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This has been an extremely busy and productive year at the IFA, AFA and within the Factoring Industry.

Some of the things that have occurred since last year’s conference are:

• The IFA has released a new website. We’ve kept all of the features that have kept the IFA website useful to our members but have given it an up-to-date look.

• We have rebranded the IFA with a new logo.

• We have released the IFA Legal Compendium. This is the first ever compendium for the Factoring industry and covers how legal issues that concern factors vary from State to State. The topics covered are:
  • Assignment of Claims Act / State Government Entity Assignments
  • State Tax Liens
  • Liability and Penalties for Unauthorized Filing of Financing Statement
  • Enforcement of Judgment Liens
  • Confessions of Judgement
  • State Sales Tax Liability
  • Lending License

We have just released the IFA’s study guide for the factoring industry, entitled “Factoring: A Guide to Account Management”. It is not specifically designed around the CAEF exam, but rather meant to assist Account Executives as they brush up on their Factoring knowledge in preparation to sit for their certification. Sections in the guide include:

• Factoring Terminology
• Is it Factoring or a Loan?
• The Factoring Transaction
• Complementary Products

• The Factoring Process
• Client
• Credit
• Portfolio Management
• Loss Prevention

We are updating the CAEF exam which we are planning to release later on this year. In order to keep the exam fresh and up to date with changes to best practices in the industry, this is something that will be done on a regular basis.

The IFA continues to grow. This year we have added over 60 new members, bringing the number of IFA members to over 450. Member requirements have stayed the same in that members must be either a Factor, Asset Based Lender or PO Finance company.

We will be offering a variety of training courses, all of which are designed to propel you into the future. The upcoming courses are:

June 18-19—The Law & Business of Factoring
June 21-22—Account Executive / Loan Officer Training Course
July 12-13—Advanced Underwriting for Specialty Finance Products
September 13-14—Transportation Factoring Meeting
October 15-16—Small Factors Meeting
October 18-19—Think Ahead or be Left Behind
October 25-26—Construction Factoring Training Course
January 23-25—2019 President & Senior Executives Meeting

We held a record number of webinars last year. These have been very well received as an excellent method to discuss specific factoring issues.

The IFA community has seen many interesting and worthwhile discussions.

The IFA submitted an Amicus Brief in which we saw a favorable outcome. You can read about the case on page 16.

The AFA continues to support the Factoring industry through our trips to Washington, D.C. to educate law and policymakers on the value of Factors to the American economy. We are also continuing to work with specific Senators and Congressman who have indicated they will support the Factoring sector. Although we cannot predict the outcome, the AFA is working with California lawmakers on proposed legislation regarding regulatory disclosure. You can read more about the AFA’s work on page 28.

This year’s Annual Conference will be biggest and best yet. As of the time of writing, registrations are running ahead of all previous years events. With over 60 speakers and more networking time than ever before, this year’s event will again show why the IFA Annual Conference is considered to be the “Must Attend Event of the Year” for all Factors and Asset Based Lenders.

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

Bert Goldberg
The International Factoring Association (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.

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.

INDUSTRY NEWS

Interstate Capital Corporation has Entered into a Definitive Agreement to be Acquired by Triumph Business Capital

Interstate Capital Corporation (“Interstate Capital”), entered into a definitive agreement to sell its factoring assets to Dallas, TX-based Advance Business Capital d/b/a Triumph Business Capital (“Triumph”), a subsidiary of TBK Bank. TBK Bank is a wholly owned subsidiary of Triumph Bancorp, Inc. (NASDAQ: TBK). The acquisition will provide Interstate Capital with access to a competitive funding structure and a broader suite of products and services.

Far West Capital is Named one of the 2018 Best Companies to Work for in Texas

Far West Capital was named as one of the 2018 Best Companies to Work for in Texas. The awards program was created in 2006 and is a project of Texas Monthly, the Texas Association of Business (TAB), Texas SHRM and Best Companies Group.

This statewide survey and awards program was designed to identify, recognize and honor the best places of employment in Texas, benefiting the state's economy, workforce and businesses. The 2018 Best Companies to Work for in Texas list is made up of 100 companies. Far West Capital has been recognized as #39 on the list.

Vice President of Debtor Credit at Crestmark Bank, Iain Charles Stewart Michie Dies

Iain Charles Stewart Michie, age 79 of Elkmont, AL passed away on Friday, April 6, 2018 at his home.

Mr. Michie is survived by his wife, Shannon Michie; children, Brenda Ann Hock (Jim), Iain Stewart Michie (Christie), Sean Barber Michie (Nicole) and Leigh Barber Michie; grandchildren, Brittany Lowery (John Michael), Jackson Scarlett, Duncan Michie, Claire Michie, Finn Michie, Iain Michie and Ryan Michie; great-grandchildren, Lucas Hock and Elissa Lowery; brother, Ernest Michie (Sybil); sister-in-law, Staci Scarlett and granddaughter-in-law, Leslie Hock.

Magnolia Financial Expands With Opening of Coastal Georgia & North Florida Sales Office

Magnolia Financial announced the opening of a regional sales office in Brunswick, GA to expand its presence in the dynamic Coastal Georgia and North Florida markets.

The Spartanburg-based company also announced it has hired Mike Parrish to head its new office. A longtime commercial finance industry executive, Mike was most recently in Commercial Real Estate. He has held various business development positions for both regional banks and independent Factoring / Asset-Based Lending organizations. Mike is a member of the Commercial Finance Association, International Factoring Association and the Risk Management Association.
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Hercules Brings Gibraltar Business Capital into the Fold
In early March, Hercules Capital announced that it was entering in the commercial finance sector through the strategic acquisition of all of the outstanding equity of Gibraltar Business Capital. As part of the transaction, Gibraltar will become a portfolio company of Hercules, continuing to operate as an independent senior secured asset-based lender under the Gibraltar Business Capital brand.

Founder of Vertex Financial, Craig Otis Canon, Dies
Craig Otis Canon died on March 12th after a long, difficult struggle with cancer.

He is survived by his loving wife, Judy; his son and daughter-in-law, Scott and Mary Elizabeth Canon; his daughter and son-in-law, Kit and Karl Willock and his five wonderful grandchildren: Katie, Elizabeth and Rett Canon, Virginia Bertrand and Kay Willock.

Big Shoulders Capital Principals Complete Sale of Anderson Manufacturing
The principals of Big Shoulders Capital sold Anderson Manufacturing in Bristol, Wisconsin after purchasing the firm last year and investing new capital to stabilize the business.

David Muslin and Todd DiBenedetto negotiated the sale of the specialty fastener business to a multinational metals company based in Switzerland, which has a strong presence in the automotive market.

INDUSTRY TRANSACTIONS
Loeb Term Solutions Finances $10 Million Dollars
Loeb Term Solutions financed $10,000,000 dollars’ worth of industrial machinery and equipment helping 3 more companies. The financing is helping companies in Specialty Freight & Logistics, Energy Services, and Contract Manufacturing to expand their businesses in order to meet the demands of their respective industries.

Rosenthal Provides $1 Million Purchase Order Finance Facility for International Branded Accessories Company
Rosenthal & Rosenthal, Inc., announced the completion of a recent purchase order finance facility to support the production financing requirements of a UK-based accessories company with operations in New York. Rosenthal’s $1 million purchase order finance facility allowed the client to address its supply chain financing requirements in connection with the acquisition of an iconic brand of outdoor accessories.

Big Shoulders Capital Provides $1.5 Million Term Loan to Railroad Contractor
Big Shoulders Capital provided a $1.5 Million senior secured term loan to refinance and fund working capital to a railroad contractor with more than 90 employees.

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Account Executive & Loan Officer Training

August 14
Summer Gathering Golf Tournament
Angus Glenn

September 11
8:30am-11:00am
Generating Business in Today’s New World

October 9
Lunch
Cybersecurity and Your Company

November 13
8:30am-11:00am
Legal Panel—Bankruptcy Matters

December 11
End of Year Gathering

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

For more information, call
Oscar Rombolà at (905) 603-6284
or email
orombola@accutraccapital-itc.com.
Visit IFA Canada’s website at
www.FactoringAssociationCanada.com

Azadian Group Hires Israel Pinto to Join Chicago Office
Azadian Group has hired Israel Pinto to join its Chicago office as Business Development Manager. Israel brings a long history of business development in the region, with a skill set rooted in strong relationship and partnership integration. He will be working with regional Senior Vice President, Ryan Heckman, responsible for building out the Midwest Region, covering Greater Chicago, Ohio, Indiana, Michigan, and Wisconsin.

Kelly Collins Joins Seacoast Business Funding as VP Business Development Officer
Kelly brings with her over 30 years of experience within the Factoring and Asset Based Lending industry. She has a high level of expertise and in-depth knowledge of solving complex financial challenges for B2B companies across many industries. Kelly will focus on the Southeastern market.

