a cargo of Indian corn. The ship's master loaded the corn on February 22, 1848, endorsing a bill of lading making the corn deliverable to the plaintiffs or their assigns, either to pay the freight. The plaintiffs...
endorsed the bill and insured the cargo from Salonica “to a port of discharge in the United Kingdom,” warranting the corn would be of average quality unless the ship were stranded. They sent the bill of lading, the insurance policy and the charter-party (the contract between the plaintiffs and the ship) to the plaintiff’s agent in London. On May 1, 1848, the plaintiff’s agent retained the defendants, corn factors in London, to sell the cargo, sending them all three documents. Being advised the vessel was due any day, the factors advanced £600. The factors sold the corn for £2,000 to a Mr. A. Callender F.O.B. on May 15, 1848 for a note payable in 60 days’ time, charging the plaintiffs a del credere commission of 3.5% and not advising the buyer who their principal was, both customary practices. The factors notified the plaintiffs of the sale the same day. It was quickly discovered when the ship soon arrived that it had encountered bad weather which had caused the cargo to be heated and fermented, whereupon the Master put the ship unexpectedly into Tunis in Africa where the corn was offloaded and sold on April 24, 1848, to prevent further loss. The buyer repudiated his contract with the factors on May 23, 1848. A year later, in May, 1849, Callender became bankrupt whereupon the plaintiffs sued the factors acting as commissioned sales agent was allowed to claim against the estate of a bankrupt buyer for the full amount of losses the factor had to cover for its clients when the bankrupt buyer did not timely pay. See Bize v. Dickason, [1786] EngR 140, T.R. 285, 99 ER 1097 and Graham v. Ackroyd, [1853] EngR 551, 10 Hare. 192, 68 E.R. 894.

A number of these cases are referenced in AMERICAN FACTORING LAW at Ch. I.II.B.4-8, pgs. 27-33.

This case is also cited in the 2013 Cumulative Supplement to AMERICAN FACTORING LAW, Ch. 1.II.B.1, page 25.

Chapman v. Derby, [1689] EngR 37, 2 Vern. 117, 2 E.R. 684(C), where efforts of a Blackwell Hall factor to claim a lien for open advances in a dispute with the estate of a deceased principal failed.

The Court of Exchequer Chamber in Couturier v. Hastie reversed the trial court’s ruling, 9 Ex 102. The Exchequer Chamber’s decision was then itself affirmed on further appeal in 1856 by the House of Lords who said: “It appears to us that the contract in question was for the sale of a cargo shipped supposed to exist and be capable of transfer, and that, inasmuch as it had been sold and delivered to others by the captain before the contract in question was made, the plaintiffs cannot recover in this action.”

See AMERICAN FACTORING LAW, Ch. 1.II.B.1, page 25; see also Ch. IV.A.1 at pages 50-51.

See AMERICAN FACTORING LAW Ch. 1.II.E, pgs. 10-12, discussing Morris v. Cleasby and Lord Ellenborough’s similar ruling in Hornby v. Lacey, [1817] Eng. R 389, 6 M&S 166,171, 105 E.R. 1205: “The commission [del credere] imports, that if the vendee does not pay the factor will: it is a guarantee from the factor to the principal against any mischief to arise from the vendee’s insolvency.” See also Ch. 1. II.A at pgs. 47-50, Del Credere Factor’s Assumption of Credit Risk, Alone, Under English Law.

See e.g. AMERICAN FACTORING LAW Ch. 1.II.B.14, Subrogation Rights of the Del Credere Factor, pgs. 44-47, discussing several early American cases to this same effect. The authors have found several other early English cases prior to 1873 to the same effect where a del credere factor acting as commissioned sales agent was allowed to claim against the estate of a bankrupt buyer for the full amount of losses the factor had to cover for its clients when the bankrupt buyer did not timely pay. See Bize v. Dickason, [1786] EngR 140, T.R. 285, 99 ER 1097 and Graham v. Ackroyd, [1853] EngR 551, 10 Hare. 192, 68 E.R. 894.

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The American Factoring Association (AFA) was founded in 2009, as a response to remarks by Tim Geithner, President of the New York Federal Reserve Bank and later Secretary of the Treasury, warning of the risk of "unregulated shadow banking."

The AFA is a non-profit unified voice for factors, an advocacy and educational arm of the International Factoring Association. Our mission is to educate lawmakers and regulators on our industry and how we help small business. With the passage of the Dodd-Frank bill by Congress and the creation of the Consumer Financial Protection Bureau (CFPB), regulatory requirements on financial institutions have significantly increased. The CFPB has the authority to limit products and practices it deems "abusive." Hence, it has a very wide arc to operate. To date, the AFA has represented the factoring industry in the following ways:

Over 24 trips to Washington DC, at our members' own expense in order to meet with members of the Senate Banking Committee, House Financial Services Committee, US Treasury, FDIC, Controller of the Currency, and Federal Reserve System.

