Introducing Firebolt

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Call 888-888-0694 or visit www.factorcloud.com to learn more or schedule a demo.
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The Commercial Factor | OCTOBER 2020
2020 has been an “interesting” year and one to which I think the entire world is ready to say goodbye. With the COVID-19 pandemic still spreading around the world and the election disruptions here in the U.S., I am hopeful that next year will prove to have less turmoil.

The Factoring industry has experienced its share of issues during the last year. Some sectors have been ravaged, while other sectors have prospered. The initial round of PPP loans caused a decrease in demand for Factoring, but as those funds are spent, demand for Factoring will increase. At the time of this writing, it is not known if there will be a future round of stimulus.

The IFA has had to make a few adjustments during this period. We have held many excellent virtual webinars that have been instrumental in informing and educating the Factoring community on a variety of topics.

We also have held a variety of roundtable discussions, including ones for Senior Executives, Transportation Factors and Small Factors. This has proven to work well in allowing members to communicate with each other and exchange ideas about issues that are important to them. We are in the process of creating additional virtual roundtables for other niches and job functions.

We also held our first hybrid meeting in Las Vegas. This was a tremendous success. Attendees participated in our Account Executive course both in person and remotely. Both groups rated this course as the best AE course to date, and we’ve been conducting them annually for more than 15 years.

Given the success of this meeting, we’ve decided to conduct our Senior Executives meeting as a hybrid meeting. We’ve delayed the meeting at the Condado Vanderbilt in Puerto Rico until 2022 and moved the meeting location for the 2021 meeting to the Waldorf Astoria in Las Vegas. This is a five-star hotel with only 380 rooms and conveniently located. Senior Executives will be able to attend the meeting either in person or virtually, and we are designing the meeting to give both groups a similar networking experience. For those that decide to attend in person, we will be following all safety guidelines established by the Hilton, Las Vegas and the CDC.

We are also in full planning mode for our 2021 annual conference to be held on May 12–15 at the JW Marriott in Palm Desert, CA. This also is being designed as a hybrid event. We are very lucky to be holding the event at the JW Marriott, as it is 450 acres with plenty of space for us to spread out. We will be releasing more details soon. Watch our website for additional information at www.factoring-conference.com.

The American Factoring Association (AFA) also has had several successes this year. We were able to receive a commitment from the Consumer Financial Protection Bureau that Factors will be excluded from the reporting requirement of Section 1071 of the Dodd-Frank Act. We were also successful in modifying the Factoring disclosure form for the California DBO to make it more relevant for Factors. If you have not done so this year, please consider supporting the AFA at www.americanfactoring.org.

Let’s hope that things return to normal soon and that COVID-19 does not affect any additional members of the Factoring community or their families. I hope you all stay safe and healthy, and I look forward to being able to shake hands with you soon.
Kourtjian Joins TAB Bank’s Business Development Team

TAB Bank added Ralph Kourtjian to its business development team as vice president and business development officer. Kourtjian is responsible for sourcing new business opportunities by providing asset-based and factoring working capital facilities to commercial entities in the Upper Midwestern United States with annual revenues of $2 million to $150 million.

FSW Funding Promotes Bennett to Operations Manager

FSW Funding promoted Ashton Bennett to the position of operations manager. Bennett will oversee the management of the factoring and asset-based lending portfolio. Prior to joining FSW Funding, Bennett worked for US Bank as a personal banker.

Capstone Capital Group Promotes Russo and Chakraborty

Capstone Capital Group promoted Mariam Russo from senior analyst to associate and Abhigyan Chakraborty from due diligence analyst to senior analyst. Russo has been with Capstone since 2017. Her primary responsibilities include account management, client intake, due diligence analysis, credit underwriting and collections. Chakraborty joined Capstone in 2018. Chakraborty is now responsible for client relationship management, due diligence analysis on new clients, credit underwriting and collections.

Dever Joins First Business Growth Funding as VP, Business Development Officer

First Business Growth Funding hired Aaron Dever as vice president and business development officer. Dever has spent the last 24 years in accounts receivable finance and asset-based lending. At First Business, Dever is responsible for sourcing accounts receivable finance transactions.

Haversine Funding Hires Merritt-Parikh as President

Haversine Funding hired Gen Merritt-Parikh as president. Merritt-Parikh has more than 25 years of experience in asset-based lending and factoring and will be responsible for origination, underwriting, investment analysis, and management and asset allocation strategy.

FSW Funding Adds Bittinger as Portfolio Analyst

FSW Funding hired Shauna Bittinger as a portfolio analyst. Prior to joining FSW Funding, Bittinger worked as an accounting clerk for an Arizona-based electrical and communications contractor.
The Commercial Factor is bringing back an old friend in this issue, as Bob Zadek, Esq. of Buchalter will be reviving his “You be the Judge” column along with colleague Ben Heuer, Esq. The column will be featured in each issue and will provide an opportunity to test your knowledge. We hope you enjoy it.

**Buyers of Worthless Stuff Are Not Happy**

**SCENARIO:** A seller whose business is the sale of robots sells a robot to a buyer for use in the buyer’s business for $100,000, taking $10,000 down and financing the $90,000 balance of the purchase price by accepting a negotiable promissory note secured by a security agreement (chattel paper) under which the buyer grants the seller a security interest in the robot to secure the $90,000 balance. The buyer receives the robot on June 10. The seller files an appropriate form UCC-1 on June 15.

The seller sells the chattel paper to the seller’s bank, with recourse, on June 16, and the buyer is directed to make all payments thereunder to the seller’s bank. The buyer pays $30,000 to the seller’s bank thereafter. The seller’s bank is a holder in due course of the note. An assignment of the UCC-1 is not recorded in the UCC filing records.

On Sept. 1, the robot, having been built with a software glitch, goes nuts and punches (or the robotic equivalent of a punch) several of the buyer’s customers. The buyer decides that owning the robot is not a great idea and revokes its acceptance in writing to the seller. The buyer had previously granted a security interest in its present and future equipment to the buyer’s bank, for which a security interest was perfected by UCC filing on Jan. 2.

The buyer stops paying the seller’s bank, whose attempt at a peaceful repossession is thwarted by the berserk robot. The buyer also stops paying the buyer’s bank on general principles.

Since all other robots sold by the seller prove just as psychotic, and the seller’s other customers are equally miffed and revoke their acceptances, the seller goes out of business. The seller’s remaining inventory is purchased by a medical school to be used to train would-be doctors of psychiatry in the treatment of antisocial behavior.

The seller’s bank sues the buyer for possession of the robot (worth $80,000) and names the buyer’s bank as a defendant as well. The buyer pays $30,000 to the seller’s bank on June 16, and the buyer is directed to make all payments thereafter. The seller’s bank is a holder in due course of the note. An assignment of the UCC-1 is not recorded in the UCC filing records.

The buyer’s damages from the loony robot are $50,000 in addition to the $60,000 paid by the buyer toward the purchase price. The buyer files a complaint in state court to recover the $60,000 paid by the buyer toward the purchase price. The buyer also files a counterclaim in state court against the seller’s bank to recover the $90,000 balance of the purchase price by accepting a negotiable promissory note secured by a security agreement (chattel paper) under which the buyer grants the seller a security interest in the robot to secure the $90,000 balance. The buyer requests the court to set the robot proceeds to $110,000, the sum of its damages and the amounts paid. The buyer’s bank wants priority over the seller’s bank since it filed first. The robot just wants to be liked.

**QUESTION:**

**WHO GETS WHAT? HOW MUCH DOES EACH PARTY GET FROM THE ROBOT PROCEEDS?**

**TURN TO PAGE 11 FOR THE ANSWERS**

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**NEWS**

**Austin Financial Services Hires Curdy as Chief Risk Officer**

Austin Financial Services hired Joe Curdy as its new senior vice president and chief risk officer. In this role, Curdy will work alongside senior management and be responsible for managing asset quality and financial risk. Curdy previously held leadership roles with Wells Fargo and Waterfall Asset Management.

**Alterna Capital Solutions Adds Three Experts to Meet Demand for SME Growth Capital**

Alterna Capital Solutions added three members to its team of dedicated specialty and alternative financing experts. Greg Carpenter joined as EVP and managing partner based in Dallas. He will be focused on growing revenue and distribution channels. Michael Kodinsky joined as SVP of sales and origination, focusing his efforts on business development in the Boston market and in Georgia, Florida and the Southeast. Jim Thieken joined as chief risk officer (ABL) with responsibility to help expand the firm’s ABL offering and lead inventory finance due diligence, risk analysis and monitoring.

**CapitalPlus Adds Keck as Senior Account Executive**

CapitalPlus Construction Services added Adam T. Keck as senior account executive. Keck will be responsible for business development and client management in the western region of the United States.

**Fidelscia Joins First Business Growth Funding as VP, BDO**

First Business Growth Funding hired Lana Fidelscia as vice president, business development officer. She will be headquartered in Dallas. Fidelscia has more than 10 years of experience in the commercial finance industry, with a focus in factoring, asset-based lending, commercial real estate and SBA lending.