Lucy Csizmas Joins North Mill Capital
Lucy Csizmas will be a Managing Director of Business Development in Southern California. Lucy spent 10 years at a national asset based lending institution where she was responsible for originating asset based lending and factoring transactions.

Crestmark Promotes Steve Hansen to Senior Vice President
Steve Hansen has been promoted to senior vice president, Western Division sales manager from first vice president. A 30-year veteran in the finance industry, he continues to grow and strengthen Crestmark’s presence in California and along the Pacific coastline.

Gibraltar Business Capital Welcomes Two New Members to the Business Development Team
Gibraltar Business Capital added two veteran specialty finance lenders to their sales team: Elijah Kaplan and Scott Simmons.

Elijah Kaplan—Senior Vice President, Northeast Region
Located in New York, Kaplan is an experienced professional in middle market lending, private equity, and restructuring. He has over 16 years of experience in financing, acquiring, and advising middle-market businesses through leveraged buyouts, acquisitions, recapitalizations, and restructurings.

Scott Simmons—Senior Vice President, Southwest Region
Based in Dallas, Simmons joins Gibraltar with 25 years of experience in building relationships and structuring deals focusing on the lower end of the middle market.

FinTech Veteran Ethan Schwarzbach Joins inFactor To Head inFactorIQ Platform
inFactor Corp announced that Ethan Schwarzbach has joined the company to head up the company’s new inFactorIQ platform. Ethan joins inFactor from Orchard Platform where he most recently served as a Manager on the Business Development team.

The inFactorIQ platform, which debuted at Lendit Fintech USA 2018, on April 9th, in San Francisco, CA, is a technology platform that offers an end-to-end loan servicing, payments processing, borrower verification, and analytics solution for SME loan originators and all associated parties involved in the lifecycle of a loan.

Coordinating with outside providers for North Mill Capital since he joined the company in 2011. He has more than 28 years of asset-based lending experience specializing in field examinations.
I worked with Craig for twenty years. He took such a personal interest in the people in his life. He was so generous in his giving and fair to all. He didn't give us our bonuses all at one time. He gave it two times a year because he wanted to make sure that we had money for Christmas so that we could have a wonderful Christmas and he gave the balance to us in the summertime because he wanted us to be able to take a family vacation. He was real thoughtful like that. I think that was his way of trying to help us not spend it all at one time.

I stayed at Vertex for 20 years, mainly due to him. He truly was like a second dad to me. He not only provided Factoring to our clients but actually really supported them and helped them with their business and helped them make wise business decisions.

He had been that company that had lost its funding, because he was a real estate developer during the 80's in Texas during the savings and loans crisis. Many of them were shut down by the RTC and he had lost his funding in the middle of a project that he was building, a very large commercial project. All the banks pulled out. He finished it, barely, by the skin of his teeth, and was able to sell it.

That experience taught him that good people with the very best of intentions sometimes encounter situations that are very, very difficult, and if they are put under a great deal of stress, they could do stuff that would not be to their best benefit in the long run, and certainly not to their lender's benefit.

So, his philosophy was that you always treat your clients with a great deal of respect and care and you build a relationship with them such that if they had to close their business and could only pay one or two creditors, that they would choose to pay you because you have that type of relationship with them. They care about your well being because you honestly and sincerely care about theirs and you have worked tirelessly to try to help them succeed. It comes back to you two-fold when you treat people, not with what's best for you but what's best for them. Those are the principles that I learned from Craig. It's not just about you making money. He had a servant's heart.

~Debra Zukonik, Chief Credit Officer, BAM Worldwide •

Remembering Craig Canon: Family Man, Mentor, Friend, and Founder of Vertex Financial

Janette Merritt and Debra Zukonik share memories of their business partner and mentor.

(from left to right) Janette Merritt, Craig Canon, Debra Zukonik
Application of Big Data and Technology in Small Business Credit in US

The United States, apart from being the largest economy, is also home to one of the three largest small business populations, the other two being China and India. As economy switched gears from agrarian to industry to services over the last few centuries, the number of small businesses have seen a healthy growth. However, the access to capital for small businesses, the lifeline for any business, has not kept pace, especially in the last ten years post-crisis.

BY SANJAY PHADKE

This comes paradoxically at a time when liquidity with banks is plenty, and total money supply has doubled over the last decade. The explanation to this puzzle lies in increasing regulation and banking consolidation making the economics of administration of small business loans unattractive. Thus, while debt is hard to come by for Small and Medium Businesses (SMBs), or is quite expensive at 10-50% APRs, the US also does not have a small business listing platform where equity capital can be generated for growth like bigger exchanges for big companies. This is a big issue leading to persistence of inequality, which by some measure has gone up a few times in the last few decades. Technology, with its new business models, was supposed to be the panacea for all problems, including this. This article summarizes the challenges and potential solutions using technology for improving small business lending access and cost.

Fundamentally, in services business like financial services, technology helps by digitizing, standardizing and then automatically processing vast quantums of data a lot more efficiently than humans. The problem with technology adoption by SMBs is the diversity of small businesses, which on one
hand include a mom and pop shop selling candies or providing laundry services in a small town, to a small enterprise vendor in a supply chain of a large business making automobiles, or providing communication services in a mid-sized town. The diversity of business types also spawns differences in familiarity with technology such as accounting systems, or online order management, or receiving or making payments online enabling automatic tracking. Each different organization means a different data type and needs a different way of dealing with it. The myriad differences mean that large standardized IT systems are not useful and too expensive. The solution for SMBs is to effectively use technology, like cloud-based pay as you go services with an ability to align with the variety of underlying businesses, and their unique forms and data.

Thus, the problem of small biz financing can be solved for one class of SMBs; the supply chain ones. According to Harvard Business Review, there are 1 million such enterprises. These are important employment generators, providing up to 500 jobs each. The advantage with this group of SMBs is that they would generally use at least basic technology in terms of billing and linked payments. For them, paying for their operational costs is probably most easily done by a cloud-based SaaS service which captures their invoices and provides early payment to the counterparty. This is a very safe credit risk, especially if the trade has been going on for a long time across cycles, evidencing the strength of an ongoing supply chain relationship. Such an approach does not need detailed financial or balance sheet analysis as much as a quick check on industry dynamics. This would take care of Payables/Receivables and would probably be a US $100 billion market by just taking care of early payment or collection of short term cash flows, essentially revenue items. As for financing for capital expenditure, automated credit approval in the US is particularly difficult as there is no filing required by private companies. That makes the process of risk analysis difficult, and as such, growth capital is hard to come by for SMBs, unless they pledge collateral to Asset Backed Lenders, or provide a portion of revenues like MCA loans. The gap in information and trust here makes these loans seriously higher priced, making it nearly impossible for SMBs to scale. This can be addressed by getting access to tax filing, with IRS making APIs available to enable faster information dissemination leading to quicker decisioning. Another approach is creating a plug into the accounting system like Quickbooks or Xero to run a credit score engine, but as the latest experience with social media shows, this needs to be tightly managed in terms of privacy and unauthorised sharing of data.

The other issue for running serious SMB loan portfolios is the high cost of customer acquisition. Historically, it was solved by feet on street, by way of branches of community banks or network of intermediaries. Later, telecalling came up, and then digital origination, but both are not as effective for enterprise customers, unlike with retail consumers. In any case, the cost of running digital campaigns and search optimizations, etc. is not trivial, especially if the value of every conversion is not large, which would be the case for SMBs, where the maximum requirement is small ticket loans. One useful feature here is the referrals, which also improves the honesty of the credit ecosystem. The last challenge for SMB access to capital, apart from information insufficiency, cost, and access, is the ease of use. The clunky legacy technology that is prevalent in large organizations would not work for SMBs. They would need easier web or mobile interfaces, or if possible, the entire transaction flow happening automatically, pretty much in an invisible fashion. The user experience for SMBs needs to be almost like the ease of switching on a light bulb, or the ease with which one can swipe a credit card, oblivious to the myriad processes that happen in the background. They don’t have the time, patience, resources and expertise to fill out detailed forms, especially on a repetitive basis. Thus, the use of one time onboarding, use of emails, etc. are the hallmarks of effective technology uses, apart from other factors mentioned above.

Once the SMBs’ capital gap issue is solved by way of reasonable cost of capital in a digital doorstep fashion, all of it thanks to smart yet invisible technology, the next piece would be the use of big data and AI to make this even more efficient. For those techniques to work, we first need enough data for training algorithms; which may be a simultaneous development along with cracking the SMB capital puzzle.
Rethinking PACA Financing

It’s not often that a factoring case gets the full attention of an appellate court, but that is what happened in a recent decision by the Ninth Circuit Court of Appeals (“9th Circuit”) when it issued an en banc ruling in the case S & H Packing & Sales Co., Inc., et al. v. Tanimura Distributing, Inc., 883 F.3d 797 (9th Cir. 2018) (“S & H Packing Case”).