AFA called on Banking Committee Members and the House Financial Services Committee regarding Operation Chokepoint. In conjunction with the Department of Justice guidelines, the FDIC issued to banks a list of industries that banks were strongly encouraged not to bank. The AFA highlighted unintended consequences of Operation Chokepoint, i.e., factors getting checking accounts closed and losing bank lines of credit. Representative Blaine Luetkemeyer (R-MO) and others pushed the FDIC to issue new guidance to its staff designed to stop the closure of bank accounts and denying credit to legal businesses.

The AFA, through the Jones Walker law firm in Washington DC, was able to get the freight broker bonding decreased.

AFA representatives met with the Treasury Department, reviewed a report on factors, and revised the report to Congressional Leaders which was more complimentary to factors instead of comparing them to payday lenders.

In today's environment, factors face more risk from additional regulation. There is significant talk of legislation to regulate online lending. Many factors have applications online or advertise online and could be called online lenders.

Similarly, several Congressmen recently sent letters to the CFPB urging the CFPB to collect data from small business lending creditors. Section 1071 of Dodd Frank explicitly gives CFPB this authority. The burden of this data collection would obviously be costly to factors. It could also lead to legislation which

Continued on page 33
WHAT’S NEW AT IFA

Our Preferred Vendors have undergone a screening and evaluation process. When you contact the Preferred Vendors, you will need to indicate that you are an IFA member to receive your benefit.

If you offer a good or service to the Factoring Industry and are interested in applying for Preferred Vendor Status, please contact the IFA at 805-773-0011.

ASSOCIATIONS

The following trade associations offer member pricing for events attended by IFA members:
- **Colombian Association of Factoring (CAF)**
  - Commercial Factoring Expertise Committee of China (CFEC)
  - www.cfc.org.cn
- **Ecuadorian Factoring Association (ASOFACOR)**
  - www.asofactoring.org
- **Factors Chain International (FCI)**
  - www.ifgroup.com
- **Romanian Factoring Association (RFA)**
  - www.asociatiadefactoring.ro

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Go Paperless. Switch to RMail to Send your Important Notices. RMail services allow factors to end disputes attributed to missing, misplaced or denied receipt of notification emails for notices of assignment, notices of default, borrowing base certificates, and other important notifications. It also helps speed invoice collections with proof of invoice delivery irrefutably starting the accounts receivable aging clock.

www.rpost.com/ifa

IFA Members save $300! Subscribe to 1000 units RMail plan for only $390! (Normally $690)

CONSULTING

**12five Consulting**

12five Consulting provides technology and social media consulting to the commercial finance industry. Born out of its sister company, 12five Capital, 12five Consulting understands the technological needs of the commercial finance industry, as it was their application of these tools that lead to their expertise. 12five specializes in software optimization, cloud computing implementation and social media representation.

Phone: 630-270-3072 • www.12five.com
Email: ryan@12five.com

IFA Member Benefit: One free hour of initial phone consultation

**FactorHelp**

FactorHelp has come to be regarded as the factoring industry’s premier resource provider. Their manuals, in use on every continent of the world, are setting the industry standard, and their reputation as the one-call solution for factoring problems is growing. By consistently introducing innovative, viable products, vigilantly cultivating an extensive alliance of Strategic Partners and providing the professional expertise demanded of an industry leader, FactorHelp strives to maintain its goal of providing the unparalleled service the factoring industry expects from a solutions partner.

Phone: 972-722-3700 • www.factorhelp.com

IFA Member Benefits: New & Returning customers: receive DISCOUNTS off D&B solutions. Discount is for IFA members that are not current D&B customers or have been gone for a period of one year. Existing customers: receive discounts on other D&B solutions not under contract. (ie: Hoovers, Supply, DNBI Modules)

CREDIT

**Ansonia Credit Data**

With more than 250 Factors and over $800 billion in data, Ansonia provides Factors and ABL lenders an innovative way of managing debtor and fraud risk. Our business credit reports feature current and historical days-to-pay information collected directly from the accounts receivable departments of small and large factors, and other companies across all segments.

Phone: 855-ANSONIA • 855-267-6642 x.103
www.ansoniacreditdata.com

IFA Member Benefits: Free VIGILANTE™ Portfolio Analysis. Try Ansonia’s unique new program for monitoring credit portfolio risk. Call today to receive a comprehensive review of your entire portfolio.

**Credit2B**

Trusted by over 50 Factors, including all of the majors, Credit2B is a cloud-based platform that empowers accurate and timely decisions by connecting the experiences of trade credit grantors around their common business customers. We combine this highly valuable trade network information of approximately $700B in recent receivables with significant third party data and public filing information to provide a comprehensive financial risk profiles, all in real time. Our dashboard also provides custom scoring, alerts monitoring, peer benchmarking and comprehensive data pack solutions for Factors with high volume needs.

Phone: 212-279-3300
Website: www.credit2b.com

IFA Member Benefits: Connect to the largest Factor community trade database. Receive 10% price discounts for being an IFA member. We offer free monitoring of accounts for all users of the platform.