**Gerber Adds Two Collateral Analysts and Marketing/Comms Coordinator**

Gerber Finance hired Graham Nelson as a collateral analyst in the California office, Hailey Williams as a collateral analyst in the New York office and Kelly South as marketing and communications coordinator. Nelson has previous experience in the banking, payments and healthcare industries. He worked as a loan administrator at First Republic Bank and managed the entire loan portfolio of the bank’s professional loan program. Williams started at Gerber in May as an operations intern before being hired in a full-time capacity. South joined Gerber Finance as a marketing intern in January and after assisting with the Gerber Finance Foundation, social media efforts and marketing campaigns, she was officially hired.
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Schedule your Invoice Intelligence demo today at hubtran.com/invoiceintelligence
**NEWS**

**NORTHEAST CHAPTER EVENTS 2020**

**December 9**  
**Virtual Happy Hour**  
4pm-5pm EDT  
Free for IFA Northeast Chapter Members, $25 for Non-Members  
For more information, call Harvey Gross at (732) 672-8410 or e-mail hgross4@verizon.net or visit www.ifanortheast.org  

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**ROSENTHAL’S FIDURA**  
**Relocates, Expands Business Development Team in Southeast**  
After nearly 10 years with Rosenthal & Rosenthal’s New York office, Heather Fidura now will be based in Tampa, FL, and will continue her role as a business development officer, sourcing new business for the firm across all products, including asset-based lending, factoring and purchase order financing.

**MOORE JOINS FIRST BUSINESS GROWTH FUNDING AS VP, BDO**  
First Business Growth Funding hired Roger Moore as vice president, business development officer. He will be headquartered in Memphis, TN. Moore has more than 25 years of experience in the commercial finance industry. For the last 10 years, he has focused on providing working capital solutions to businesses through accounts receivable financing and asset-based lending.

**FSW FUNDING HIRES BRODERICK AND HANSEN AS BUSINESS DEVELOPMENT OFFICERS**  
FSW Funding hired Nick Broderick and Morgan Hansen as business development officers. Broderick is based in Phoenix and Hansen is based in Atlanta.

**GIBRALTAR BUSINESS CAPITAL EXPANDS OPERATIONS AND CREDIT TEAMS**  
Gibraltar Business Capital hired Paulina Nenadovic as a collateral analyst for the operations group and Todd Seehase as a senior vice president and account executive on the credit side.

**CAPITALPLUS PROMOTES POWELL AND RATHBONE**  
CapitalPlus Construction Services promoted Curt Powell to vice president of sales and Laura Rathbone to vice president of underwriting. Powell will assume additional responsibility for leading the internal and external sales teams as well as managing existing referral relationships. He joined CapitalPlus four years ago as the only sales representative and has assumed positions of increasing responsibility.

**IFA CALENDAR OF EVENTS 2021**

**January 13**  
**Factoring Government Receivables**  
Webinar 11am-12:00pm PST

**January 28-29**  
**2021 Presidents & Senior Executives Hybrid Meeting**  
Waldorf Astoria  
Las Vegas, NV

**March 9**  
**Joint Factoring Meeting with the NYIC & IFA NE Chapter**  
Webinar Time TBA

**May 12-15**  
**2021 Annual Factoring Conference**  
JW Marriott Desert Springs  
Palm Desert, CA

**Registration Information:**  
www.factoring.org

**CANADA CHAPTER EVENTS 2020**

**November 18**  
**Webinar: Take on 2021 - Discover the Tools to Take Control of Your Business Development**  
10am EST  
Join your IFA colleagues, along with two well-known experts from the referral and sales training worlds, Paula Hope of Booked Solid and Kim Piller of Sandler Sales Training, who will help you bring back your new business development “cadence,” your daily sales rhythm. Create a powerful plan to grow your business for 2021, no matter the environment in which you find yourself.

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.

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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.
As market volatility peaks, factoring businesses find it extremely challenging to mitigate the ever-rising risks, consistently ensure regulatory compliance and meet customer expectations while growing revenue and improving margins. Choose the right technology solution with proven capabilities that provides you the edge to stay competitive.

3i Infotech’s Factor/SQL®, a SOX (Sarbanes Oxley) compliant and pioneering factoring solution, provides the much needed control over all your operations - be it portfolio management, risk analysis, commission tracking and investor activity monitoring to optimize your returns. Factor/SQL® is an ideal partner to comprehensively provide sharper visibility into transactions, enhance customer service, improve decision making and grow your profitability.

MAKE YOUR BUSINESS PREDICTABLE IN UNPREDICTABLE TIMES

Are you standing at a crossroads, and looking at an unpredictable future?

As market volatility peaks, factoring businesses find it extremely challenging to mitigate the ever-rising risks, consistently ensure regulatory compliance and meet customer expectations while growing revenue and improving margins. Choose the right technology solution with proven capabilities that provides you the edge to stay competitive.

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Crossroads provided the company with an inventory revolving line of credit, which allowed the company to pay down suppliers and continue in its expansion efforts.

**Prestige Capital Funds $2MM for Potted and Indoor Plant Farm**

Prestige Capital Finance closed a $2 million factoring arrangement for a California-based plant farm that specializes in potted and indoor blooming plants. The farm will use the proceeds from the factoring arrangement to expand its footprint in home centers across the U.S.

**Amerisource Closes $5.5MM Credit Facility for Metal Stamping Firm**

Amerisource Business Capital closed and funded a $5.5 million credit facility for an Ohio-based metal stamping firm, which used the proceeds to refinance existing bank debt.

**Gibraltar Business Capital Supplies $4MM ABL to Ditto Sales**

Gibraltar Business Capital provided Ditto Sales with a $4 million asset-based loan to help it manage through obstacles facing the business.

**Rosenthal Delivers $1.5MM PO Facility to Apparel Company**

Rosenthal & Rosenthal completed a $1.5 million purchase order finance facility to support the production financing requirements of a Wisconsin-based apparel company that imports licensed casual wear.

**InterNex Provides $1.5MM Credit Facility to Arizona Healthcare Billing Company**

InterNex provided a $1.5 million credit facility to an Arizona-based healthcare billing company. InterNex provided an upsized line of credit to refinance an existing lender and provide working capital.

**TAB Bank Supplies $4MM Revolver to Manufacturing Company**

TAB Bank provided a $4 million asset-based revolving credit facility to a manufacturing company based in North Carolina. TAB Bank also provided the company with a $200,000 M&E term loan and a $1 million commercial real estate loan.

**IFG Closes $7.19MM Revolving Open Ledger Invoice Finance Facility for ZEN Energy**

The Interface Financial Group closed an AUD$10 million ($7.19 million) open ledger invoice finance facility for South Australia-based Zen Energy, which will use the proceeds to assist with its demerger from SIMEC Energy and to finance further growth.

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**Think you know your stuff? PROVE IT!**

**CERTIFIED ACCOUNT EXECUTIVE IN FACTORING**

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

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Any qualified candidate can sign-up, there is no need for employer sponsorship. Qualified candidates can schedule the exam at a supervised testing center in a nearby city and will take a 100 item, multiple choice exam.

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The exam was not designed to be easy; many candidates report that taking the exam took every bit of the two hours allotted and not everyone who takes the exam will achieve this prestigious credential.

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Do you or your employees possess the knowledge base to become Certified?

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Visit www.factoring.org for more information or call 805-773-0011
UMB Capital Finance Provides $20MM Credit Facility to SOAR Transportation Group
UMB Capital Finance, utilizing its accounts receivable finance business channel, provided a $20 million credit facility increase to an existing client, SOAR Transportation Group, to assist in funding several acquisitions as well as for general working capital purposes.

King Trade Capital Supplies $6MM PO Finance Facility to Personal Hygiene Company
King Trade Capital provided $6 million in purchase order financing to a California-based company that sells hand sanitizer and sanitizing wipes.

Celtic Capital Provides $3.2MM in AR and Inventory Lines of Credit for Sheet Metal Distributor
Celtic Capital formed a new client relationship with a California-based distributor and fabricator of sheet metal products and industrial supplies.

Prestige Capital Provides $7MM in Additional PPE Funding
Prestige Capital Finance provided $7 million to two companies to fund the manufacturing and importing of masks, swab transport containers and disinfectant wipes.

Sallyport Structures $1.75MM Credit Facility for Supplier to Trading Card Industry
Sallyport Commercial Finance structured a $1.75 million credit facility to a supplier to the trading card industry to help meet growing demand and fill upcoming orders.

Republic Business Credit Supplies $3MM Direct-to-Consumer Facility to Apparel Accessory Manufacturer
Republic Business Credit provided a $3 million direct-to-consumer inventory loan facility to a private equity-owned apparel accessory manufacturer based on the West Coast. The facility provides availability on the manufacturer’s inventory, accounts receivables, merchant accounts and e-commerce related proceeds. The funding also refinanced the manufacturer’s existing bank facility while providing liquidity to enhance its e-commerce strategy.

Versant Funding Provides $1.8MM Factoring Facility to Sweets and Treats Distributor
Versant Funding provided a $1.8 million non-recourse factoring facility to a national distributor of sweets and treats.

TAB Bank Provides $4.5MM Revolving Credit Facility to Texas Manufacturing Company
TAB Bank provided a $4.5 million asset-based revolving credit facility to a manufacturing company based in Texas.

White Oak Provides $4.5MM to Three Aerospace Firms Supporting U.S. Defense Agencies
White Oak Commercial Finance’s government contracting finance division provided $4.5 million in factor and ABL-based credit facilities to three aerospace businesses providing specialized services to U.S. Defense agencies.
Pivot Financial Provides $7.5MM GreenSpace Debt Facility
GreenSpace Brands entered into a new credit facility with Pivot Financial to replace its previous ABL facility. The structure and conditions of the new debt facility include a $3.5 million term loan and a $4 million full recourse accounts receivable factoring facility.

Rosenthal Provides $2MM Production Finance Facility to Toy Company
Rosenthal & Rosenthal completed a $2 million purchase order finance facility for a California-based toy company.

UMB Capital Finance Provides $5MM Facility to Video Conference Systems Integrator
UMB Bank, through its UMB Capital Finance accounts receivable finance business channel, provided a $5 million credit facility to a Texas-based integrator and supplier of video conference systems.