An en banc ruling by an appellate court is when the entire appellate court, or a large contingent of the judges, conduct a hearing to decide an important issue. In this case, PACA suppliers sued the PACA buyer, Tanimura Distributing, Inc. (who filed bankruptcy) and its factor, Agricap Financial Corporation (“Agricap”) for monies due to the PACA suppliers. The United States District Court for the Central District of California held in favor of Agricap, and in doing so, relied upon the case known as Boulder Fruit Exp. & Heger Organic Farm Sales v. Transportation Factoring, Inc., 251 F.3d 1268 (9th Cir. 2001). The 9th Circuit held in the Boulder Fruit case that a commercially reasonable sale of accounts will defeat a claim by a PACA supplier, who sued the factor for breaching the PACA trust. Although not specifically discussed in the Boulder Fruit decision, it’s important to note that the factoring agreement at issue in that case was a full recourse agreement, meaning that the factor could charge back an unpaid account to the factor client if the account debtor failed to pay for any reason. Many prominent commentators, such as the writers of American Factoring Law, analyzed the Boulder Fruit decision in great detail, and noted that the PACA supplier argued in a reply brief that the full recourse factoring agreement was a disguised loan. The Boulder Fruit Court did not discuss the full recourse nature of the agreement in its published decision, but it is assumed that this issue was subsumed in the ruling. So, getting back to the S & H Packing Case, after the trial court ruled in favor of the factor, the plaintiff appealed to the 9th Circuit. The initial panel, consisting of three judges, held in favor of the factor and said it had to come to the decision because the Boulder Fruit case was binding on the court. (S & H Packing & Sales Co., Inc., et al. v. Tanimura Distributing, Inc., 850 F.3d 446 (9th Cir. 2017).) The majority decision in this initial panel, however noted that other appellate courts did not follow the 9th Circuit’s line of reasoning and suggested that an en banc panel of the 9th Circuit hear the case and reverse the decision. The plaintiffs, of course, asked for an en banc hearing, and the request was granted.

Before further analyzing the en banc ruling of the 9th Circuit, it is important to briefly understand how PACA law affects the factoring and lending industries. PACA stands for the Perishable Agricultural Commodities Act. It was initially enacted in 1930 and protects those who deal in fresh fruits and vegetables and cherries packed in brine. To obtain PACA protection, the supplier must be registered with the Department of Agriculture and use the magic PACA language in its invoices. This depression era legislation was designed to protect family farmers and small businesses. PACA was later amended in 1984 to provide trust protections for PACA sellers. PACA ostensibly creates a floating trust in favor of the PACA supplier. The PACA buyer holds the PACA trust assets and its proceeds, in trust for the benefit of the PACA supplier. The buyer is required to pay the...
The en banc panel of the 9th Circuit in S & H Packing heard oral argument of the case on September 20, 2017 and issued its decision on February 22, 2018. The majority decision ruled that in determining whether or not a third party factor is liable for violating the PACA trust for collecting on accounts receivable, it first must be determined if the transaction was a true sale. Then, if the court determines the transaction is a true sale, the next analysis is whether or not the sale was on commercially reasonable terms. The majority then sent the case back to the trial court for a ruling in accordance with the decision. The majority decision examined the policy behind PACA law and determined that in balancing the equities between a financier and a PACA supplier or else the PACA buyer breaches the PACA trust. This trust exists against all assets of the buyer’s business and is in favor of PACA suppliers dating back to when the buyer first engaged in the business of purchasing PACA products. This trust has been applied to all assets of the PACA buyer and exists for the entire universe of PACA suppliers, no matter when they started doing business with the PACA buyer. PACA creates liability against all people who control payment and is more powerful than a personal guaranty. PACA liability is not dischargeable in bankruptcy. The PACA trust has been applied to impose liability against a lender or factor who collect accounts receivable when the PACA suppliers have gone unpaid. Lenders and factors have been treated as transferees of PACA trust assets and the only defense is whether or not the third party lender/factor is a buyer in good faith. For factors, this required in almost all instances (except for the 9th Circuit, until recently), that the factor show that the purchasing of accounts under the factoring agreement was a true sale and that the factor paid reasonable value for the purchased accounts. In practice, this meant that the factor would have to prove that it purchased the accounts in a non-recourse situation, where it assumed the economic risk of the account debtor’s financial inability to pay, advanced at least 80% of the purchased accounts, and rebated a portion of the collected funds back to the factor client upon receipt of the account debtor’s payment. Courts considering PACA trust liability cases against factors also struggled with issues of quality recourse and situations where the factor could charge back unpaid accounts for things like disputes. This led to some bad court rulings that do not comport with the business realities of non-recourse factoring.
supplier, that Congress determined that the PACA supplier deserved special protection. The majority panel discussed the fiduciary duties of a PACA trustee (the PACA buyer) and discussed that a third person buyer of the PACA trust assets, in this case, the accounts which constitute the proceeds of the PACA inventory, is only liable if it paid fair value for the accounts. Therefore, the analysis of whether or not Agricap’s factoring agreement is a true sale was paramount. The main consideration, but not the only consideration, was the risk the factor took with respect to the account debtor’s financial inability to pay. This issue was to be determined in the remand back to the trial court.

The three judges on the dissent saw things completely different than the majority, who based their decision in part because they did not want to be different than other circuit courts. The dissent analyzed PACA and fiduciary duty law. The dissent felt that it was often beneficial for a PACA fiduciary (buyer of goods) to obtain financing and grant a security interest in the assets, because it provides the PACA fiduciary with working capital. It also felt that the majority decision created trust law that does not exist in PACA law, and criticized other decisions which imposed the PACA trust as not well reasoned. The dissent did not believe that PACA provided the super powerful trust that other court decisions have imposed. It went on to point out that Congress could have granted the PACA supplier a first priority lien that attached against the PACA assets, but chose not to. Because they felt that there was no lien granted under the PACA statutes, and the PACA trust did not glom onto all the PACA assets following the transfer, it did not matter whether the financing transaction was a loan or true sale. The dissent also mentioned that the majority decision will chill financing in the agricultural industry and make it prohibitively expensive. This point of view has not been previously articulated at this level of detail in any recent published PACA decision.

The dissenting opinion was one of the few decisions that have really dug deep into the PACA trust law issue and critically picked it apart. The decision also pointed out flaws in other circuit court decisions and can possibly be used to critically analyze and take down the PACA trust doctrine as it applies to the banking and financing industries. One prominent legal commentator predicts that the U.S. Supreme Court will decide to hear the case and issue a reversal.

However, unless the law changes, PACA financing comes with the risk that the factor client/borrower’s vendors will not be paid and will sue the lender/ factor for interfering with the PACA trust. “Unless the law changes, PACA financing comes with the risk that the factor client/borrower’s vendors will not be paid and will sue the lender/factor for interfering with the PACA trust.”

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The dissenting opinion was one of the few decisions that have really dug deep into the PACA trust law issue and critically picked it apart. The decision also pointed out flaws in other circuit court decisions and can possibly be used to critically analyze and take down the PACA trust doctrine as it applies to the banking and financing industries. One prominent legal commentator predicts that the U.S. Supreme Court will decide to hear the case and issue a reversal.

However, unless the law changes, PACA financing comes with the risk that the factor client/borrower’s vendors will not be paid and will sue the lender/factor for interfering with the PACA trust. If one is to engage in this type of financing, the deal should be set up as a traditional, old line, non-recourse factoring deal, where the factor assumes the economic risk of the account debtor’s financial inability to pay. This should be spelled out in no uncertain terms. Once the account debtor pays, a portion of the purchase price should be rebated back to the factor client provided there is no default. Special attention should also be paid to the ability to charge back unpaid accounts to the client. The chargeback rights should be limited to disputes, fraud and bad violations of the factoring agreement. For those that have reviewed some of the contracts the MCA lenders have started to use, where they try to structure their loans as true sales, it’s probably not a bad idea to borrow some concepts from some of the better written MCA agreements. Also, one should keep a watch on the accounts payables and obtain regular reports and payable agings, in order to monitor the factor client’s payments to its PACA suppliers. If the factor client is late on paying its PACA suppliers, financing must stop, or other satisfactory arrangements, approved by knowledgeable counsel, should be made.