**Dun and Bradstreet (D&B)**

D&B is your source for the best business insight in the world. D&B’s global database contains the deepest, broadest, most rigorously quality-assured business insight available, covering more than 210 million businesses worldwide. With this insight, D&B has been enabling companies to Decide with Confidence™ for more than 170 years.

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CREDIT CARD PROCESSING

**ePaymentAmerica**

ePaymentAmerica is the nation’s leading provider of processing services for the factoring, A/R financing, and P/O financing industries. They offer IFA members exclusive VISA, MasterCard, American Express and discover pricing, a discount on their virtual gateway, and a discount on PCI Compliance Certifications.

Phone: 901-385-5327 • www.epaymentamerica.com
Email: factoring_program@epaymentamerica.com

IFA Member Benefits: Interchange Plus Pricing* Bundled Monthly Service Fee of $30.00 (includes IRS regulatory compliance, account maintenance, PCI compliance, virtual gateway & online management tool) *Based on volume/transaction count.

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**Agility Recovery**

For the past 25 years, Agility Recovery has been a premier provider of onsite recovery solutions across the United States and Canada. When disaster hits, Agility will be on the scene, providing you with any, or all, of the critical elements you need to keep your business in business: power, space, technology, connectivity. Membership also includes access to a dedicated Continuity Planner and secure access to your myAgility planning portal to assist in building and maintaining your business continuity plan.

Phone: 866-364-9696 • www.agilityrecovery.com
Email: andre.selvyn@agilityrecovery.com

IFA Member Benefits: 5% discount to each respective client’s monthly ReadySuite membership fee.

FUNDING

**RMP Capital Corp.**

RMP Capital Corp. is a best-in-class provider of Rediscouting Lines of Credit to Independent Factoring Companies with portfolios from
spread through higher returns, and outpace the companies expand commercial credit, increase their latest breakthroughs. Our Commercial Lending JHA's solid technology background with the

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month to try the complete program.

In addition to the one-month free trial for everyone, IFA Members receive an additional month to try the complete program.

IFA Member Benefits: RMP Capital Corp. will pay your IFA membership yearly dues.

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50 Words Marketing, LLC

50 Words is a marketing outsource firm for companies that either do not have a marketing department or that need to add more manpower to their existing marketing team. They serve as your dedicated marketing department.

Phone: 610-631-5702 • www.50wordsmarketing.com
IFA Member Benefits: 50 Words will provide
twelve hours of marketing services with the purchase of any marketing service. (Offer to new clients only)

SOFTWARE

FactorFox

FactorFox Cirrus is a cloud application for factors, their clients, brokers, lenders, and others who enter or access data. Entries can be made and reports accessed from any internet-connected computer, tablet, or smartphone. As a web-native program, there is no extra cost for setting up your account or to access your data; further, you receive three hours of free training online. FactorFox’s various versions make it suitable for nearly any size factor.

Phone: 866-432-2409 • www.factorfox.com

In addition to the one-month free trial for everyone, IFA Members receive an additional month to try the complete program.

ProfitStars®

As a diverse, global division of Jack Henry & Associates, Inc. (JHA), ProfitStars combines JHA’s solid technology background with the latest breakthroughs. Our Commercial Lending Solutions help FIs and alternative finance companies expand commercial credit, increase their spread through higher returns, and outpace the competition through four successful, time-tested solutions: Commercial Lending Center, CADENCE, BusinessManager®, and LendingNetwork®.

Phone: 205-972-8900 • www.profitstars.com

IFA members will receive 10% off new ProfitStars lending solutions product purchase. For IFA members who are currently ProfitStars customers: Free one day CADENCE refresher course, per year, at ProfitStar's training facility in Birmingham, AL.

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Tax Guard

Tax Guard fills a critical gap in a commercial lender’s credit risk management toolset with efficient, real-time and actionable insight into the true, non-public IRS tax compliance status of their prospects and clients. Our due diligence reports, tax compliance monitoring and resolution solutions support commercial lenders throughout every stage of the funding life-cycle.

Phone: 303-953-6308 • www.tax-guard.com
Contact Heather Love
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First Corporate Solutions

First Corporate Solutions is a full service public records provider specializing in the research, retrieval and filing of public records nationwide and internationally. Their services include industry standards such as UCC, lien and litigation searching, UCC and corporate filing services, nationwide registered agent coverage and real property title searching, as well as unique solutions such as state and county account monitoring designed specifically for Factors.

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Email: info@ficoso.com
IFA members will receive a 10% discount off of the retail rates of their signature state and county account monitoring product.