Wintrust Receivables Finance Closes $5MM Line of Credit for Expedited Transportation Firm
Wintrust Receivables Finance closed a $5 million accounts receivable-based line of credit for a Midwest-based provider of expedited freight and transportation.

Tradewind Finance Provides $2MM Export Factoring Facility to East Mediterranean Food Manufacturer
Tradewind Finance completed a $2 million post-shipment finance facility for a manufacturer and exporter of East Mediterranean food based in Lebanon. The company will use the funding to support growth and for the expansion of its production plant.

Seacoast Provides $6MM Asset-Based Facility to IT Consulting and Staffing Provider
Seacoast Business Funding provided a $6 million asset-based revolving credit facility for an IT consulting and staffing provider in the Northeast.

TAB Bank Provides $10MM Revolver to Traffic Control Company in California
TAB Bank provided a $10 million asset-based revolving credit facility for a traffic control company based in California.

Wingspire Capital Delivers $30MM Working Capital Revolver to Auto Parts Distributor
Wingspire Capital is funding a $30 million senior secured working capital revolver to a distributor in after-market auto parts, consumer electronics and personal protective equipment.

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ADVERTISE ON THE NEW COMMERCIAL FACTOR WEBSITE

The Commercial Factor website publishes a variety of content including news and relevant magazine articles. One banner size ad provides maximum visibility and audience engagement across the entire website on both desktop and mobile.

To advertise, contact Laura Backe at laura.backe@nw-assoc.com

magazine.factoring.org
Hedaya Capital Completes $1MM Factoring Facility for Outdoor Apparel Company
The Hedaya Capital Group completed a $1 million factoring facility for a family-owned outdoor apparel company.

INDUSTRY NEWS

The IFA Mourns the Passing of Steve Johnson
Steve Johnson, president and founder of J D Factors, passed away on Sept. 3 due to complications from prostate cancer. Johnson was president of J D Factors, which he co-founded in 2000. Prior to starting J D Factors, he was with another factoring company and various banks for about 25 years.

eCapital Expands West Coast Foothold with REV Finance Portfolio Acquisition
eCapital acquired the factoring portfolio of REV Finance Group, an affiliate of Roly’s Trucking and R.E.G. Logistics, a Los Angeles-based family of transportation, warehousing and logistics companies.

Convoy Launches Payment Service & Fuel Card for Carriers Nationwide
Convoy, a national digital freight network, launched Convoy Factoring, a new payment service for carriers that provides same or next day payment with no hidden fees and no lock-in contracts. Powered by Apex Capital, Convoy Factoring offers qualified carriers access to immediate payment at a rate of 0% with QuickPay for Convoy loads and 1% to 2.99% with factoring for non-Convoy loads.

1st Commercial Credit Expands Texas Territory
1st Commercial Credit, an Austin, TX-based factoring company, expanded its sales territory with sales offices in Dallas, Houston and San Antonio.

Quickpay Launches Live Funding Service with Real Time Payment Capable Banks
Quickpay Funding launched a live service that speeds up funding to small and mid-sized companies. This service offering expands Quickpay Funding’s value proposition for small businesses in a variety of industries, including Hispanic-owned businesses.

ENGS Commercial Capital Launches Floor Plan Finance Program
ENGS Commercial Finance’s working capital subsidiary, ENGS Commercial Capital, is now offering floor plan financing to qualified dealers and equipment manufacturers. According to ENGS, manufacturers can expect increased sales and create cash flow by receiving immediate payment for commercial equipment using floor plan financing. Additionally, the company noted that offering a floor plan financing option to a manufacturer’s dealer network can drive brand loyalty and increase market share.

First Horizon Launches ClearPath Fast Payments in Partnership with Interchecks
First Horizon National will be launching ClearPath Fast Payments in partnership with Interchecks. This partnership will provide a platform that delivers immediate payments capability to treasury management clients, making fast and convenient payments more accessible to businesses.

Alterna Capital Solutions Receives $15MM PE Investment, $30MM LOC Increase
Alterna Capital Solutions, a specialty and alternative financing lender to small businesses, completed an additional $15 million private equity investment from Alterna Equity Partners, coinciding with a line increase of $30 million from Texas Capital Bank to complement a $50 million asset-based credit facility led by Wells Fargo Capital Finance.

ANSWERS FROM PAGE 4

SOLUTION:
Between the banks, the seller’s bank wins. Since the chattel paper transaction was a classic purchase money transaction, and since the seller filed within 10 days of the buyer’s receipt of the goods, it has priority over the buyer’s bank.

In the seller’s bank vs. buyer dispute, it looks bleak for the buyer. However, it can assert a security interest in the robot. Just read 2-711(3). When a buyer rightfully revokes acceptance, it “has a security interest in goods in his possession for any payments made on their price.” Now who has priority?

First, the seller is the debtor that secured the transaction. That means that the buyer has a security interest against the seller, but the seller’s bank has a security interest against the buyer. Now what?

2-711 protects buyers of defective or otherwise nonconforming goods by giving them the right to “foreclose” on their possessory security interest and sell the goods to recover their claims.

The seller’s bank will argue that since it holds the chattel paper free of the buyer’s claims, it must prevail. The buyer will argue that (i) it revoked acceptance and therefore no longer “owns” the goods, with title passing to the seller, and (ii) it has a possessory security interest to secure its claims against the seller. The seller’s bank will claim that the buyer failed to perfect. The buyer will correctly argue that filing is not necessary under 9-113.

What about priority? The buyer’s best argument is to claim that its security interest is statutory (arising solely under Article 2) and is governed by 9-310 (statutory lien trumps Article 9 lien) by analogy.

If the buyer wins, how much is its prior claim over the seller’s bank? Only $60,000, since the buyer’s 2-711 lien only secures payments made on account of the goods and not any damage claim.

Robert A. Zadek, Esq., is of counsel at Buchalter. Benjamin M. Heuer, Esq., is senior counsel at Buchalter.
PPE-andora’s Box: The Challenges of Financing Personal Protective Equipment Suppliers

In the months following the onset of the COVID-19 pandemic, stockpiling personal protective equipment (PPE) has become a necessity. To address this need, many companies have started to supply these resources. This trend has created many opportunities for factors to provide working capital, but those opportunities come with many challenges. Bryan Ballowe of TradeCap Partners and Michael Ullman of Ullman & Ullman dive into the niche factoring arena for PPE suppliers.

BY BRYAN BALLOWE AND MICHAEL ULLMAN

For those of us who consider ourselves seasoned veterans in the commercial finance industry, we like to think “we’ve seen it all” or “nothing can surprise us.” Many of us feel confident that we have taken all the necessary precautions to deal with unwanted surprises in our portfolio and that our underwriting and monitoring procedures are air-tight. Just as quickly as we get comfortable, we also sometimes become complacent and, inevitably, something that we fail to foresee or imagine happens.

From terrorist attacks to recessions, most of us have endured a lot during our careers. However, it’s safe to say that 2020 is a year none of us will forget on many levels.

Up until recently with the November election, the single largest story that has dominated our daily lives has undoubtedly been the effects of the COVID-19 pandemic. In late February, we all were wondering what just hit us and how long it would stick around. At the time, we wondered about the pandemic’s severity and what, if anything, we had to do medically, socially and certainly professionally.
Little did anyone know that when demand for PPE exploded, a Pandora’s Box of significant risk opened to not only suppliers of PPE but also their lenders and financial partners.

PPE INDUSTRY BOOMS
One of the many effects caused by this global crisis has been the incredible need and demand for items mandated by Federal Occupational Safety and Health Administration requirements, which we mostly took for granted. Some of these commodities are commonly referred to as personal protection equipment, or PPE, and include masks, ventilators, thermometers, gowns, face shields, syringes and gloves, just to name a few. With the tidal wave of increased demand came a significant opportunity for suppliers — as well as their lenders and other sources of capital — to step up in order to source and deliver PPE to those who were in desperate need outside the occupational setting. Little did anyone know that when demand for PPE exploded, a Pandora’s Box of significant risk opened to not only suppliers of PPE but also their lenders and financial partners.

Right when the pandemic started, the demand for PPE was so significant that many companies pivoted on a dime to help or, perhaps, take advantage of significant sales opportunities. The demand for PPE came from everywhere, including governmental agencies, retailers, private companies and more. Everyone needed product and was willing to contract with anyone who could deliver — or promised to deliver. Many suppliers had good intentions to meet demand; however, many of those companies had little to no experience selling PPE or the knowledge of the regulations and requirements associated with selling such items. While some companies had significant experience and were poised to meet the significant demand, others were simply looking to take advantage of the situation to make a quick fortune or defraud others in order to do so. Desperate customers were paying cash upfront for product that never existed, had been allocated and sold elsewhere, was not of the quality ordered, or was eventually confiscated by overseas governments. Simultaneously, many lenders were exposed to a completely new landscape of risk that they had never faced before.

REGULATORY ROADBLOCKS
In addition to the bad actors surfacing in the marketplace, many lenders and their clients found themselves facing strict regulatory requirements for PPE. To say that the regulatory requirements for PPE are complicated and extremely cumbersome is an understatement. This created a significant learning curve for both suppliers and lenders alike to overcome, leaving many questions to try to answer in a very short time. Which goods are regulated? What is the governing body that sets the rules? What classification does the product fall under? What certifications and licenses are required? Are clients sourcing from factories that are approved by agencies such as the FDA and Health Canada? If so, are the factories adhering to regular audit programs? Do overseas suppliers have approval to export goods from the country of origin? If a lender’s client is sourcing from a third-party intermediary, how do the parties involved verify if an approved manufacturer is producing the goods? Are the goods properly labeled and do they adhere to governmental requirements? Do clients selling PPE have proper 510(k) certifications and/or MDL or MDEL licenses to market the PPE they are selling in the first place? The regulatory requirements lenders found themselves dealing with created more of a legal nightmare and risk profile than most were willing to manage.