Hopefully, the U.S. Supreme Court will decide to hear this case and reverse. The dissent was so well written that there’s a chance this will happen. The time has come to critically review the PACA trust laws. Most of the PACA suppliers are not the small family farms that were protected in the Great Depression-era legislation. Rather, the PACA beneficiaries are sophisticated business people, with full access to all technology used in making credit decisions, who take advantage of an antiquated body of law, which is really a form of welfare. Agricultural financing is very expensive to obtain and rightfully so. Perhaps a change in this law will come soon.
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A small or medium sized business that is awarded a contract to sell goods and/or perform services to a state or municipal governmental unit sends you an application to factor its accounts in order to obtain working capital financing in connection with the performance of a government contract.

BY JARED ULLMAN

Based on a recent appellate decision² that affirmed a trial court Final Judgment in favor of our law firm’s client, United Capital Funding Corp.³ All factors who do notification factoring can sleep better and now have expanded opportunities to do business in this niche.
The unique issues that were addressed in the United Capital Funding case were:

1. Does the Uniform Commercial Code ("UCC"), specifically, Section 9-406(a), control the obligation of a state governmental unit to honor a notice of assignment?

2. Does the doctrine of sovereign immunity prevent a factor from filing a lawsuit against a state governmental unit in order to seek to collect accounts that the government wrongfully paid as a result of its decision to dishonor a duly delivered and proper notice of assignment?

Both of these issues were analyzed and decided by the Second District Court of Appeal of Florida, in a case styled Florida Department of Transportation ("FDOT"), appellant v. United Capital Funding Corp. ("United"), appellee (the "United Case"). The United Case is the first court in the country to expressly hold that state governmental units are subject to and must comply with Section 9-406 of the UCC. In addition, a decision that was issued by the Supreme Court of Ohio in the case of MP Star Financial, Inc. v. Cleveland State University, 837 N.E.2d 758 (Ohio 2005), which held that 9-406 of the UCC does not apply to governmental units, was flatly rejected.

I. THE PERTINENT FACTS OF THE UNITED CASE.

United entered into a factoring agreement with a company named Arbor One Incorporated ("Arbor"). Arbor was awarded several FDOT contracts to provide highway maintenance services. Arbor assigned its right to receive payment of its accounts to United. These accounts arose from the performance of highway maintenance services for the FDOT in various locations in Florida pursuant to a service agreement. Pursuant to UCC 9-406, enacted in Florida as Fla. Stat. Sec. 679.4061, United issued multiple Notices of Assignment to the FDOT, notifying the FDOT that Arbor assigned its accounts to United and payment was due exclusively to United (the "Notices of Assignment").

Fla. Stat. Sec. 679.4061 (which section has been enacted in a similar, if not identical version by other states), reads in relevant part:

An account debtor [here, FDOT] on an account may discharge its obligation by paying the assignor [here, Arbor] until, but not after, the account debtor [here, FDOT] receives a notification, authenticated by the assignor [here, Arbor] or the assignee [here, United], that the amount due or to become due has been assigned and that payment is to be made to the assignee [here, United]. After receipt of the notification, the account debtor [here, FDOT] may discharge its obligation by paying the assignee [here, United] and may not discharge the obligation by paying the assignor [here, Arbor].

United unilaterally elected to ignore the Notices of Assignment and instead of paying the accounts to United, continued to pay the accounts directly to the assignor, Arbor. After substantial pre-litigation efforts to reach an agreement with the FDOT and have it agreed to pay United, United filed a lawsuit against the FDOT and sought a declaratory judgment seeking a declaration from the Court that:

(a) the FDOT was subject to Fla. Stat. Sec. 679.4061 and, therefore, obligated to pay United all accounts that arose from Arbor’s services to FDOT after receiving the Notice of Assignment, and that the FDOT failed to discharge its obligation on the accounts by paying Arbor, and
(b) the doctrine of sovereign immunity did not exist to enable the FDOT to escape liability after ignoring or otherwise refusing to comply with.

The FDOT moved to dismiss the Complaint, and subsequently asserted twenty-eight (28) affirmative defenses to United’s Complaint! The trial court judge (Honorable Jack Day) granted summary judgment in favor of United and against the FDOT, holding, among other things, that: the FDOT’s payment of the accounts to Arbor failed to discharge its obligation on the accounts after receiving United’s Notices of Assignment, that UCC section 9-406, as enacted in Florida, governed United’s claim against the FDOT so that the FDOT was obligated to honor the Notice of Assignment, and the FDOT waived, or was otherwise not entitled to assert, the doctrine of sovereign immunity as a defense to payment of the accounts owed to United and judgment was entered in favor of United. The FDOT appealed the lower trial court’s judgment against the FDOT.

II. THE ISSUES CONSIDERED BY THE APPELLATE COURT.

The first issue was whether Article 9 of the UCC generally, and Fla. Stat. Sec. 679.4061, in particular, applies to a state governmental unit that is an account debtor (as opposed to being a borrower/debtor).

The FDOT argued in its appellate brief, based on section 9-109 of the UCC, enacted in Florida as Fla. Stat. Sec. 679.1091(4)(n), that as a state agency, it was not governed by Article 9 of the UCC. That section states, in relevant part, that Article 9 does not apply to “Any transfer by a government or governmental unit,” which is referred to as the “government-transfer exception” to Article 9 of the UCC.

The FDOT’s position was that it was not required to honor United’s Notices of Assignment because payments on the accounts at issue involved transfers of money by a governmental unit (i.e., the FDOT).
and the so-called government-transfer exception prevented section 679.4061(1) from placing any restrictions on how the FDOT may discharge its contractual obligation to make payment on the accounts. The FDOT sought to rely on the Supreme Court of Ohio case styled MP Star Financial, Inc. v. Cleveland State University (the “MP Star Case”). In the MP Star Case, the Court held that Ohio’s analog version of Section 9-406 of the UCC does not apply to governmental units based on the “government transfer exception.”

In response to the FDOT’s “government-transfer exception” defense, as counsel to United we argued that the “government-transfer exception” could only be properly construed to apply in those limited circumstances where a government unit, itself, borrows money and in exchange grants a security interest or lien in its assets, and does not apply to the government’s duty to pay accounts after receiving a notice of assignment.

The Florida Court of Appeals in the United case expressly rejected the decision in the MP Star Case, and ruled that “the government-transfer exception created by section 679.1091(4)(n), by its own terms, is not implicated by the mere fact that the government happens to be an account debtor required to make a payment on an account, chattel paper, or payment intangible that has been assigned. If a government actor sold such assets, that would be a different story. Article 9 generally applies to such sales, and the sale of an account, chattel paper, or payment intangible by a governmental body would be a transfer of that asset, which would be a transfer by a governmental unit within the meaning of section 679.1091(4)(n).”

Based on the appellate court’s decision in the United Case, pursuant to UCC Section 9-406, as enacted in Florida, once a notice of assignment is delivered to a state agency, it is as effective against a state governmental unit as it is against a private party and, therefore, obligates a governmental unit account debtor to honor an effective notice of assignment. The FDOT’s failure to do so resulted in its failure to discharge its obligation on the accounts by paying Arbor, and remained liable to United.

The second issue was whether sovereign immunity barred or precluded a lawsuit by United, as assignee, against the FDOT when the FDOT ignored or otherwise failed to honor the duly delivered Notices of Assignment.

The FDOT argued that regardless of whether the FDOT is governed by 9-406, as enacted in Florida, the doctrine of sovereign immunity precluded United’s lawsuit against the FDOT and prevented the FDOT from having to pay United any of the accounts that the FDOT paid to Arbor, the assignor. The reason given was simple: the FDOT never itself, directly entered into a contract with United, it was merely an assignee.

In response to the FDOT’s argument, on behalf of United, our firm took the position that the FDOT expressly waived sovereign immunity as a defense to payment by virtue of it having entered into the contracts between Arbor and the FDOT. We argued that the doctrine of sovereign immunity did not apply to United, as an assignee of Arbor’s express contractual right to receive payment on all accounts arising from the contract between Arbor and the FDOT.

The Court of Appeals agreed with United, and held that sovereign immunity did not bar United’s claim and the language of the order is worth repeating, as follows:

Sovereign immunity affords the government a privilege not to be sued without its consent. Our constitution allows the legislature to waive that immunity by general law. Art. 10, § 13, Fla. Const. Here, the legislature has by general law waived the Department’s immunity on contract claims:

Suits at law and in equity may be brought and maintained by and against the department on any contract claim arising from breach of an express provision or an implied covenant of a written agreement. In any such suit, the department and the contractor shall have all of the same rights and obligations as a private person under a like contract. The question is whether a claim by an assignee of contractual accounts receivable, here, United, based on the FDOT’s failure to pay as required by the contract falls outside of this waiver. We think that it does not.

As such, where the government has entered into an express written contract that it is statutorily authorized to enter, sovereign immunity cannot protect it from the same contract rules that govern the performance of the express written contract obligations of a private party to a contract.”
a private party to a contract... Section 679.4061(1)’s provision governing discharge upon assignment establishes a rule of contract performance: it determines how a party to a contract may discharge an obligation to make payment on an account created by virtue of that contract—i.e., how it can perform its contractual obligation to pay after the party has been notified the account has been assigned.