IFA CALENDAR EVENTS

April 13, 2016
Factoring Essentials Training
Fairmont Scottsdale Princess
Scottsdale, AZ

April 13-16, 2016
Annual Factoring Conference
Fairmont Scottsdale Princess
Scottsdale, AZ

May 3-5, 2016
Financial Statement Analysis Online Training Course
Webinar: 10am-12pm PDT

May 18, 2016
Protecting Factors of Healthcare Receivables Webinar
Webinar: 1pm-2pm PDT

June 8, 2016
Digital Invoice Delivery & Payments Webinar
Webinar: 1pm-2pm PDT

June 13-14, 2016
The Law & Business of Factoring Training Course
Planet Hollywood, Las Vegas, NV

June 16-17, 2016
Account Executive/Loan Officer Training Course
Planet Hollywood, Las Vegas, NV

July 18-19, 2016
Credit & Collections Training Course
Paris Hotel, Las Vegas, NV

September 15-16, 2016
Transportation Factoring Meeting
JW Marriott, Indianapolis, IN

October 17-18, 2016
Successful Transportation Factoring Training Course
Planet Hollywood, Las Vegas, NV

October 20-21, 2016
Small Factors Meeting
Planet Hollywood, Las Vegas, NV

October 27-28, 2016
Best Practices from Best Factors Advanced Training Course
Planet Hollywood, Las Vegas, NV
Help Your Organization Adapt and Learn

The success of your organization relies on its members recognizing emerging trends and adapting to change faster than ever. This requires a new and very different understanding of human motivation and organizational psychology.

BY TOBY GROVES

We have over-relied on expertise to keep us relevant, but expertise isn’t what it used to be either, with artificial intelligence and sophisticated algorithms taking over what used to be solely in the human domain, and technical knowledge available, freely and instantly. What has become clear is that the organizations that succeed are the ones that learn faster than others. Leading your organization through this type of process, which allows us to recognize emerging trends that can’t be predicted, requires a type of innovation that most managers don’t know how to ask for—emergent innovation. How do we do it?

A NEW UNDERSTANDING OF MOTIVATION

During the industrial revolution and beyond, people were “human capital”, incentivized to work faster and be more like machines. In order to become more efficient, we continually upgrade our tools. In the accounting realm, we moved from using ledger paper, to using an adding machine, to using computers and developing better and faster software. Now with the development of artificial intelligence, computers have begun to build their own algorithms. In other fields, we progressed from humans on the assembly line, to robotics, and now we can print everything from tools to human body parts. The interest of management was not in employee engagement or learning or personal growth, just efficiency and production. Now that machines can do many of the tasks that humans used to perform, faster and with fewer errors, the role of people has profoundly changed. Accordingly, the old methods of motivation that were effective with those types of tasks are no longer effective. In the past, the goals of turning out product faster, cheaper and with less errors meant that the old style carrot and stick motivation was effective. “If-Then” incentives, such as providing a bonus for additional productivity, are effective for physical tasks or completing a checklist. However, research shows that these “if-then” rewards do not work well for tasks that involve complex problem solving or creativity. “If-then” motivation typically causes pressure that results in focusing on the step by step process in which they are involved, which usually
diminishes success in complex tasks. Employee engagement was not really seen by leaders as an important part of the organizational vision. The new way to approach motivation requires the ability to spark employee engagement. Old approaches to employee motivation are quickly becoming irrelevant because the types of tasks that they impact are the tasks that computers are taking over.

EFFICIENCY AND THE LEAN APPROACH

The desire for greater efficiency has spawned a number of approaches to standardization and error reduction such as ISO and Lean Six Sigma. The lean movement is one of the more popular approaches to efficiency and waste reduction. Lean Six Sigma has garnered a large number of supporters, with specific training programs where subscribers to the approach attain higher levels of specialization in the program including yellow belt, green belt and black belt.

A focus on waste reduction and efficiency means sticking to your area of expertise, where organizational members splinter into their own specialties and create silos of information. The result is a more mechanistic type of organization, with less engagement between organizational members. Communication and interconnection are typically viewed as inefficient because employees spend time sharing information that does not clearly lead to gains in efficiency.

Nobel prize winning psychologist, Daniel Kahneman recognized what he called system I and system II thinking. System I thinking is fast, automatic and instinctive, while system II is slower and more effortful, logical and deliberative thinking. An important feature of these systems is that they don’t play well together. We switch between the two systems and have difficulty seeing the big picture when we are focused on logical details, and vice versa.

System I thinking associates new information to recognized patterns, what has been learned through past experiences. System I thinking allows the ability to see the bigger picture than the logical, step by step thinking associated with system II. System II is great at handling logical details of a process, like writing software coding. However, the person that is focused on the process of writing the code (System I), has difficulty recognizing whether the specific code that is being written, relates well to the larger goals of the project (system II). The result in too many cases was going down a path that didn’t serve big picture goals.

One answer to this problem was pair (or peer) programming, where two programmers work as a team.
As one programmer focuses on the functional details of the code (the driver), an observer reviews the code and is able to consider how the code fits into the overall strategy of the project. While this could be considered inefficient from the standpoint of lean strategy, the pair programming method results in higher design quality with fewer defects, a greater diversity of problem solutions and significantly higher satisfaction on the part of the programmers. This type of approach spurs learning and engages curiosity and the brain’s “seeking circuitry”. When programmers work with a variety of others on a larger team, engagement and knowledge spread through the team, increasing insight and problem solving abilities.