SUPPLY CHAIN CHALLENGES
Whenever global demand outweighs supply to the extent it has in the PPE space this year, the inherent risks associated with sourcing and supply chain management become significantly magnified. One of the biggest issues facing companies selling PPE and their lenders is that overseas suppliers require large cash deposits or even 100% payment upfront prior to goods being produced and shipped. While deposits are nothing new when it comes to sourcing goods from overseas, sending large deposits or even pre-paying for goods that are in such demand under these challenging times poses a significant risk.

Many overseas suppliers that require large cash deposits or prepayment in full are intermediaries and have very limited ability to deliver the amount of product they are promising to deliver. Some suppliers that do have product regularly sell goods otherwise allotted for those who already prepaid to the next highest bidder that comes along. In addition, some overseas factories that require large cash deposits and prepayments have been unable to keep up with demand and have had to push back delivery dates well into the future. Securing product is only half the battle. Freight rates and container availability has been a significant issue for many importers during this time. Since goods in the PPE
space are highly regulated, customs agencies have increased the number of containers they are examining to verify the authenticity and quality of the PPE being imported. Additionally, customs agencies have turned away or even seized many containers if required certifications and necessary paperwork is not in order.

**DUE DILIGENCE**

Lenders also should be aware of the credit profile of their clients’ customers as well as the risks associated with the repayment of PPE. Many suppliers are selling to distributors who do not have the ability to pay for goods unless those distributors receive payment first. Meanwhile, many end customers are setting up escrow arrangements to provide security of payment for goods. While these arrangements are commonplace in industries such as real estate, many escrow arrangements for PPE do nothing more than create additional layers of paperwork and costs when the focus should be on dealing with a creditworthy end customer in the first place.

Additionally, lenders must be aware of required inspections of end-user customers and become comfortable with the requirements as well as the location and timing/duration of these inspections. Inspections are understandable, but many end-user buyers (especially distributors in this space) hide behind an inspection to haggle on price, delay payment or even walk away from the transaction. Prices and demand for PPE can be very elastic and can change overnight. At the beginning of the pandemic, the demand for all types of PPE was so high that customers were ordering goods from multiple suppliers to reduce the risk of non-delivery. As the supply of certain items has normalized, many end buyers are pushing out deliveries, reducing the price they are willing to pay or even cancelling orders altogether.

Lastly, most of the new companies supplying PPE have limited to no experience whatsoever in this space. As mentioned earlier, many companies changed their entire business model simply to take advantage of the opportunity created by the significant demand for PPE. Although many of these companies have experience sourcing other goods from overseas suppliers, the unique risks and highly regulated nature of these goods, as well as the extremely volatile supply chain, makes selling this type of product extremely challenging even for those companies that have focused on selling PPE for years.

**BEST PRACTICES FOR CAPITAL PROVIDERS**

For lenders and factors, there are measures and best practices to mitigate many of the risks associated with financing companies that now supply PPE. In each of the authors’ humble opinions, the experience of the borrower/factoring client is quintessential. Vetting a borrower’s/factoring client’s history of successfully sourcing and delivering goods, as well as being paid, helps answer many of the questions and mitigates many of the risks associated with these types of goods. Additionally, having a thorough understanding of the regulatory requirements associated with supplying PPE and knowing which resources to access to verify requirements are met will go a long way in successfully lending in this space.

Finally, sticking to structure is key. Bank instruments such as letters of credit can significantly reduce the risks associated with sourcing PPE from overseas suppliers. While many overseas suppliers still require cash deposits, mitigating the risks associated with cash deposits is paramount. Additionally, understanding issues surrounding the issuance of ocean and air freight bills of lading and marine cargo insurance, adhering to a strict policy of monitoring end-user customer credits, verification of customer orders and payment terms, and maintaining the ability to control goods at all times will go a long way in successfully lending to or factoring for companies that supply PPE.

**Bryan Ballowe** is co-founder and managing partner of TradeCap Partners. Prior to founding TradeCap Partners, Ballowe was vice president and chief operating officer of King Trade Capital, where he worked for 20 years. Prior to joining King Trade Capital, Ballowe worked at Bank of America for two years as a global financial analyst, underwriting senior debt and high yield bonds for various companies in the media and telecom industry. Ballowe can be reached at bballowe@tradecappartners.com.

**Michael Ullman** is a shareholder of Ullman & Ullman, P.A. He has served as counsel and trusted advisor to more than 200 factoring companies throughout the United States and abroad. He also serves numerous other business clients in a range of industries. Ullman also serves as co-counsel for the International Factoring Association, a position he has held for more than 20 years, and lectures frequently at IFA events.
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Immediate Payment Innovation Supports Increased Client Satisfaction and More Business

Payment innovations such as real-time payments remove banking hours, cutoff times, windows, weekends and holidays to move funds any time. David Jackson, a payments industry expert for First Horizon National Corporation, lays out the value of immediate payments for the factoring industry.

BY DAVID JACKSON

Most companies operate during business hours closely tied to when clients conduct business. However, the factoring industry is more closely tied with banking hours, which creates constraints on how flexible they can be with clients. Factors must design their business processes based on the calendars, time zones, cutoff times, hours and settlement times of banks along with many other considerations. Many times, clients have an entirely different set of operating hours when they conduct business, but money only moves during banking hours. Generally, this means factors lose the opportunity to work during those days and hours in between. Payment systems require cutoff times to be within the window for processing. Nearly all payments are submitted in batches for payment one to three days in the future. To accelerate payments, factors and their clients are forced to use an expensive wire platform, but even those options have pesky cutoff times, weekends, holidays, time zone cutoffs and other issues that add time to funding clients.

RESHAPING THE PAYMENT SYSTEM FOR FACTORING

What if factors and their clients could work together on any day without worry that the bank is closed for a holiday? What if there was no cutoff to send money to
clients? What if factors could work with clients at any time and still send funds? And what if there was no longer any issue with crossing to a different time zone because there still is no cutoff time to send money to clients? This would truly change the nature of the industry, and best yet, funds would move immediately when told to move.

This concept has existed in the United States for several years and is now emerging with more function. This was prompted by continued innovation of the financial services industry and amplified by a set of projects by the non-regulatory side of the U.S. Federal Reserve.

The recently completed U.S. Faster Payments Task Force defined the issues and the success criteria. The financial industry is now deploying systems to move money faster, more securely and with more granularity to support finer liquidity management of business without regard to “banking hours.”

Today, the most viable method involves the use of existing networks that can push messages and money to nearly any depository account across the country. The techniques that are used have been around for years from Visa and Mastercard but are not a “card” product. They truly move from one account to another using these very pervasive networks. As this method (and ones from the Fed and The Clearinghouse) further mature, the U.S. could start to see the merging of ACH, check, same day ACH and wires into a more uniform immediate transfer economy.

For all businesses, timed payments are becoming more of a necessity. Consider the ability to pay another business or person at a specific date and time, or at completion of a specific criteria. For example, when a load hits the dock, payments could be made regardless of the date or time. This is beneficial for clients as well because when the funds move into a client’s account, they are immediately available for use. There is no delay between receiving the payment and using the funds to get to the next job. Because of how this system is designed, clients will never have a “wire receive fee” or anything like it. And remember, this process happens whenever it’s told, whether that’s Sunday at midnight or on Jan. 1.

Since payments can move any time and any day, issues can be addressed for a factor’s accounting cycle, systems and procedures. Normally banks will send a report for the day’s transaction activities. What happens when that report cycle isn’t the same as your business day or is produced in the wrong time zone? Factors must reconcile multiple reports to their accounting system business day or wait to reconcile on the next business day.

In a more immediate payment system, since transactions move when they’re told, their status is continuously available since the status of everything can be monitored as it happens. That means factors can set their accounting day so the status of processing periods already match the previously defined business day. Then widely available technology can auto-import status to reconcile to the accounting system. Now the accounting system can reconcile every day or at any time synchronization is needed — end of day, intraday, every hour or whenever account updates are required. This is immensely helpful in managing intraday liquidity and cash flow/position because you don’t have to wait for a report, just consume the transaction data when you want.

THE BUSINESS PAYMENTS COALITION

In addition to more immediate payments, to support a different Federal Reserve of Minneapolis initiative, you can use an optional shared ID. You can read about this work by the Business Payments Coalition (BPC) in an article published by The Federal Reserve of Minneapolis: “Simple Remittance Requirements.”

This reference ID could be as simple as an account number, invoice number, contract number or anything that helps both sides know the purpose of the payment. Many small business owners can be confused when it comes to understanding which payment is for which invoice or account. The BPC was formed to help. Clients can collect transaction data on their side of the platform if they would like to automate the upload of payments data to their accounting systems. The reference ID can be used as an index to auto-post to the correct item in the payable system.

David Jackson is a payments industry advisor at First Horizon National Corporation. You may know First Horizon as First Tennessee Bank or IBERIABANK, but combined, the company is First Horizon National Corporation with $86 billion dollars in assets in 500 banking locations in 12 states across the Southeast. First Horizon recently implemented a payments innovation platform supporting the factoring industry.

Jackson is a sales and consulting executive delivering successful and innovative client engagements in payments, including B2B, B2C and G2C solutions. His background includes integration, go-to-market and business strategy, including blockchain, payments and real-time fraud detection. He advised dozens of startups through several incubators and investment firms. Jackson can be reached at djackson3@firsthorizon.com or 614-560-1237.
A Family Man: Steve Johnson Built His Legacy on Enduring Connections

The factoring industry lost one of its most prominent figures in September, as Steve Johnson, president of J D Factors, passed away due to complications from prostate cancer. Johnson became a legend in the industry by treating his employees and clients as family and making that an integral part of everything he did, both inside and outside of the office.