The Florida Court of Appeals ruled in favor of United on both of the above issues and provided important and necessary legal clarity for any factor (or asset-based notification financing lenders) who wish to purchase or lend against accounts owed by state governmental units located in the State of Florida. However, any person who seeks to get paid from a state governmental unit should have a professional carefully evaluate the laws of each specific state in which the governmental accounts are created in order to determine how each such state’s courts have, or may, decide these issues addressed in the United Case. 8

III. ADDITIONAL CONSIDERATIONS FOR FACTORS THAT WISH TO FACTOR STATE GOVERNMENT ACCOUNTS.

In connection with a Factor or asset-based lender’s due diligence as to governmental unit account debtors, the Factor or asset-based lender should consider not only those addressed in this article but additional issues that are either legally, or as a practical matter, important; such as, but not limited to: Does the procurement contract (or any applicable state laws) between a governmental unit and making payments to the governmental unit that entered into the contract?

• Prevent the contracting party from assigning rights under the contract to any other person, with or without the government’s express consent (including the right to receive payment on the accounts)?

• Require that the party seeking to collect payments from the government first exhaust certain administrative remedies, including submitting claims to a state arbitration board for an arbitration proceeding to determine the dispute?

• Establish procedures and time-frames for submitting disputes to a state governmental body as a condition to enforcing rights including commencing a lawsuit?

• Provide that any changes in connection with goods and/or services provided to the government are ineffective unless approved by a government contracting officer, in writing?

Factoring government accounts arising from a government contract may be a lucrative niche but does involve unique issues. Factors that wish to take advantage of business opportunities that may exist in this area may seek and perform due diligence at the inception of a factoring deal in order to develop a successful collection strategy if a dispute occurs similar to the situation that arose in the United Case.

1Factoring accounts arising from sales of goods or services from businesses to United States Governmental agencies is beyond the scope of this article.


3The law firm of Ullman & Ullman, P.A. represented United Capital Funding Corp., as counsel, at both the trial and appellate court levels.

4Sovereign immunity is a legal doctrine that affords governments a privilege not to be sued without their consent.

5The International Factoring Association, through its amicus program, filed an amicus brief in the United Case on behalf of the factoring industry, advocating the importance of the Court decision on both legal issues with respect to the factoring industry.

6The Court found that the FDOT qualified as a “governmental unit” within the meaning of section 679.109(4)(n) due to 679.1021(1)(ss) (which defines “governmental unit” to include “a department...or...a state”).

7In the MP Star Case, a vendor to a state university sold its accounts receivable to a factor. The factor provided notice of the assignment to the university, and the university continued paying the original vendor. The factor sued the university asserting that Ohio’s codification of Article 9’s provision governing discharge upon assignment—identical to Florida’s—required that the university pay it rather than the vendor. The university moved to dismiss on the grounds that Ohio’s codification of the government-transfer exception—also identical to Florida’s—precluded the factor’s claim, specifically, holding that Ohio’s analog to section 679.4061(1) does not apply to governmental-account debtors. The trial court dismissed the action, and the intermediate appellate court affirmed. The Florida Court of Appeals in the United Case expressly rejected the Ohio Supreme Court’s holding in the MP Star Case.

8The ability to collect on a judgment obtained against any state governmental unit would be determined by the laws of a particular state. In Florida, for example, courts have developed an enforcement mechanism to enable a party to enforce a judgment against a governmental unit.
Has Your Business Email Been Hacked?

Our company’s email account was hacked; fortunately, we discovered it before any significant damage was done to us, and with only minor damage to one of our clients. This type of email fraud has reached epidemic proportions. Once a fraudster enters your “secure” software, he can read your incoming and outgoing emails and, often, the emails of all the other company employees using your domain. It then becomes easy for the fraudster to try to initiate money transfers from or to your clients or borrowers. They even mimic your writing style to persuasively convince recipients that their phony emails come from you. The emails often include the actual logo used by you or your clients.

Note that under the above circumstances, the party relying on the fraudulent instructions is the loser. Even though the victim was intending to send funds to you and relied on what it thought were valid instructions from you, and even though your email was the one hacked, the other party is the loser.

The fraudster sets up a domain name that looks very similar to yours through Google or some other platform, at a nominal cost. The fraudster will also set up bank accounts by using a bank’s online system, and thus, never actually appears at a branch. Usually, the domain name will have one letter changed, added or omitted.

For example, John@abcstaffing.com to John@abcstaffing.com or mstrange@abcfactors.com to mstange@adcfactors.com. The fraudster then sends an email to those who routinely wire funds to you, telling the recipient that “you” have changed wire instructions and that funds should now be wired to “you at the new account” (i.e. their account). Once the funds are wired to the bogus account, the money is immediately transferred out and the account is closed. The transfers out are very hard to trace as the money is transferred numerous times. The fraudster will tell you that the bank where his regular account is has system problems and cannot accept wires or the fraudster will make up another reason that sounds legit why he needs the money in another account.

Another twist to this scam is where the scammer sends an email to you from an individual or company you know using a different email address such as John <abc270@aol.com>. This is a real email address, but the scammer inserted the name John to make you think that for example it is John from ABC Staffing. John requests the factor or lender to send funds to another bank account, again making excuses why he is using a personal email address and why he needs the funds for Staffing to be sent to a different account.
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Get your back office moving.
Frequently, the iteration and twists used by the scammer includes a whole string of emails going back and forth, with the victim unaware that he is being defrauded.

You can check who registered a domain by going to the web site whois.com and inserting the words after the @ sign. Most domains will give you a number to call for abuse. If you see the domain was registered, for example, by Google, you can call the phone number and they will tell you what info you need to send them. They investigate very quickly and if you send them scans of the fraudulent emails with an explanation, in a few days the domain will no longer be able to be used to send or receive emails. You can check this out by again going to whois.com and entering the bad domain name where you will see if the domain is no longer usable.

If you have been victimized or discovered the fraud before being victimized, you should report this to the FBI and to the bank's security department where the fraudulent account was set up.

I am suggesting that you inform your clients, and their staff as well as your staff:

Never wire funds to any other account that is not the one that you regularly use, no matter what an email requests without verifying it directly with the lender, factor or client by telephone and text messaging that they asked for the wire instructions to be changed. Make sure you use the telephone number you regularly use and not the one on the email, as it could be bogus. You should make sure you recognize the person's voice who you are requesting confirmation from. In addition, you should verify by calling someone else who you know at the company to re-verify the request to change the bank wire instructions.

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Harvey Friedman is the Chief Operating Officer of Lenders Funding, LLC. He has been with Lenders Funding for the last 12 years. Mr. Friedman has over 47 years of experience in factoring and asset based lending. He was the Executive Vice President and Chief Credit Officer at Gibraltar Corporation of America (“GCA”), a wholly owned subsidiary of United Jersey Bank and after retiring from GCA became the Managing Director of Asset Based Lending for Sterling Bank. Harvey can be reached by phone at 757-220-9592 or 757-220-9593 or by email at hfriedman@lendersfunding.com.

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Can You Tell When Someone Is Lying? Probably Not, But Using Controlled Cognitive Engagement (CCE) May Help You From Being Defrauded

BY BRETT HOOD

Factoring is a business built on trust between two parties and there is no better person at exploiting trust than the fraudster. There have been a number of cases litigated involving fraud and factoring. Despite technology and artificial intelligence improving verification of accounts receivables, even the best system cannot fully account for human ingenuity as well as the ability for fraudsters to find and create methods to exploit weaknesses in even the best internal control systems.

The problem with detecting deception in others is that scientific studies have proven that you are not very good at it. By most estimates, you can successfully detect liars at a rate slightly better than chance, even if you have been trained in various techniques to detect deception. In fact, those who have received training in how to detect deception fare only slightly better than those who have received no training, but are significantly more confident in their ability to detect lies.1

In order to improve your lie detection ability, you must first acknowledge that there isn’t a universal verbal or nonverbal behavior that would indicate when someone is lying. While many have claimed that failing to look someone in the eyes when answering a question or touching the nose or mouth while answering questions are clear signs of deception, science has proven this to be incorrect.2 It appears, however, that the key to improving your ability to detect someone else’s lies involves allowing the other person to talk.