According to a 2006 article in Fortune magazine, 58 Fortune 200 companies had adopted Six Sigma. The stock prices of fully ninety percent of that group failed to keep pace with the S&P index and the article suggested that the companies had focused on perfection at the cost of innovation. 3M, a company renowned for innovation, backed away from Six Sigma after noticing costs to their innovation strategy.

**COMPLEX, ADAPTIVE SYSTEMS**

In the face of growing complexity in our organizations, researchers in the social sciences have been examining how complex systems such as ants, cities, brains, and immune systems operate. Of particular interest was how systems such as these, which have no central command, are able to quickly adapt to changing circumstances even though there is no central command directing the system. Work done by researcher Deborah Gordon has shed light and spurred other research into the simple set of rules of social behavior that ants follow when they build structures or perform other tasks. These systems have self-organizing...
mechanisms which are driven by very localized interactions. Since ants recognize other ants based on their common tasks, they realize if they come across more ants of a particular task type, say foraging, that there is more foraging to be done and will begin doing that task.

A fascinating study done at MIT on team effectiveness show that human organizations are subject to the same influences. The study outfitted team members with high-tech “cards” that they would wear which recorded their interactions with other group members. These cards didn’t record verbal language, but instead recorded body language, and which members of the group interacted, and how much they interacted. The most effective groups were not determined by the IQ of its members, or personality. Rather, they found that patterns of communication were paramount to team success.

The answer, in a word, is engagement. This suggests that instead of focusing on efficiency and expertise, that groups perform better when barriers to engagement are removed; when the only rules of engagement are a simple set of rules that allow more of it, not less. This engagement is paramount to the purpose that employees feel when they perform their work. In a recent survey released by Deloitte, millennials reported that a strong sense of purpose was an important part of employee satisfaction and a majority said purpose was considered in determining where they would work.

**LEARNING AND ADAPTING**

At the heart of organizational learning is a culture that supports rapid cognition and robust patterns of communication amongst its members. Patterns of communication amongst group members is strengthened through a mindset of empathy, creativity, and collaboration. Powerful ways you can influence your organization towards creativity, adaptation, and communication include 1. embracing the idea of being wrong, and 2. adopting an adaptive versus predictive mindset.

OK, so I’ll be the first to admit that initially, trying to be wrong doesn’t sound like a great model of success. However, companies like Adobe have accomplished great advances in corporate culture by “increasing the failure rate”. Management realized that they didn’t have enough type II errors. They only allowed a small, very specialized team of experts to work on new product development ideas. They spent a lot of money and time developing and testing ideas their experts believed in, subscribing to the idea that they didn’t want to waste resources on mistakes. They realized that there

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may be a lot of good ideas that they weren’t trying. Perhaps they could try developing “low resolution” models of a larger number of ideas at a lower cost. This is important because even though the first crack at an idea may fail, much can be learned by the failure, and perhaps bits and pieces of that failure could play a major part in future successes. How would you know if you never tried any of those ideas?

Adobe started what they call their “KickBox” program with employees, which is now available “opensource” on their website for anyone to try in their own organization. With the KickBox program, any employee can pick up a box and test their own ideas. The box has a credit card in it, good for a fixed dollar amount ($1,000 at most recent check) for the employee to test their idea in any way they see fit, no questions asked or documentation required. The box also has a “Bad Ideas” notebook. There is no “Good Ideas” notebook, because they say you shouldn’t judge your ideas at first. Many ideas that seem good turn out not to be, and many ideas that seem bad turn out to have something good in them. They now see many more ideas than they used to, at a fraction of the cost. They have also sent employee engagement and trust through the roof.

An adaptive versus predictive mindset is also important. When we use a model that predicts what will occur over a medium or long range period of time, we not only have to change course and redo much of our work, but the prediction almost always drives our expectations to come true, and to be unaware of those things that contradict our prior beliefs. An adaptive mindset, like the type used in agile development processes, supports the development of many low-resolution ideas, and revisiting the course of action on a regular basis. An adaptive approach also has developers of ideas and processes choose methods that allow change in the future if situations change.

How do you teach organizations to behave in this way? One tool I use that is very popular with all types of organizations that I speak to, are the rules of improvisation. No kidding, I said improv. These simple rules remove barriers that allow open communication and adaptation, and are supported by neuroscience. The holy grail of improvisation is “Yes, and...” which means that people within the group must accept any idea that another group member throws out. This removes a lot of the judgment process that people go through when they worry that their idea isn’t good enough. Another rule is “Make someone else look good, and you look good”. This rule removes self-focus, and we all know how much stress melts away in social
situations when we aren’t worried about the way we are being received. If we concentrate on someone else, it opens our minds up to more ideas, and we are less judgmental. Another rule says “There are no mistakes”. The idea behind this rule is that all ideas offer some value, and to use all ideas, even if they are born from frustration. These rules allow rapid and innovative thinking and open communication. They also build tremendous trust within a group. I frequently use improv exercises that spark curiosity and engagement in all types of teams to improve critical thinking, with fantastic results. Try it in your own organization and I’m sure you’ll find it’s an addictive way to improve culture.