BY PHIL NEUFFER

As an old saying goes, you don’t get to pick your family, but for Steve Johnson, the former president of J D Factors, that wasn’t exactly true. Johnson's professional life was largely influenced by the family he did have, including his father-in-law John Danis, who gave him his start in the factoring industry. However, Johnson didn’t just form familial connections with those with whom he shared a legal relation. Johnson also made sure every employee and client he ever worked with was treated just as well as anyone sharing the Johnson (or Danis) name.

“Family was No. 1 in his life and it’s always been,” Matt Johnson, co-president of J D Factors and Steve Johnson’s son, says. “And J D Factors is just another family that was No. 1 in his life and in many of our lives.”

Steve Johnson tragically passed away on Sept. 3 due to complications from prostate cancer, but his legacy both as a co-founder of J D Factors and within the factoring industry at large will continue on, primarily because of the way he treated others both inside and outside of his chosen family.

“My coworkers would, to a person, agree that they are treated like family,” Chip Wiley, senior vice president of operations in Chicago for J D Factors, says. “The business provides phenomenal benefits to the employees and just is a great place to work. And that’s really a testament to Steve and his family because that’s where the culture was nurtured and brought along.”

FAMILY FIRST

Steve Johnson’s company, J D Factors, is very much an extension of that family-centric point of view. He originally founded it with Joyce Danis, John Danis’ wife and Johnson’s mother-in-law, following John Danis’ death in 1998. However, the combination of the Johnson and Danis families began long before then.

Johnson married Janalee Danis, John and Joyce Danis’ daughter, in 1976 but spent the first 15 years or so of his professional career in banking rather than factoring, the industry in which his father-in-law made a living. During those 15 years, Johnson held roles at multiple institutions in Southern California, including Mercury Savings and California Commerce Bank. He was drawn to banking, and eventually factoring, due to his love of numbers, according to Matt Johnson.

After 15 years in banking, and plenty of encouragement over the years from John Danis, Steve Johnson joined his father-in-law at Riviera Finance in 1990, ultimately beginning his path in the factoring industry.
“I think it was kind of his father-in-law’s plan to get him exposure to the business and then move him into corporate management,” Wiley says.

It was at Riviera Finance that Steve Johnson got to know Wiley and further cement his relationship with Bo Kelly, who serves as co-president of J D Factors today with Matt Johnson. Of course, Kelly’s connection to Steve Johnson and the Danis family went back much further, as he grew up across the street from the family and remembers Janalee Danis as his first babysitter.

“I tell people I’ve hit the lottery in life twice. Once when I met my wife, Jennifer, and the other because I grew up across the street from the Danises,” Kelly says.

**A BOSS, A BROTHER, A FATHER**

Both Wiley and Kelly became long-time business partners of Steve Johnson, but each viewed their relationship with him as much more than that.

“He initially reported to me. So, it was kind of interesting. Our initial relationship was [that] I was the boss and that he was the employee,” Wiley says, noting that Johnson brought him on at J D Factors in 2002 but only waited so long because of a two-year non-solicitation agreement with Riviera Finance.

Kelly’s relationship with Johnson also evolved over the years, ultimately becoming one of the most central in Kelly’s life.

“Steve was like my brother, and then my dad passed away in 2003, and he went from being my pseudo brother to my pseudo father,” Kelly says. “So our relationship had changed a lot over the years, from workmates to where I felt like he was my brother, to at the end, I felt more like he was a father figure to me.”

Despite being a family figure to so many within his company, Johnson was still the boss at J D Factors, but his integrity, genuine nature and openness made him stand out above other company leaders.

“Steve was honestly the nicest, just the kindest person I’ve ever met,” Wiley says. “He learned from his mistakes. He led his employees. He wasn’t afraid to give his coworkers, his employees, his staff, responsibility.”

“I never in my life met a more genuine, honest, level-headed person than Steve,” Kelly says. “We talked about everything continually every day and we didn’t always in the beginning see the same way, but by the time we were done, we always did.”

For Matt Johnson, his father was an exceptional boss in good times and bad.

“It was always very easy to go in and talk to him and ask him questions, especially when I was just learning how to do all this stuff. And he’d let me vent and yell when I had to deal with terrible clients or terrible debtors,” Matt Johnson says. “Was I ever angry with my boss? Probably. Was I angry with my dad? No, not really.”

Such a mentor-like approach was what Matt Johnson and his sister Melinda came to expect from their father. For example, when Matt Johnson started playing soccer as a child, Steve Johnson read up all he could on the unfamiliar sport so he could coach his son’s team. Steve Johnson also played a prominent role in the Boy Scouts of America, serving as scoutmaster for his son’s troop, with Matt Johnson eventually going on to become an Eagle Scout and a scoutmaster himself.

“He was the best dad,” Matt Johnson says. “I mean, I’m sure your dad’s good, but he wasn’t Steve Johnson.”

**LEAVING A LEGACY**

Steve Johnson, whose father was a United Methodist minister, also served on the board of trustees of the Claremont School of Theology, and on top of all that, he found time to be a board member for the American Factoring Association and an active member of the International Factoring Association and the Commercial Finance Association (now SFNet). Through his work with the IFA and AFA, as well as his time with Riviera Finance and J D Factors, Johnson built quite a representation and legacy in the factoring world.

“Steve’s legacy with factoring is that you can have a super successful company and grow it from nothing to where we are now and be a nice guy and get along with people,” Kelly says.

“There are an awful lot of people throughout the factoring industry that trace their roots either directly back to Riviera or to J D,” Wiley says. “And a lot of our competitors are people that either had a direct relationship working for Steve or his family or working for people who worked for Steve and his family.”

Steve Johnson’s legacy will live on beyond J D Factors in part because of the lessons he taught to his children, particularly his son, who has followed in his father’s footsteps. After attending the University of the Redlands, his father’s alma mater, Matt Johnson rose through the ranks at J D Factors to become co-president with Kelly. The two both share the goal of continuing to serve clients with a family-oriented perspective.

“We’re not just a faceless company. We want to be a part of our clients’ lives and help them along the way,” Matt Johnson says, crediting his father for this company philosophy.

“We really, really care and that’s not just some soap box BS or whatever. We really do care,” Kelly says. “And that’s a reflection of Steve.” •
The Board of the American Factoring Association just approved a brand-new set of bold goals advocating for the factoring industry in the coming years. In addition, we have elected three new board members and set out on a path in Washington. Our aim is to amplify your voice and build deep and lasting relationships. It is essential that we protect what you have built.

Speaking of protecting your rights, we had a big win this fall that reflects why the AFA is so needed. We have been advocating on your behalf in front of the Consumer Financial Protection Bureau for many years. In September, the CFPB released its outline regarding the implementation of Section 1071 of the Dodd-Frank Act. This section of Dodd-Frank will require “lenders” to collect and maintain race, gender and ethnicity information from loan applicants.

The AFA has spent four years meeting and working with the CFPB to explain why factors, as purchasers of existing receivables, are not “lenders” and should not be required to collect and maintain this data. The AFA’s intense work over these last four years is reflected by the CFPB’s interim decision to exclude factors from having to gather and maintain this data. According to the CFPB’s cost estimates, if factors were required to do so, the cost to the industry would be millions of dollars.

After the release of the CFPB’s outline, the bureau empaneled a group to provide feedback on the 1071 outline. The AFA nominated Kwesi Rogers and he was appointed by the CFPB. Kwesi spent two days working with the panel on discussing the outline.

The CFPB will now draft proposed regulations, which the AFA intends to follow closely. It is very important that the progress made is not negated in the final regulations. Some are urging the CFPB to include factors in the regulations and we must work to advocate against this.

As of writing, we are gearing up for the election. We will follow the results closely and adjust our strategy as needed.

Overall, 2020 was an action packed year for the AFA, as we fought for you on the Paycheck Protection Program, met with the CFPB and worked hard in Washington, D.C., California and New York, where new regulations around SME lending.
are coming. We also made some governance changes at the board level meant to streamline our goal setting, elected new officers and have mounted a new membership campaign.

In December, we will have a Zoom webinar with our Washington attorney and representative, Palmer Hamilton, to discuss election results and AFA strategy going forward. We invite you to join us and make your voice heard.

As you may have been a bit busy this year (ha-ha), you may have missed renewing your membership. If so, go to americanfactoring.org where you can renew and/or pledge your support to the 100% volunteer-led AFA. We really need you, now more than ever. •

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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As of November 11, 2020
WHAT’S NEW AT IFA

ASSOCIATIONS

The following trade associations offer member pricing for events attended by IFA members:

Commercial Factoring Expertise Committee of China (CFEC)
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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, FactorHelp strives to maintain its goal of providing the unparalleled service the factoring industry expects from a solutions partner.

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 INFORMATION

Ansonia, An Equifax Company
Ansonia is your next-generation business credit and collections solution offering decisioning tools and over $1.3 trillion in accounts receivable data from major industries across North America. 200+ factors and 70% of North American Truckload, LTL and 3PLs rely on Ansonia for innovative ways to manage debtors and fraud risk. As always, Ansonia delivers quality data, credit, and collections solutions you can afford. Call us today to see why IFA members voted Ansonia their number one source for underwriting account debtors.