In a study performed by Thomas Ormerod and Coral Dando, border officials who utilized a conversation-based screening method caught fake airline passengers 20 times more frequently than border officials who used traditional methods focused on standard interviewing techniques and recognition of nonverbal behaviors.3 The key to the success was
simply allowing the fake passengers to talk. "In contrast to current practice, we propose that security agents should not be trained to identify specific behaviors associated with deception. Instead, agents should work to draw out potential inconsistencies through conversation." The method, Controlled Cognitive Engagement (CCE), embodies six techniques that have been scientifically shown to improve the ability to detect deception; use of evidence, tests of expected knowledge, effective questioning styles, observation of verbal maneuvering, asymmetric cognitive loading, and changes in verbal behavior.5

The CCE method employs a three-step process and is similar to other interviewing and deception detecting techniques known as the cognitive interview technique and statement analysis. The theory behind CCE, as with the cognitive interview technique, is that liars will experience a higher cognitive load (increased mental effort) to avoid having their lies detected, which in turn, will cause verbal and factual inconsistencies. If the interviewer is focused and listening intently, then these verbal and factual inconsistencies can help to determine when someone is purposely avoiding a truthful answer. Statement analysis is similarly based on analyzing the specific words chosen when answering a question.

In the CCE technique, an interviewer should never rely on a set of scripted questions. The method is based on engaging people in normal conversation with the interviewer carefully inserting pertinent questions in the flow of the conversation.

The first stage of CCE involves simple rapport-building questions. For factors, these questions can be as innocuous as "How was the traffic coming in today?" or "How is your family doing?" The purpose behind this stage is for the interviewer to establish normal verbal behaviors, or a baseline.6 By doing this, you hope to recognize changes in speech patterns, choice of words, or length of response.

The second stage of CCE is referred to as the information-gathering stage. Interviewers should ask open-ended questions, just like in the cognitive interview method and statement analysis, designed to gather information about the person and the business. Examples include: "If you could change one thing about your business, what would it be?" or "Tell me a story about one of your best and worst paying customers." Chances are that if a person is going to try to defraud you, he or she will have practiced responses to certain expected questions such as any questions regarding the age of the accounts receivable or bad debt expense. Constructing questions which the fraudster hasn't prepared or foreseen will increase the cognitive load, making it more likely for the fraudster to provide inconsistent details and facts, shorter responses, and fewer pertinent details, especially when you get to the third stage of CCE, which is veracity testing.7

The veracity testing phase involves you asking questions that the business owner should know, based on the answers you received from the information gathering stage. Things to look for in this stage are inconsistencies, gaps in expected knowledge, misalignment with what you already know about the business, and changes in the passenger's verbal behaviors. Potential questions a Factor could ask of clients are "Why do you still maintain a relationship with that client?", "When I asked you for a story about your worst customer, how many customers popped into your head?" or "If you made that change in your business, what would it allow you to do differently?" Questions such as these would be more taxing on the fraudster as opposed to the person who is truly suffering from the maladies they mentioned. This was evidenced by Ormerod and Dando's study. "The use of CCE changed the verbal behavior of deceptive passengers, whose answers became shorter and had less information content by the end of the interview, whereas the answers of genuine passengers did not change."8 A person who is truly invested in their business should be able to offer sensible answers, while the fraudster's answers may not show the same depth or thought because their goal is to separate you from your money.

Much like a magician, the fraudster is hoping that you will focus on only the things they want you to see, rather than digging into the areas that will expose their fraudulent ways. Science has shown that with every lie you tell, the next lie becomes easier. A fraudster has no hesitation lying to you. Using CCE requires you to focus intently on the answers provided by your client, helping you to avoid the sleight of hand deployed by the fraudster. While you will never be able to detect every lie told to you, CCE can improve your chances of detecting genuine conversation as opposed to forced and deceptive conversations. Doing so may mean the difference between losing your investment and keeping your hard-earned money.

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Ibid.

Ibid.

Ibid.
Growing Calls for Regulation

BY GAGE PRICE, President, MP Star Financial, Inc.

As we gather for the Annual International Factoring Association Conference, now is a good time to access the potential threats facing our industry. Many believe that the new Administration reduces the potential for onerous new regulation and, therefore, the AFA can stand down and spend less time in Washington.

Nothing could be further from the truth, and the AFA must continue in its mission to reach out and educate our Members of Congress and make new friends who understand the importance of a vibrant factoring community. I want to share with you two examples of why the AFA is vital in the ongoing battle to protect our industry from becoming unintended collateral damage from burdensome regulation.

The first example is the ongoing implementation of Dodd-Frank. As you may recall, the AFA was formed in response to the Great Recession in 2008-09. At the time the Consumer Financial Protection Board (CFPB) was created, it was tasked with creating regulations to protect consumers. It is only now in 2018, that the CFPB is beginning to implement Section 1071, which is entitled “Small Business Loan Data Collection.” While it is an innocuous sounding name, the fact is that it could add substantial data collection requirements to our factoring industry.

The question now is “Will factors be classed as financial institutions under the regulation?” The CFPB Office of Small Business Lending Markets lists factoring, by name, as being 7 percent of the overall $1.4 trillion Small Business Lending Market. So, we need to be aware of these regulations.

The second area where our industry is facing potential legislative and regulatory threat is at the state level. Recently, in California, Senate Bill 1269 was introduced, and it calls for onerous disclosure requirements on lenders engaged in small business financing. The AFA has reviewed this legislation and is working to see if factoring can be exempted.

The second area where our industry is facing potential legislative and regulatory threat is at the state level. Recently, in California, Senate Bill 1269 was introduced, and it calls for onerous disclosure requirements on lenders engaged in small business financing. The AFA has reviewed this legislation and is working to see if factoring can be exempted.

For decades, California has been the first-mover in new regulations and legislation. It appears that California is moving towards implementing its own regulations, regardless of what happens with the Section 1071 regulations. These are two areas on which the AFA has been concentrating its recent efforts. The AFA has had meetings with its numerous friends in Congress, as well as with the CFPB, regarding...
proposed regulations under Section 1071. SB 1269 was only introduced last month, but the AFA is actively working on following this bill.

That is where you come into the picture. Your generous support over the years has helped the AFA to champion our industry and call attention to issues that directly affect our members. Section 1071 and SB 1269 clearly are threats to Factors and the AFA needs your continued support to respond. Please consider contributing your time and financial support to the AFA so it can continue to support our industry.

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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- White Oak Business Credit, Inc.

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- BAM Worldwide, LLC
- Far West Capital
- Goodman Factors, a division of Independent Bank
- Great Plains Transportation Services, Inc.
- Interstate Capital Corporation
- Millennium Funding
- Phoenix Capital Group, LLC
- Republic Business Credit, LLC
- TAFS, Inc.
- United Capital Funding Corp.

**Gold ($2,500—$5,000)**
- Accord Financial, Inc.
- AmeriFactors Financial Group, LLC
- Assist Financial Services, Inc.
- Bay View Funding
- Commission Express National, Inc.
- Durham Commercial Capital
- Evergreen Working Capital
- FirstLine Funding Group
- FSW Funding
- Lenders Funding, LLC
- Mickey Seeman—Owner, Sunbelt Finance
- PRN Funding
- Prosperity Funding, Inc.
- Riviera Finance, LLC
- SevenOaks Capital Associates, LLC
- SouthStar Capital, LLC
- The Hamilton Group
- Transport Factoring, Inc.

**Silver ($1,000—$2,500)**
- Alleon Capital Partners LLC
- American Funding Solutions LLC
- AmeriSource Funding, Inc.
- AmeriTrust Capital Corp.
- Brookridge Funding
- Business Finance Corporation
- David Pape—Commercial
- Business Funding Corporation
- Commercial Finance Consultants
- Commonwealth Capital, LLC
- Contractors Capital Solutions
- Coral Capital Solutions LLC
- CV Credit Inc.
- Factor King, LLC
- Gateway Commercial Finance
- J.O.B.E. Services, Inc.
- K.W. Receivables
- Kiran Ramasamy—Vayana Network
- Levinson, Arshonsky & Kurtz, LLP
- QC Capital Solutions
- Match Factors, Inc.
- Mazon Associates, Inc.
- Nationwide Capital Funding, Inc.
- Primary Funding Corporation
- Spectrum Commercial Services Company
- Viva Capital Funding LLC
- Xynergy Healthcare Capital LLC

**Bronze ($500—$1,000)**
- Advantage Business Capital
- Business to Business Capital Corp.
- Camel Financial, Inc.
- Cash Flow Resources, LLC
- Concept Financial Group
- Entrepreneur Growth Capital
- Exchange Capital Corporation
- Finance One, Inc.
- Firmco Business Funding
- Greenback Capital
- MarcFunding, LLC
- New Century Financial

**Other (Under $500)**
- FactoringClub
- Hawaii Receivables Management, LLC
- Stonebridge Financial Services, Inc.
- TradeGate Finance, Inc.