**AFA UPDATE**

Continued from page 25

further exacerbates the burden on factors. The former Administrator of the Small Business Administration, the ranking Democrat on the Senate Banking Committee, the Federal Reserve Bank in Cleveland, and the Clearing House Association representing the Nation’s largest banks, are among many who have called for regulation of online lending. The fear among factors is that we may become an unattended consequence from this action.

In summary, we must remain diligent and the AFA must continue its activities. In order to do this, we need your help.

The goal of the AFA is to increase membership and financial support from every IFA member. We urge every IFA member to contribute to the AFA as we are in the midst of our annual membership fund drive. Currently, we have Bronze Members who have contributed as little as $500 up to Diamond Members who have contributed in excess of $10,000. This is a very inexpensive insurance policy to help protect our industry from needless regulation which will be both costly and prohibitive. Please consider supporting the American Factoring Association.

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You are eligible to sit for the Certified Account Executive in Factoring exam if you have been involved in Factoring for at least two years and you are or have been in an Account Executive role, or you have managed such a position.

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Lien Creditors And Other Predators Out To Get Your Collateral

The UCC is a race statute. Whoever is first to perfect the security interest is senior in priority. This is true even if the first person to perfect knows about the other creditor’s claim. However, there are ways in which the secured creditor will lose its priority position.

A lien creditor and a state or federal tax lien can, and usually will, trump a prior perfected secured party. In addition, there are lots of fake lien creditors who seek to impose rights against you and your collateral that they do not have. It is important that one understands their own rights in order to effectively deal with the fake lien creditor.

The UCC in Sec. 9-201(a)(52) defines a lien creditor as: “(A) a creditor that has acquired a lien on the property involved by attachment, levy or the like; (B) an assignee for the benefit of creditors from the time of assignment; (C) a trustee in bankruptcy from the date of the filing of the petition; or (D) a receiver in equity from the time of appointment.” California has a non-uniform version of this section that provides that the filing of a notice of attachment or judgment with the Secretary of State’s office does not constitute a lien creditor. Other states may have non-uniform provisions to address their creditor’s rights laws.

The most common lien creditor priority situation arises when a creditor of the debtor/factor client/borrower (collectively the “factor client”) goes to court to enforce a claim and obtains a judgment or a prejudgment remedy, like a writ of attachment. This now gives the creditor the opportunity to become a lien creditor by initiating a levy. Most typically, this would be the creditor levying on the factor to obtain any funds that may be held for the factor client, or levying on other assets that constitutes your collateral. This type of enforcement will then kick in what is known as the 45-Day Rule. Once the lien creditor levies, under UCC Sec. 9-323, you have 45 days after knowledge of the lien creditor’s levy to make advances and still be senior. However, on day 46, your advances and the newly acquired collateral to secure your advances, will be junior in priority. This section contains two exceptions. The first exception applies to secured parties who lend money pursuant to a committed financing facility. This type of facility does not apply to factors, who always advance at their discretion. The second exception applies to the factoring industry. This exception provides that the priority rules do not apply to those who purchase accounts, which is what factors do. However, it is not advisable to rely upon this exception. First, many factoring deals are recourse deals, where the factor client assumes all risks relating to the account debtor’s failure to pay. Since most courts treat full recourse factoring transactions as loans, one should never rely on this exception. Even in an old school non-recourse factoring

Steven N. Kurtz, Esq., has represented factors, banks, and asset based lenders on a continuous basis since 1987, and he is the Co-general Counsel to the IFA. A founding partner of Levinson Arshonsky & Kurtz, with offices in California and Oklahoma, he practices in the areas of commercial law, insolvency, workouts, loan documentation and trade finance, in both transactions and litigation matters. He can be reached by phone at 818-382-3434 or by email at skurtz@laklawyers.com.
deal, which still contains rights to recourse the purchased account back to the factor client, courts have sometimes gotten hung up on recourse rights, confuse what this really means, and refuse to treat the transaction as a true sale. Therefore, the best course of action when you are dealing with a lien creditor is to stop your funding when you learn about the levy. You should also contact your counsel because there may be things that need to be done to get your collateral out of the hands of the lien creditor.

Closely related to a UCC lien creditor is the fake lien creditor. A fake lien creditor is typically a creditor who has obtained a judgment or prejudgment remedy. The fake lien creditor then does a lien search and writes a letter or e-mail to the factor and attempts to levy on the factor’s priority collateral without judicial process. The fake lien creditor has, for years, been a common trick in the garment industry in Southern California, where there are lots of factoring transactions. The fake lien creditor trick has since caught on with the merchant advance industry and has taken a new twist. There are several unscrupulous merchant advance companies who look for borrowers who are already with a factor. The reason for this is because merchant cash advance lenders like to do business with a borrower who has factored its accounts since there is typically money in the bank accounts, which are the proceeds of the factor’s advances, when the merchant cash advance company debits the deposit accounts for repayment. Because the underwriting criteria for many unscrupulous merchant cash advance lenders are an e-mail address and a pulse, the default rate is high. Typically, the merchant cash advance lender will send out a set of discovery demands and pretend that they can force the factor to fly across the country to sit for a deposition in New York to aid the merchant cash advance lender in its collection efforts. The bottom line is that if you receive anything that purports to be a levy on your collateral that is not officially served, then it’s generally a fake lien creditor and can be ignored. With respect to the redirection demand that some merchant cash advance lenders have started to use, if you are in a senior position, you need not comply with the demand. However, the service rules for levies in each jurisdiction are unique and if you receive something that purports to be a demand, or a redirection letter from a merchant cash advance lender, then you should always consult with your counsel to confirm that you can indeed ignore the demand. It is also recommended that everyone start using language in the financing statements that lets the world know that your documents prohibit granting junior liens. That’s an effective tool against the unscrupulous merchant cash advance lenders, when you respond to their demands.