855-ANSONIA • 855-267-6642
www.ansoniacreditdata.com

IFA Member Benefits: Complimentary review of your portfolio’s risk distribution. Includes a breakdown of debtors by risk category (high, medium, or low) and visibility to how debtors are paying other factors as well as all industries and much more. Ansonia Alerts $20 per month (20% savings)

FactorsNetwork
FactorsNetwork provides an online platform where Factors share trade experiences with each other. Members are able to pull unlimited Credit Reports as well as monitory and analyze their portfolio. Transportation Factors benefit from our CarrierMonitoring and ChameleonCatcher programs and their clients profit from our LoadBoard. We even offer a Sales Tool to help you find new clients.

435-659-4612
www.factorsnetwork.com

IFA Member Benefits: 50% cost savings for the monthly membership fee. It is normally $1,000 per month, but IFA members will pay $500 per month.

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 • dave.powers@clarusdc.com
540-222-3925 • www.clarusdc.com

IFA Member Benefits: IFA members that purchase the CardX program 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.

901-385-5327 • www.epaymentamerica.com Zellner@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.

FUNDING

Haversine Funding

Haversine Funding helps commercial lenders fill funding gaps through participation programs, lender finance and growth capital funding. Our clients are factors, ABLs, inventory, purchase order and other commercial finance companies. We offer lines up to $5MM for individual transactions and up to $25MM for portfolio participations.

Gen Merritt: gmerritt@haversinefunding.com 469-360-9792 • www.haversinefunding.com
IFA Member Discount: For transactions that equate to funds employed averaging $3 million over previous 6 months. Haversine Funding would sponsor an IFA conference or course registration fee. The member may receive one free admission to an event per year.

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 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.

Robert Thompson • 866-272-3704 www.LiquidCapitalCorp.com

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50 Words LLC

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

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 for new clients only)

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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.

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

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Artis Trade Systems

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480-250-8186 • www.artistrade.net
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EQ Riskfactor

EQ Riskfactor is the leading provider of risk management and fraud analytics software for the global commercial finance market including factoring organizations, banks and alternative lenders. EQ Riskfactor’s risk management technology uses automation to identify potential frauds along with advanced analytics. The technology highlights unusual activity so lenders can better investigate fraud and reduce risk. The tools also help lenders to eliminate manual processes, saving time and money.

Aaron Hughes • aron.hughes@equiniti.com Melissa Havers • melissa.havers@equiniti.com www.equiniti.com
IFA Member Benefit: Members will receive free hosting when they purchase EQ Riskfactor. This is worth up to $5,000 depending on the number of users and size of firm.

FactorCloud

We built FactorCloud when we, a former factoring company, couldn’t find software we liked. Our sister product Firebolt – artificial intelligence and OCR - is built right in. With this powerful combination, our operations employees managed nearly 80% more NFE. You can also growth your portfolio with fewer people. Save time and increase efficiencies. Reduce costs, risk and errors. Make profit rain with FactorCloud and Firebolt.

Rachel Presley: rachel@factorcloud.com 888-888-0694 • www.factorcloud.com
IFA Member Benefit: 10% discount on subscription fee

FactorFox

FactorFox has been providing factoring software to small, medium, and large companies during the last 15 years. FactorFox is beautifully designed, user friendly, and powerful. With every line of code we write, we challenge the status quo. We are continually finding ways to mitigate risk, and to give our factors a competitive advantage in the factoring industry.

877-890-1897 • www.factorfox.com
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Finvoice

Finvoice 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. Finvoice came out of a passion to help small businesses who generate 67% of jobs and 50% of the world’s GDP.

Andrew Bertolina 310-951-0596 • www.finvoice.com
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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.

Matt Bernstein 630-544-0459 • 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.

205-972-8500, option 3 • www.profitstars.com
IFA members will receive 10% off new ProfitStars lending solutions product purchase. For IFA members who are currently ProfitStars customers: Free one day FactorSoft refresher course, per year, at ProfitStars’ training facility in Birmingham, AL.

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.

464-502-4478 • www.tax-guard.com
Rich Porterfield: rporterfield@tax-guard.com
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800-406-1577 • www.searchcf.com
Rich Porterfield: rporterfield@tax-guard.com
IFA Member Benefits: IFA Members will receive a 10% discount off of the retail rates of their signature state and county account monitoring product.

The Commercial Factor | OCTOBER 2020
Still in the Woods: Strategic Insights from 2020’s Factoring Trends

Bill Phelan of PayNet and Jeff Jones of Ansonia Credit Data provide a visualization and analysis of the ups and downs of the factoring world this year. They see an interesting correlation between bank lending and factoring in the time of COVID-19 and the Paycheck Protection Program while certain states show greater risks of default.

BY BILL PHELAN AND JEFF JONES
While bank credit surged at the time of the Paycheck Protection Program stimulus lending period, factoring volumes initially dipped and then recovered. This inverse relationship between bank credit and factoring might indicate how another stimulus package could impact factoring.

Nonetheless, there are some positive developments worth noting. However, there is concern about the coronavirus in the coming winter months, a recent Comcast Business survey found 78% of small and mid-sized businesses are at least somewhat confident they can handle a surge in cases this fall/winter.

WE ARE NOT OUT OF THE WOODS

According to PayNet’s October 2020 Small Business Lending Index, after a stronger-than-expected rebound this summer, the longer-term scarring effects in the labor market are becoming increasingly apparent. Since April, permanent job losses have increased by 1.8 million — half of which occurred in August and September — and several large companies have announced plans to lay off employees in the coming months, including Disney (28,000), American Airlines (19,000) and United Airlines (13,000). Additionally, while consumer spending rose for the fourth straight month in August, it remained 3.4% below its pre-COVID-19-pandemic level.

THE PANDEMIC: A BOON FOR ENTREPRENEURS?

Separately, a recent Wall Street Journal report highlighted how the pandemic has been a boon for some entrepreneurs as new business applications among likely employers are at their highest point in a decade. While many small businesses are managing to hold their own (and some are thriving), according to the Census Bureau’s Small Business Pulse survey, 8.5% have either permanently closed or do not believe their operations will ever return to normal, and nearly half believe it will take more than six months for business operations to normalize.

Based on PayNet’s Absolute PD Outlook — a forward-looking probability of default model — the map on the next page predicts states that have the highest probability of defaults on business loans within the next year. AbsolutePD Outlook uses millions of forecasts on individual businesses that PayNet calculates with AbsolutePD. These individual business forecasts are aggregated by four-digit NAICS for each county in the United States. PayNet models these forecasts across the census count population of businesses.
Financial relief remains a critical need for many small businesses. A September Goldman Sachs survey found that without additional financial relief from Congress, 36% of small businesses will begin to lay off workers soon, while 30% will run out of cash reserves by the end of the year. Additionally, although there appears to be substantial bipartisan support for additional targeted small business relief, negotiations in Washington have been unsuccessful thus far. As long as the uncertainty continues, there will be increased opportunity for factors to provide funding to existing companies in need of immediate financial relief, and to look ahead to fund newly emerging enterprises to come given the entrepreneurial mindset of factors.

such that there is a default forecast available for each county where one or more businesses exist in any four-digit NAICS sector.

**A RISE IN DEFAULTS IS PREDICTED**

Loan forbearance and the PPP have helped small businesses, but these are only temporary solutions. Without a vaccine to fight new waves of infection, expect double-digit default rates of bank lending and commercial leasing in hard-hit sectors, including hospitality, food service and retail. Business owners are hard pressed to stay open while piling up more debt when a timetable for future repayments looks uncertain.

Financial relief remains a critical need for many small businesses. A September Goldman Sachs survey found that without additional financial relief from Congress, 36% of small businesses will begin to lay off workers soon, while 30% will run out of cash reserves by the end of the year. Additionally, although there appears to be substantial bipartisan support for additional targeted small business relief, negotiations in Washington have been unsuccessful thus far. As long as the uncertainty continues, there will be increased opportunity for factors to provide funding to existing companies in need of immediate financial relief, and to look ahead to fund newly emerging enterprises to come given the entrepreneurial mindset of factors.

**Jeff Jones**, vice president of Ansonia Credit Data, blended his experience in transportation sales, credit and collections operations with emerging technology. Following Ansonia’s acquisition by Equifax, he continues to innovate solutions to help companies better manage their accounts. He can be reached at jeff.jones1@equifax.com.

**William Phelan** is senior vice president and general manager of USIS Commercial Services at PayNet, an Equifax company. He serves on the Federal Reserve Bank of Chicago’s Advisory Council on Agriculture, Small Business and Labor, and on the boards of various industry associations. He can be reached at william.phelan@equifax.com.
stinks.

“Good design is like a refrigerator—when it works, no one notices, but when it doesn’t, it sure stinks.”

—Irene Au, Designer
Networking is one of the most important parts of business development and sometimes something as simple as an informal business lunch can lead to a major career change. Such is the case with Tae Chung, the new senior vice president of business development at Republic Business Credit. Chung shares why he decided to join the company, the challenges of doing so during a global pandemic and how he is leveraging his experience to drive new business.

BY PHIL NEUFFER

One of the last in-person business lunches Tae Chung had in 2020 turned out to be an important one. In late February, right before the first round of COVID-19 shelter in place orders changed how restaurants served customers, Chung broke bread in Los Angeles with Robert Meyers, president of Republic Business Credit. Although Chung was gainfully employed by Hana Financial at the time, the conversation eventually made its way to a potential future for Chung with RBC.

“That’s how we started the dialogue,” Chung says. “Rob made it clear that he remained very interested in working with me at some point should it ever make sense. At the time, I wasn’t really interested, but it is always flattering to be courted and it was a fun, open discussion.”

Although Chung left that lunch in February without any plans of joining another company, the thought of joining RBC stuck in the back of his head. After all, the company employed some of his oldest friends in the finance industry, including Jason Carmona (EVP, western regional manager) and Matt Begley (chief operating officer).