As of April 1, 2018
ASSOCIATIONS
The following trade associations offer member pricing for events attended by IFA members:

Beijing Commercial Factoring Association (BCFA)

Colombian Association of Factoring (CAP)

Commercial Factoring Expertise Committee of China (CFEC)

Ecuadorian Factoring Association (ASOFACOR)

FCI

Romanian Factoring Association (RFA)

CERTIFIED EMAIL
RMail
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.

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

CONSULTING
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 Members receive a discount of 10% on their consulting fees and 5% discount on all FactorHelp products in the IFA store.

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.

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Trusted by all of the majors because of the sheer volume of Factor trade and 98% third-party data coverage of active businesses in North America, 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 live bureau and public filing information to provide comprehensive financial risk profiles, all in real time. Our dashboard also provides Factor specific scoring, Factor client risk pools, monitoring, peer benchmarks and comprehensive trade data pack solutions for integration into your enterprise software.

Phone: 212-714-4500

Website: www.credit2b.com

IFA Member Benefits: Join the largest virtual factor community. Receive 10% price discounts for being an IFA member. Complimentary invitations to our hosted events in NYC.

FactorsNetwork
FactorsNetwork provide an online platform where Factors work together to increase their profitability and competitiveness. Members are able to pull Credit Reports free of charge as well as monitor and analyze their portfolio. Transportation Factors benefit from our CarrierMonitoring and ChameleonCatcher programs and their clients love our LoadBoard. You can even use the Sales Tool to help find new clients.

Phone: 435-659-4612

www.factorsnetwork.com

IFA Member Benefits: 33% cost savings for the annual membership fee. It is normally $3 per day, but IFA members will pay $2 per day.

CREDIT CARD PROCESSING
Clarus Merchant Services
Clarus Merchant Services offers a custom program developed specifically for how the Factoring Industry processes their credit card transactions. Our program provides detailed reporting that allows tracking of each invoice and fee transaction for easy account reconciliation with their customers and clients. We work with each member to ensure all processing costs are covered and that they are doing so within the guidelines of MasterCard / Visa. In addition we provide IFA members direct access to their account manager for immediate response and support.

David Powers, Member Relationship Manger
Phone: 540-222-3925, • www.clarusdc.com
Email: dave.powers@clarusdc.com

IFA Member Benefits: Any IFA member that purchases the CardX program will receive a one-time $200 rebate once the member has processed a whole month using the program.

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.

DISASTER RECOVERY SERVICES
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myAgility planning portal to assist in building and maintaining your business continuity plan.
Phone: 866-364-9696 • www.myagilityrec.com
Email: andre.selvin@myagilityrec.com

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

FUNDING
Liquid Capital Corp.
Liquid Capital has been in the Factoring industry since 1999 and entered into a partnership with Next Edge Capital in 2015. This relationship has allowed them to pursue an aggressive growth strategy focused on the following key initiatives:
• The acquisition of A/R portfolios from Factors looking to exit the industry
Member benefit: Trailer fees for the life of the acquired accounts
• Soliciting Factors to join the Liquid Capital network to gain access to additional capital, a robust range of working capital and trade finance products, extensive marketing and back office support
Member benefit: Liquid will pay your IFA membership or Annual Conference registration fee for the following year.
• ABL referrals from existing Factors who would not normally fund this type of transaction
Member Benefit: The referring Factor will earn an origination fee and have the opportunity to participate in the funding.
Brian Birnbaum
Phone: 866-272-3704 • www.Liquidcapitalcorp.com
Email: birnbaum@liquidcapitalcorp.com

MARKETING
50 Words 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: IFA Members will receive five free hours of marketing services with the purchase of any marketing service. (Offer to new clients only)

RECRUITMENT AGENCY
Commercial Finance Consultants
Established in 2002, CFC is the premier provider of human talent to the factoring industry. CFC’s goal is to provide their clients with the best available human capital and the most current industry information to assist in accomplishing their growth potential.
Phone: 469-402-4000 • www.searchcfc.com
Email: dar@searchcfc.com

IFA members will receive an additional 60 days added to the guarantee on all placements.

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.

Finvioce
Finvioce offers traditional factoring companies and asset-based lenders a simple-to-use and comprehensive software solution to help them become a modern and efficient online lender. Finvoce came out of a passion to help small businesses who generate 67% of jobs and 50% of the World’s GDP.
Andrew Bertolina
Phone: 310-951-0596
www.finvioce.com

IFA Member Benefit: Complimentary landing page review/optimization for digital conversion. 15% discount on pricing for the first year.

HubTran
HubTran is the leading provider of back office automation technology for factoring companies. HubTran’s SaaS platform streamlines invoice processing, document management, and exception handling. Customers increase productivity 4X, reduce errors and increase capacity. HubTran’s innovative technology leverages Optical Character Recognition and Artificial Intelligence to simplify back office work without requiring massive investments of time in training and integration.
Tinamarie Sulpizio
Phone: 928-855-0170 • www.hubtran.com

IFA Member Benefit: 1 week trial and waived setup/integration fees

ProfitStars
ProfitStars® is an industry-leading provider of portfolio management systems for commercial finance, and offers a common framework for factoring, asset-based lending, inventory finance, and lines of credit. Our dynamic Commercial Lending Center Suite™ incorporates all digital loan origination, decisioning and portfolio management workflows that save time, improve accuracy and improve the overall borrowing experience.
Phone: 205-972-8900, option 3 • www.profitstars.com

IFA members will receive 10% discount off the retail rates of their signature state and county account monitoring product.

TAX COMPLIANCE
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.
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Email: Rich Porterfield, rporterfield@tax-guard.com

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First Corporate Solutions
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Phone: 800-406-1577 • www.fcioso.com
Email: info@fcioso.com

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IFCA CALENDAR OF EVENTS 2018
May 9
Factoring Essentials Training
Fontainebleau, Miami Beach, FL
May 9-12
2018 Annual Factoring Conference
Fontainebleau, Miami Beach, FL
June 18-19
The Law & Business of Factoring Training Course
Planet Hollywood, Las Vegas, NV
June 21-22
Account Executive/Loan Officer Training Course
Planet Hollywood, Las Vegas, NV
July 12-13
Advanced Underwriting for Specialty Finance Products
Planet Hollywood, Las Vegas, NV
September 13-14
Transportation Factoring Meeting
Hilton Cleveland Downtown, Cleveland, OH
A conversation with: ROBERT STEPHENS

WHAT’S YOUR BACKGROUND?

I’m an art school dropout. I’m from Chicago. I’m Generation X, which means I have a healthy distrust of authority. I bore easily, which you can tell from Geek Squad. Being a dropout means I don’t claim to know everything, which I think is a good attitude for the 21st century. Knowing information is less important than being able to find it. That’s the power of the network. When it comes to disruption, it’s really just about thinking about questions. It depends on whether you wake up in the morning liking disruption or not. Humans, by evolution, don’t like things to change but they do and so we adapt pretty well. I tend to like it because I bore easily and business is always changing anyway. The question is whether change is really happening faster now than it did fifty or a hundred years ago. Anyway, I’m an art school dropout but I always loved computers because I’m the Star Wars generation of the 70’s and 80’s. Having a computer in your home was like Star Trek and I’ll never forget what that feels like. I personally feel that way about technology. It’s fun for me. It’s never been a job. What’s exciting now though is that a computer thirty years ago, in the 80’s, that was like a new thing. Now, the story is technology disruption in every industry. Today, I’m speaking to 1200 restaurant managers. In a few weeks, I’ll be speaking to the Factoring Association. Everybody now is in the technology business in a way.

I went to the University of Minnesota, thinking I’d make my fortune in computers instead of being a starving artist. And then, low and behold, the web browser happened—the world wide web—and as soon as I saw that, I thought all bets are off. My original vision was to create a web programming firm but I didn’t have any money so I started fixing computers and that’s how the Geek Squad got started. Not having money for my business was the best thing ever to happen to me because it forced me to do a lot of things myself. The first GoPro started in Nick’s kitchen in Half Moon Bay, CA. He made it with some plastic and a hot glue gun. If you want to come up with a new product or service, you hack something together to test it. If you had to always spend $100,000 to prototype something, it would make us take less risks. So, that was a benefit for me, and sometimes, the constraints of not having resources (people, time or money), force you to be more creative to solve it. That’s why kids have more fun with an old refrigerator cardboard box that they turn into a fort than they do with some bleeping gizmo that has all the buttons, meaning it’s more fun when they get to fill in the blanks, and I think it’s the same way in business, too.

The story of Geek Squad really is the story of some clues around how do you go to the next step, how do you do it? No company, no team, no matter what size company, ever feels they have all the resources they need or time. In many ways, every team, even inside large corporations, is a lot like Geek Squad when it started. How do we stand out? How do we differentiate? How do we do things efficiently? That’s what you’re gonna hear in this talk. It’s a fun story because Geek Squad was designed to be kind of like a Marvel comic book. It’s just computer repair; it’s not brain surgery, so that’s why I gave it a fun name. That’s the other part of the story, too: how you talk about your product or service or your company. Your business should read as exciting as a comic book. I mean, why not? Life is short and business could be always more fun.