Another predator is the IRS. While the IRS rules and procedures for obtaining and enforcing a tax lien are beyond the scope of this article, once the unpaid tax bill has risen to an assessment by the IRS, the IRS obtains a lien against all of the factor client’s assets. A big source of confusion is the difference between the IRS 45-Day Rule and the UCC 45-Day Rule. The IRS 45-Day Rule is basically as follows: You will have priority on your existing collateral calculated at the time you learned of the IRS levy or 45 days after the IRS levies, whichever occurs first. That means that the instant you learn about the IRS levy, you must stop funding because if you don’t, your advances send out a set of discovery demands and pretend that they can force the factor to fly across the country to sit for a deposition in New York to aid the merchant cash advance lender in its collection efforts. The bottom line is that if you receive anything that purports to be a levy on your collateral that is not officially served, then it’s generally a fake lien creditor and can be ignored. With respect to the redirection demand that some merchant cash advance lenders have started to use, if you are in a senior position, you need not comply with the demand. However, the service rules for levies in each jurisdiction are unique and if you receive something that purports to be a demand, or a redirection letter from a merchant cash advance lender, then you should always consult with your counsel to confirm that you can indeed ignore the demand. It is also recommended that everyone start using language in the financing statements that lets the world know that your documents prohibit granting junior liens. That’s an effective tool against the unscrupulous merchant cash advance lenders, when you respond to their demands.
and the new collateral which secures your transaction will be junior to the IRS. State tax authorities often initiate levies to enforce their rights. Many state tax priority rules track the IRS rules. However, many do not. Some, like California, will automatically jump ahead of the secured party upon levy. Therefore, with state tax levies, you should treat it just like the IRS, assume the worst, and immediately stop funding.

A bankruptcy trustee and assignee for the benefit of creditors are also treated as lien creditors under the UCC. A bankruptcy trustee is either a chapter 11 debtor in possession who is vested with the powers of a trustee or an actual court appointed trustee, with a chapter 7 trustee being the most common lien creditor. An assignee for the benefit of the creditors, is very similar to a bankruptcy trustee. Her job is to administer the assignment estate by liquidating its assets or recovering claims—similar to a chapter 7 liquidation, but it’s under state law. The bankruptcy trustee and assignee for the benefit of creditors are lumped together for lien creditor purposes, because each of them, once appointed, have the right to undo a lien which was not properly perfected. Both persons will take advantage of UCC 9-317, which provides, to the effect, that a lien creditor prevails over a secured party whose interest is not perfected at the time the lien creditor came into existence. The key to avoiding this problem is to have well drafted agreements, file the financing statement in the debtor’s exact name in the state where it is organized, do a search after the filing to reflect your lien of record, and docket when your lien expires. Your financing statement should say: “All Assets. Pursuant to an agreement, the debtor has agreed not to further encumber the collateral or obtain additional financing without our consent. The secured party reserves all remedies against anyone who violates our rights”. This prevents the common mistake that the financing statement drafter does not pick up all of your collateral, and puts the merchant cash advance lenders on notice that you do not consent to additional liens or credit without your permission. Some forms of collateral require perfection outside the UCC, such as aircraft, motor vehicles, and registered copyrights. Some collateral requires control, like deposit accounts. When dealing with collateral outside of goods, equipment, inventory, and accounts, it’s best to get your counsel involved so as not to have a lien creditor priority problem later.

A receiver also is considered a lien creditor, who, by virtue of the UCC, can contest an unperfected lien, just like a bankruptcy trustee or an assignee for the benefit of creditors. Receivers are often appointed to enforce default rights, such as a judgment. These types of receivers typically operate with an order that puts her in possession of the factor client, appoints a receivership estate consisting of the factor client’s assets, and puts the receiver in control of the estate. From there, the receiver often tries to collect from your account debtors. The priority rules for this are set out in UCC Sec. 9-323. At best, the receiver has that 45-day window where your advances will be senior to the receiver’s claims. A receiver may argue that your factor client no longer has the authority to request advances once the receiver has been appointed and the debtor should not be factoring. This argument depends on the order appointing the receiver and what the receiver is actually doing. However, the safer rule is to stop advances once the receiver is appointed.