People can greatly influence how you think about a company, but Chung also was intrigued by the growth plans of RBC as a business overall. “It made a lot of sense,” Chung says. “The approach they take to building a business, their go to market approach, their culture … it meshed very well with where I would enjoy adding value.”

PERFECT TIMING IN AN IMPERFECT TIME

In March, when shelter-in-place orders began in response to the COVID-19 pandemic, Chung’s prior employer faced many challenges, leaving Chung in a precarious position and one that ultimately opened the opportunity to join RBC.

Although changing companies in the midst of a global pandemic was not his planned course of action, Chung was fortunate enough to have the option.

“I think timing and a bit of luck were a few key reasons that determined how everything played out in the end,” Chung, who now works as a senior vice president of business development for RBC, says. “It was just a perfect timing in the midst of a very uncertain economic environment.”

Speaking of timing, RBC didn’t waste a single second getting Chung on board officially. According to both Chung and Meyers, after Chung informed the company he was interested in joining, it took fewer than 48 hours before an offer sheet was sitting on his desk. “It was a wonderful way to end a crazy week,” Chung says. “As you’re building and growing a business, you identify key people in key markets. And, as anything, timing is not always at your discretion,” Meyers says. “Once Tae told us that he became available, it was a no brainer.”

It’s easy to see why Meyers and RBC were so interested in Chung, who first entered the factoring industry in 2002 at Finance One, a factoring company in Los Angeles. Chung started in operations with Finance One and eventually moved into a business development role in 2007.

“During that time in the industry, often people were employed in a
random chat that happens when video conferencing and phone calls a person, “Meyers says. “For all that only comes from time investing in human connection with people that pride ourselves on having that true.”

“Right now, current position wise, I am purely doing marketing and business development. My main focus: originate new clients and help onboard them,” Chung says, while giving a great deal of credit to RBC's underwriting team for winning deals. “Our underwriters are a big help in supporting that aspect. Underwriting the accounts, getting those to the finish line in the midst of a pandemic and arming our [staff] with the ability to focus [on] adding new clients while working in tandem to fund the new deals.”

As Chung has been working to accelerate deal flow, there is no way to ignore the negative effects of the COVID-19 pandemic, even on the healthiest of companies.

“Throughout the years, I always believed the previous economic downturn was the worst, but COVID-19 is by far the worst economic downturn that I faced in my career,” Chung says, noting that to remain successful, he has been forced to adapt, pivot and proactively anticipate what lies ahead for both RBC and its clients.

Looking at retail in particular, he is going beyond the established narratives of the decline of brick-and-mortar and the rise of e-commerce to find solutions for potential clients. For example, in the midst of the COVID-19 pandemic, Chung believes that budget discounters like TJ Maxx and Ross are better positioned to ride out the storm, particularly as consumers exhibit more conservative spending behaviors. Chung also anticipates a continued increase in interest in factoring as a means of gaining liquidity.

“During pandemics or recessions, it typically broadens the interest in factoring by companies that have never factored before or sought credit protection for their receivables,” Chung says. “There’s going to be a lot of pull back in the bank credit market, and I believe more clients will seek factoring as an alternative to banking, or those banks will encourage their clients to add on credit protection to the receivables to support their loan.”

In addition to adaptability and a forward-looking mindset, Chung believes RBC's willingness to go all out to find the right deals is the key to the business' ability to remain active during the pandemic.

“We have been very aggressive in the market during the pandemic in terms of adding new accounts, structuring deals and finding a partnership with clients to help them grow,” Chung says.

By helping to pursue business, Chung has helped with that aggressive approach, proving that Meyers was right to seek him out.

“[He’s] overwhelmingly exceeded expectations in the midst of what is an obviously crazy time,” Meyers says. “But I think that it comes down to something very simple: Tae is the right person. We knew Tae was the right person before this, and we got lucky that Tae was available.”

Meyers isn’t alone in valuing Chung and his ability to get things done. According to Chung, his ability to be direct and honest with clients is what has led to his success and what should continue to aid him in the future.

“I have clients that have been with me for the past 15 years that have trusted me because of [my] upfront and straightforward approach to solutions,” Chung says. “I don’t sugarcoat everything. At the time that something needs to be addressed, we address it together and move forward on the same path.” •
Haversine Funding helps commercial lenders fill funding gaps through participation programs, lender finance and growth capital funding. Our clients are factors, ABLs, inventory, purchase order and other commercial finance companies. We offer lines up to $5MM for individual transactions and up to $25MM for portfolio participations.

The following vendors offer discounts or other advantages to IFA members. All have undergone a screening / evaluation process.

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If you offer a good or service to the Factoring Industry and are interested in applying for Preferred Vendor Status, please contact us at 805.773.0011.
Furnishing Success: How Homestar Uses Flexible Financing to Traverse COVID-19

In a Q&A for Commercial Factor, Leigh Lones of Rosenthal & Rosenthal spoke with Mark Phanco, COO of Homestar, about the challenges (and successes) the furniture distributor has faced during the COVID-19 pandemic and why flexible financing such as factoring has been important in keeping business on track.

BY LEIGH LONES

No one predicted how catastrophic and far-reaching COVID-19 would be when it hit in early 2020. There was not a business, industry or region in the world immune to COVID-19’s outsized impact. No business owner was prepared to deal with the hurdles, setbacks and business disruptions that ensued, including months of lost sales, backlogged inventory and increasingly complex supply chain challenges. The companies that have weathered the storm thus far have demonstrated their tenacity and adaptability, even under the most challenging of circumstances.

Homestar Corporation, a ready-to-assemble furniture company, is one such standout business that has displayed exceptional resiliency throughout this turbulent period. Leigh Lones, SVP and Southeast region sales manager at Rosenthal & Rosenthal, spoke with Homestar COO Mark Phanco about growing a business during a global pandemic, pivoting to meet unexpected demand and why flexible financing is a must.
LONES: Homestar has a fascinating back story. Only a decade old, the company is headquartered in China with offices across Europe, Asia and the U.S. Over the years, Homestar has taken steps to expand its presence across North America. Initially, this growth stemmed from your U.S. manufacturing facility, which Ashley Furniture acquired in 2019. Most recently, the company has seen significant growth from your skyrocketing e-commerce sales with large domestic retailers. How has your business fared in recent months and what are some of the biggest challenges that you’ve faced?

PHANCO: COVID-19 has obviously created a unique set of circumstances for every business and especially for Homestar. There’s of course the critical mass piece, namely how to sustain a business when the world around you turns upside down. Our strong management team and the support we receive from Rosenthal has positioned us well and we’ve been fortunate to continue to move our business forward, even when other companies have struggled to do so.

The other unexpected byproduct of the pandemic is that furniture became a necessity for many consumers. The home office category, as one example, which had traditionally been a small piece of the business over the last 10 years — less than 1% — is now booming. All of a sudden, everyone needed a home office.

This created a good problem for Homestar. Demand was high, e-commerce orders flooded in from retailers and inventory flowed without issue from China. The products had already been manufactured in China before the Chinese New Year, so they were simply put on a boat and sent to the U.S. to be sold, which kept us a step ahead of many domestic manufacturers.

While many companies experienced supply chain disruptions, we were able to get our furniture directly into the hands of our retail customers more quickly because our furniture was pre-assembled overseas.

One major hurdle we faced early on, however, was that most of our employees were under stay-at-home orders like so many other people around the country. So, while our customer service was on the mark, we couldn’t get products on the trucks and delivered to customers as quickly as we had wanted to. A couple of our large retailers needed their orders filled so urgently that they actually prepared letters from their CEOs deeming Homestar an essential business. Their support and confidence in us helped to get Homestar up and running again at full capacity.

LONES: It seems like the stars were really aligned for Homestar, specifically the timing of the sale of the company’s U.S. manufacturing business in 2019, which was key in helping Homestar refocus on e-commerce. How did that shift away from a manufacturing model to a solely e-commerce model work in your favor?

PHANCO: Our owner, Steve Lu, deserves credit for having the vision to not only maintain a U.S. presence but also to grow our footprint here, even after the sale to Ashley Furniture. We were hyper-focused on what the U.S. market’s needs were and how we could help to meet them. We knew the customer had changed and that we were now serving a primarily younger consumer base that was more accustomed to buying furniture online than in stores — a completely different buying experience than when I was buying furniture for my first home years ago.

We were lucky to find an acquisition partner in Dallas and built a drop-ship distribution center right smack in the center of the country so we could move products quickly to customers from coast to coast. The acquisition was a great one for us and accelerated our e-commerce operations by almost six months.

We knew if we were going to grow in the way that our owner had envisioned, we would need a lending partner that would grow with us and keep us charging ahead. Instead of needing funding for manufacturing, we looked to Rosenthal for inventory financing to ensure that our product continued to flow from China to our customers without interruption.

LONES: The pandemic has exposed many weaknesses and vulnerabilities in certain sectors and has caused major disruption across the credit markets. With credit coverage significantly restricted, how have these changes affected the furniture industry and your own business?
PHANCO: What’s happening right now in the credit markets is like nothing we’ve ever seen before. It’s hit businesses and consumers alike. On the consumer side, you could see the impact reflected in the shift in demand for our products. Interestingly, our highest furniture sales are historically right after tax season. People typically go out and buy houses, cars and furniture. So there was a real concern, especially among suppliers, about what would happen when the IRS delayed the tax filing deadline in April. But then the stimulus checks went out and we saw an almost immediate spike in furniture sales. For suppliers, things began to tighten up on the inventory side because of payment delays from big retailers. Some had money but no inventory, others had inventory but limited funds. Everyone was starving for sales.