HOW DO YOU FIND THE FUN IN AN UNCERTAIN FUTURE?

The number one thing that I get asked to talk about is the future because technology is now really touching every part of even the physical world now, so everybody is asking the same question. The good news is, the Factoring...
association is not alone in thinking about disruption. I don’t know of any organization or company or industry that is not asking the exact same question, so the good news is they’re asking the question, because to ignore the future is to be run over by it. The best way to ask questions about things like Blockchain (Is it hype? Is it real?) is to read about it. There’s no excuse. If you just watched YouTube videos about Bitcoin, I think within 15 minutes you could get the rough outlines of what it is. Being able to experience 12 different ways to describe it... people are naturally good at getting the pattern if you sit down and take time to just think. That’s all it is. It’s just taking the time. It’s not that this stuff is impenetrable. That was the mission of the Geek Squad. I want to go into normal people’s homes, help them not be afraid of computers, let them start a business in their home or let them do some work from home without having to drive in on the weekends, and not be afraid of WiFi, and then maybe, a few weeks later, want to learn something new or expand what they have. That’s the same goal of the talk. I want my talk to be like a Geek Squad house call. I want the audience to feel smarter after I leave and that they feel like they got an upgrade and they got a lot to think about and chew on and had fun doing it. It was clear within a few months of starting Geek Squad back in 1994 that Geek Squad could be a global brand. I knew Best Buy would be number 1. It was just luck that they just happened to be based in Minnesota where I was living. I waited 8 years before calling them. We needed to perfect our systems, work on processes, design uniforms, get everything ready. What you learn on the inside of a large organization is the power the leadership has. For those in the IFA with large organizations, the leadership really plays a crucial role in getting your people on the dance floor. If they can see their leaders being curious, asking questions, challenging things, it will make it more easy and safe for employees to try new things. What I had to do was figure that out. There’s an element when you’re a founder and you’re a poor starving college student, you have nothing to lose, nothing to be afraid of. But when you are on a team or a corporation, every company has a culture. Depending on how the company runs, every company has to somehow budget time and resources and taking chances.

WHY DO YOU FEEL THE FINANCIAL SECTOR IS RIPE FOR DISRUPTION? WHAT DISRUPTIONS WILL FACTORS FACE?

When we look at the idea of disruption, the question is, is there a pattern here? What’s behind disruption? What is disruption in 2019? Is it any different than in 2000 or 1980 or 1880? I would argue that it’s friction. If we look at Uber, Smartphone, and Blockchain, they’re all really about reducing friction. Uber took out the payment steps, calling on the telephone, waiting for the car, not knowing where it was. The Smartphone, GPS, and digital payments compressed all that. Blockchain is really putting trust in digital, but that’s really reducing friction because lack of trust increases time and delay. Technology is just like fire and the plough and the steam engine; it just reduces work. That’s really the story of all technology development. This applies in a specific business. Count the number of steps it takes for a customer to fill out a form. Count the number of minutes. I define friction as effort times time times the number of steps it takes. How long are your customers having to sit on hold? Can they text you instead of call you? Why do people prefer texting? Because it’s just more efficient. Face to face is great for a lot of things and for your best customers, but even for your best customers, they always want an easier way to do it. So, when you think about it that way, disruption becomes very simple. It’s about taking out the bullshit, taking out the steps. It’s very easy. Anybody can be an expert at disruption if they know how to count. I used to call Best Buy’s 800 number all the time and just see how long I waited on hold. I didn’t trust the reports I got from people. I wanted to experience it. I hung out with people in the call centers because they’re the ones talking to customers. If the call center employees aren’t happy, then they’re gonna put a bad face on the brand. So, this is also something people are gonna hear about in the talk--the importance of touchpoint. Geek Squad is in people’s homes. That’s why I make them wear clean white shirts. If you can’t keep a white shirt clean, I don’t expect you to be able to fix a computer. So, there are ways in which to design, not just the customer experience, but the employee experience.

Disruption always is about competition, but if they’re winning it’s probably because they just took steps out of some other part of the process that you ignored. So once you look at it that way, it’s not just looking at the customer; it’s also looking at the employees. If you’re just focusing on customer surveys and keeping customers happy, you’re still missing more than half the game. More than half the game is giving employees simpler policies. If employees have to jump through 18 hoops to click a button, that’s costing you money, which means that they’re more frustrated and they’re gonna do a crappier job, and you’re paying them by the hour. So, your employees probably are the best place to start. You’re already paying them, so you don’t have to pay consultants. If you ask employees two key questions: 1) What should the company be doing to do better, beat the competition, double our market share?, and 2)
What tools do you need? I guarantee you, this is the one question that will never go unanswered or get you a blank stare. Every employee, when asked “What tools can we give you to help you do your job better?”, every employee will give you pages of content, and until those pages are blank, your work is not done. That, to me, is the whole shebang.

We’ve all stood in line. Why do I have to call my bank to cancel a lost credit card? I should be able to text them and that’s it. I don’t even have to give my name. It’s coming from my mobile number and my mobile number is already on file with you. You already have my address. Send me the card. It’s so simple, yet no bank allows that.

Have you ever gotten an email from a company that says “do not reply”? Why would a company that’s in the business of taking money from people ever tell a customer “do not reply”? So, that’s gonna be a big part of my talk, as well as some of the new technologies coming that I believe are going to disrupt every industry. Just messaging. Apple just opened up iMessage last week for businesses. It’s called Apple Business Chat, and I believe it is going to be bigger than social media because it’s going to reduce a ton of friction for companies and customers. And I built a whole company around it right now.

**ASIDE FROM SIMPLIFYING PROCESSES AND PAYING ATTENTION TO EMPLOYEES, ARE THERE OTHER WAYS FACTORS CAN PREPARE FOR CHANGE?**

Read a lot. People always ask me, how do you know all this stuff? I just read. I watch less Netflix and I read more articles. Having a good information diet is nutritious. Have a balanced diet. Read your sports page, but...technology is the game. It’s no longer okay to say “I’m not a tech person.” That doesn’t mean anything. In fact, I would argue, I don’t even know if there are technology companies anymore. What company doesn’t use technology? So, it’s not okay for business leaders to say “I don’t understand this. I don’t understand them.” It doesn’t mean you have to agree with everything you read, and it doesn’t mean you have to adopt every technology, but you should understand the forces behind why--I don’t know that Bitcoin is going to replace gold but that’s not really the real question. Once you read up on it, you realize, why is Bitcoin getting so much attention? Sometimes the story is the story behind the story, and understanding why are millions of programmers spending their free time hacking together stuff to run Blockchain? So, understanding the underlying trends is how you come up with your products and services, how you stay ahead of the competition. I’m just amazed at the number of people who are like “I don’t understand.” It’s like, “Well, you must not want to understand it very much because it’s not like there’s a shortage of information on everything in the world.” I taught myself to pour concrete a few weeks ago. I don’t know anything about concrete but I had to do something and I learned it and I watched about 17 YouTube videos and I got it. So, if I can pour concrete, anybody can do anything. If employees see the boss not doing things, that gives them a pass. If you’re a leader and you feel like your team or your company is not keeping up, start with yourself. If you are aiming to move up in the world, there is no better time than now to differentiate yourself from other companies. Take the initiative. Take an online class. Read up on something. What also tends to work if you’re trying to move up and make a name for yourself in your company and get promoted is translating an external trend of a technology of disruption and what it means for Factoring and landing the cover story for the Commercial Factor.

That’s where the person can add value. It’s like “Hey, this is this thing happening in the world. I read it. I read a bunch of stuff, and because I already work in this industry, I combined the two.” Now, you’ve created some new information. “This is what it means for us as an industry.” That’s the game right there.

The thing about disruption is, it will happen with you or without you. It doesn’t matter what your industry cares or thinks about. Technology marches on. Either, you will pick up something from it or your competitors will pick up something and the game will move forward. So, that’s the great thing about it. It doesn’t matter what I understand about the Factoring Industry; what matters is what the Factoring industry understands about what’s going on outside of it. The more time you put in, the further you’re able to see, and piece together good questions to help formulate a strategy.

**WHAT’S THE TAKEAWAY MESSAGE OF YOUR TALK?**

I just hope that they can be entertained by an art school dropout who, with no capital and no venture capital, grew a company from zero to 25,000 employees, that’s now 60% of Best Buy’s profits, a company that’s gonna be 25 years old next year. I hope they enjoy the story and feel like if I can do that, there’s no excuse for anybody in the room not to take a chance and try something new. •
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