The best way to combat the lien creditor and the other predators is to get the fundamentals right in the beginning. Well-drafted agreements and proper filing of the financing statement wins most of your battles, or sets you up to win later. When dealing with exotic collateral, you should consult your counsel. Another preemptive measure is to utilize the service of a reputable UCC filing and search company. Most of the good firms in this field are able to monitor your factor clients and will alert you to an adverse filing. It’s better to have this information in the beginning so you can immediately address the problem. The service price is reasonable enough that it can be charged into the deal, or can be absorbed as a necessary cost of business, without eating into your profits. While the priority rules vary depending on the situation, the opposing creditor, and your deal, the safest and easiest way to handle the problem is to immediately stop funding. Often deals can be reached where the lien creditor/predator can be paid over time and, in exchange, subordinates to your lien and other rights. So, what at first looks like a problem, can now be a new business opportunity which puts your rights in a better position. With respect to the tension between the senior secured creditor and junior secured creditor, that will be the subject of another article to be published soon. •
Is Factoring Right for All Businesses?

So many authors, including myself, have written about the benefits of invoice factoring, explaining how we help businesses in need of working capital. Just type something like “benefits of invoice factoring” into your favorite search engine and you will find pages of articles telling you how factoring works and why it is the best solution for your business.

As the owner of a factoring company, I can definitely say that factoring is an extremely useful tool to help businesses grow by unlocking cash in the form of an account receivable. But is factoring a one fit all tool for all businesses to achieve growth?

As a featured speaker and panelist at small business workshops over the last several years, I’m fortunate to be given the opportunity to speak directly to business owners. Typically, when presenting at these workshops I am joined by a traditional banker and a lending specialist from the Small Business Administration. As the person representing the factoring industry, they usually give me the coveted title of “Alternative Lender”. We are each given approximately thirty to forty five minutes to present to the group on how our industry can help them with their business challenges. When it comes time for me to present, I explain that factors are not lenders but rather purchasers of invoices. It can be confusing since many factors charge on a time-based fee, and in the case of recourse factors, the invoice is required to be repurchased after a certain amount of days outstanding.

One the first comments I usually get from business owners is that they only like to fund their customers who are slow payers. I always caution that factoring companies are not collection agencies and most prefer to stay away from slow-paying customers for several reasons. Let’s assume your client has just given you a $10,000 invoice with one of her slow payers. For simplicity purposes we will assume the factor has advanced 90% and will be charging a 3% fee for every thirty days outstanding. We will also assume that the payer of the invoice usually takes 120 days to pay. So let’s do the math—you as the factor have advanced 90% on $10,000 leaving you with a $1,000 reserve. If the invoice has gone 120 days outstanding, that equates to a $1,200 fee (10,000 x 3% x 4). If you only have $1,000 in reserve and are owed $1,200, then you are upside down by $200 on this transaction. There are remedies in a situation like this, such as withholding advances on future invoices or deducting rebates from other invoices. Another possible solution can be to lower the advance, allowing for a larger reserve on future invoices.

However, our position for slow-paying account debtors has always been to question why it takes them so long to pay. Is the payer so financially unstable that they need to hold on to their own cash? Is the problem with your client, where they are not properly billing even though the invoices were verified? It’s kind of ironic that experience has taught us that some of the most financially sound corporations are notorious slow payers. With large companies, there is usually a myriad of red tape they need to go through to get a payment approved. Fortunately, many of these larger payers now utilize online account payable systems where we have the ability to simply log into the system.

DON D’AMBROSIO is the president of Oxygen Funding, Inc., an invoice factoring company located in Lake Forest, California. Don has over 25 years experience working in the commercial and residential finance industries. He previously served as Controller of a commercial insurance agency and as Chief Financial Officer of a publicly traded mortgage company. He can be reached at 949-305-9300 or don.dambrosio@oxygenfunding.com.
see the approval and date the invoice will be paid.

Another case where factoring does not work is when the client refuses to allow you any contact with his customer. I look at this situation as more of a common objection. For all of you new factors, I highly recommend that you get a signed notice of assignment which includes signatures from both the client and the account debtor. A "Notice of Assignment" is generally a written instruction to the client’s customer that the client’s accounts receivable have been assigned and is payable to the factor. This document protects the factor in the event a payment is accidentally sent to the client instead of the factor. Even if the client skips off with your money, this document ensures you are still owed the funds from the client’s customer. Hopefully, you will never have to enforce this notice but it imperative you have it as part of your requirements before funding. Also, another thought to keep in mind is how will you verify your client’s invoices if you have no contact with payer? Sure, you can skip some steps and do what some people in the industry call non-notification factoring. For our money that is out on the street, we prefer to take every step that helps to minimize the risk in any way.

These are just a few examples where I feel certain situations are not the right fit for factoring. At many of our workshops, the businesses owners cannot factor with us simply due to the fact they are new and haven’t invoiced any clients. At this point, I tell them to be proactive and always try to remain one step ahead of the game in managing their business. Now if I can only figure out a way for them to give me a cooler title than alternative lender.
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