Credit restrictions have changed the way we do business. Many factories have modified their expectations for payment. If you want more favorable terms, it takes a strong balance sheet and access to funding. Whether it’s inventory financing or receivables financing, the right lending relationship can give a business flexibility as well as help navigating supplier relationships, supply chain challenges and shifting payment terms. We’ve also been able to pay our obligations to suppliers and tap into working capital to run our business.

LONES: Most people know Homestar as a furniture company. But Homestar also has a booming medical products business. With PPE in high demand because of COVID-19, how did you mobilize to meet the urgent needs of your customers?

PHANCO: As was the case when we made the decision to refocus our furniture business on e-commerce, our owner had the foresight to get into the medical products business at just the right time. We already had the customer base: the same large retailers who purchased our furniture. And when COVID hit in March, we knew there would be incredible demand for PPE for consumers and medical professionals alike. We worked quickly to find the right factories in China that were producing only the highest quality products. But there were many new hurdles to jump through, and most pressing were the prepayment requirements from freight companies to ship product overseas.

LONES: So many companies right now are struggling with more stringent supplier demands, prepayment requirements and other restrictions that can either slow down or jeopardize customer orders entirely. Homestar is already well-positioned in China and you have strong relationships with suppliers and manufacturers. How did that factor in?

PHANCO: It was almost a perfect storm. PPE, digital thermometers and other medical products fit right into our wheelhouse, mostly due to the relationships we already had with suppliers and manufacturers across Asia. That, coupled with intense demand from our existing U.S. retail customers, made it clear that this could be a significant growth opportunity for Homestar. Thankfully, we’ve been able to keep up the incredible momentum we were experiencing with our core business — furniture — while also having flexibility to grow in another sector.

PHANCO: How does your approach differ when thinking about financing a startup brand versus a more established brand? What are some of the key factors that help you decide whether to give up equity or explore alternative financing solutions like factoring?

PHANCO: Being able to shift gears, adapt quickly to meet demand and pursue opportunities is really the name of the game. Having flexible financing solutions like inventory financing and receivables financing has actually allowed us to get back into the manufacturing business in the U.S. — but this time for PPE, not furniture. It’s looking more and more likely that the U.S. could become a mask-wearing culture ... and with so many retailers and industries starved for PPE, we see a real opportunity. We know that many of our retail customers would prefer to buy “Made in the USA” PPE so that is our new focus. We wouldn’t have been able to do that as successfully had we gone down the path of giving up equity. •
Perfectly Splendid: Back to the Basics of Attachment and Perfection of Security Interest

Steven N. Kurtz returns to the basics and offers up guidance on attaching and perfecting security interest in an article inspired by and in memory of Steve Johnson and David Rains.

I frequently look at what’s happening around me for inspiration for this column, and some recent unpleasant news triggered the idea for this article. The International Factoring Association lost two longstanding and prominent members this year in Steve Johnson of J D Factors and David Rains of Commercial Finance Consultants/FactorHelp. Steve and David were friends that I have known for more than 20 years and hold in high regard. They both shared a love of imparting their knowledge to others. Steve worked with youngsters through his church and scouting. David’s passion was teaching prison inmates life and business skills. The void caused by their passing made me realize there is a whole new group of people in the factoring and commercial finance industry who could benefit from learning the basics. This article will do a deep dive into the attachment and perfection of security interest, which is the foundation

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of the industry. While designed for newcomers, more experienced folks may learn a thing or two as well.

Whether you are extending credit and taking collateral or purchasing accounts, you need to comply with Article 9 of the Uniform Commercial Code. In fact, the UCC recognizes the line is often blurred between a true sale of accounts and a loan. The first step for Article 9 is the attachment of your security interest. Provided that your security interest attaches and you perfect, which for most collateral is recording your financing statement correctly, you are both attached and perfected as to your collateral and, if applicable, have taken steps necessary to own the accounts you purchase.

As for existing collateral that is perfected, you will always be ahead of a lien creditor. Issues arise when you make new advances on after acquired collateral.

interest requires that the debtor have rights in the collateral, that value is given and, in most instances, that the debtor has authenticated a security agreement that describes the collateral. These steps are easy, and the last step occurs in the granting clause of your agreement in which your client grants you the security interest in the collateral. Before Article 9 was overhauled on July 1, 2001, security agreements often had long and meandering collateral descriptions. Article 9 now allows you to simplify your collateral descriptions by describing categories of collateral. If you are using the super long collateral description, you are probably on an older form.

Unless you are dealing with exotic collateral, such as chattel paper, or collateral for which the UCC provides alternative places for perfecting your lien, such as titled vehicles or registered copyrights, you perfect your security interest by filing in the state in which your client is organized. But first you need to ensure you describe your collateral correctly in your financing statement. This step is easy now, but understanding this concept requires another history lesson.

Before July 1, 2001, financing statements had to be signed by the debtor, and in many instances, had to be filed in multiple states, and creditors often lost priority challenges against the collateral because it was easy to get things wrong when you had to file financing statements in multiple jurisdictions. Plus, if the debtor opened a new location, the creditor was exposed.

Now you perfect your security interest in all collateral perfected by a financing statement in the state where the debtor is registered. But again, another history lesson. Before July 1, 2001, your UCC-1 had to match the exact grant of your security interest. So if your agreement had a super long collateral description, your financing statement signed by the debtor had to match your language in the security agreement. If you accidently left something off, then the secured party was in danger of losing its perfection on whatever it left off. Sometimes transcription errors produced strange results when the person preparing the UCC-1 left off parts of long flowy collateral descriptions. Another common mistake was that the person drafting the UCC-1 thought that since the creditor was getting a blanket lien, often referred to as all assets, it was OK to say “all assets.” Before July 1, 2001, this was wrong and led to the creditor losing its lien. Now your financing statement can say “all assets.”

The bottom line way to make sure you are perfected is as follows. Your security interest attaches through the granting language in your agreement, where you can describe the collateral in basic categories. A written agreement to extend credit satisfies the "value" provision in UCC 9-203 and contains language that affirms the factor client owns the collateral, which means it has the "rights" in your collateral. You perfect by either describing the collateral exactly as the security agreement states or you can simply say "all assets" on your UCC. I prefer using all assets since it’s hard to mess up those two words. If you say all assets, your actual collateral
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is what’s described in your security agreement. Your financing statement must be filed exactly in the name as it is registered in the articles of incorporation or LLC on file with the state. Write the debtor’s name exactly as it’s written in the registration papers. Once you file the UCC-1, you should run what is called a “search to reflect.” That means, after you file, you conduct a search using the name as reflected in the official state records, in the state where you filed, using the state’s official search logic system. If your lien shows up in your search to reflect, you are perfected. If not, then you need to figure out why. The UCC is what is known as a “race statute,” meaning that whoever records first wins the priority fight, no matter what.

LOSING PRIORITY

Now that we have discussed perfection, you need to be cognizant as to how you may lose your priority or have your rights violated by other creditors. This can happen easily even if you do everything right. The most common ways to lose priority is through a lien creditor, a tax lien or a secured creditor junior to you. Again, a lien creditor is typically either a creditor levying on your collateral through a judgment or pre-judgment remedy, or a bankruptcy trustee. Outside of bankruptcy, it’s common for your client to get into trouble with creditors and get sued. The litigation often turns into a lien creditor situation.

As for existing collateral that is perfected, you will always be ahead of a lien creditor. Issues arise when you make new advances on after acquired collateral. The lien creditor problem kicks in the UCC 45-day rule set out in §9-323. Generally, you will be senior on new advances if you did not know about the lien creditor or if the advances were made pursuant to a commitment. Once you know about the advances, you have a 45-day safe harbor in which you can make advances and be ahead of the lien creditor on the newly acquired collateral. The UCC 45-day rule has an exception for those who buy accounts, but I never recommend continuing to fund after 45 days for a factor because most factors do full recourse factoring, which is often treated by courts as a loan and not a true sale of accounts. The best rule of practice is that once you learn of a lien creditor levying on your collateral, you should stop funding and address the issue. But, as a safe harbor, you do have 45 days in which to fund with knowledge of the lien creditor, and you can still be senior on after acquired collateral and the new advances.

Another way to lose priority is through a federal tax lien. The federal tax lien has its own 45-day rule, which is different than the UCC 45-day rule. The federal tax lien 45-day rule is as follows: If the IRS files a tax lien, you will keep your priority on new advances or new collateral on the earlier of 45 days after the lien is recorded, or immediately upon your learning (or when you should have learned) of the tax lien.

Do not confuse the federal tax lien 45-day rule with the UCC 45-day rule. The IRS jumps ahead of you 45 days after its tax lien is recorded, if you never learned about it, or the instant you learn before the 45 days expire. This means you must stop funding the instant you learn about the IRS lien. If you want to continue to fund, you will need to enter into a written subordination agreement with the IRS, which is always on its lousy form. State tax liens will be governed by the law of the state, but you should always stop funding the instant you learn. Many states track the IRS priority rules but not all.

Another way to have your priority interfered with is through another secured creditor. Even though your agreement may prohibit the granting of other liens in your collateral, it still happens and the other creditor’s financing agreement with your client is valid. The issue is not one of priority because in most instances, the factor or asset-based lender is in the first position. The issue with the junior creditor is whether it is violating your rights. While there are cases all over the place on this issue, if you are putting a warning on your UCC-1 and your agreement prohibits the granting of a junior lien without your consent, you have the upper hand if you have to go to court.

This article was inspired by Steve Johnson and David Rains because of their love of teaching beginner level subjects to their students. As a means of honoring their memories, you may wish to donate to their favorite charities: the Claremont School of Theology and the Prison Entrepreneurship Program.
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