

## Dear Friends:

It's been a winter full of pleasant surprises. We've all enjoyed unseasonably warm temperatures (when was the last time you played with your dog outside in January in shorts and a T-shirt?), and business news from clients has been favorable also. Many people who in January shared a bleak outlook for sales are now reporting that February and March are turning out much better than expected.

Our most recent expansion is finally completed, and we've filled the extra offices with personnel. Szabo Associates is now home for 39 employees, and we again thank you for helping us to grow. We also gave in to a growing business trend a few months ago—we bought a FAX machine, and the thing is so popular that a second machine is now under consideration.

Please check out page two of the newsletter for a Calendar of Events. Robin Szabo will speak at the Broadcast Financial Management Association Conference on the subject of "Dialing For Dollars"—we all know what that's all about! So put on your cowboy boots and join us in Dallas at our hospitality suite.

Best wishes,



Pete Szabo, President  
Szabo Associates, Inc.

## Court Ruling Is Boon To Industry

*The following is a bit different in nature from our usual feature articles. It's an account of a court case in which we were involved recently on behalf of several broadcast industry clients. The impact of the decision reached by the courts is important to all of us involved in collections. The article is based on facts compiled on the case by Kathleen May and Raoul Roth, Esq.*

In late 1980, our litigation department placed 11 accounts with our California counsel, Raoul Roth, for collection. All 11 accounts involved claims by television stations against the advertising agency of Scott, Lancaster, Mills & Atha. The ad agency had run spots on these stations on behalf of its client advertiser, National Service Corporation.

In the midst of this national advertising campaign, National Service Corporation filed Chapter 11 Reorganization and failed to pay Scott, Lancaster, Mills & Atha for services rendered. The stations involved took the standard position that the agency was liable to the media for payment. The agency, however, maintained it did not owe the stations, alleging it had merely acted as an agent for National Service Corporation.

In establishing the media's case, counsel relied heavily on the "standard custom in the media industry

to look to the agency for payment." The agency had contracted with the stations for the purchase of advertising time. The stations had extended credit to the agency and regarded it as an "independent contractor."

The case finally went to trial in May 1986. The media presented an expert witness, Marvin Schragar, from a well-known New York rep firm, Blair Television. In his testimony, Mr. Schragar referenced the AAAA (American Association of Advertising Agencies) liability clause as a guideline supporting the standard practice in the industry to look to the agency. The clause states: "Station agrees to hold Agency solely liable for payments to be made under this contract, except that where Agency is not an advertising agency, the person, firm or corporation which authorizes Agency to contract for television time hereunder shall be liable in the event of default by Agency." Witnesses for the defense denied knowledge of the AAAA liability clause and claimed that the agency had merely operated as an agent for a "disclosed principal."

The trial court ruled on behalf of the stations. The court concluded that the agency was liable for payment of air time on behalf of its client based on the custom in the

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## Court Ruling

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industry and the agency's failure to notify the stations of its nonliability at the time of purchase of air time. In July of 1986, the defense filed an appeal.

In July of 1988, the California Court of Appeals was presented with the briefs filed by both sides. In October, 1988, the Appellate Court upheld the trial court's ruling.\* The decision was "certified for publication," allowing it to be cited in other cases across the country in which the agency liability issue arises.

The impact of this decision cannot be underestimated. With this landmark case, the Appellate Court established a new and clear-cut precedent regarding an agency's liability to the media based on "custom in the industry," which also applies to verbal contracts.

In late 1988, the liability clause was dropped from the AAAA contract. This omission, which leaves nothing in the present AAAA contract regarding liability for payment, assigns even more importance to the case as a legal reference for similar cases in the future. The court's decision can be used as a tool during the collection process as well as an aid to counsel when pursuing an advertising agency under similar circumstances.

Szabo Associates is very pleased with the Appellate Court's decision. The outcome of this case makes worthwhile the efforts of our litigation department, which was instrumental in obtaining documents, lining up witnesses, and assisting counsel in building the case, as well as of Raoul Roth,

our legal counsel. We also appreciate the contributions of the witnesses, who were not a party in this matter but who felt the case significant enough to volunteer their valuable time to testify on behalf of the media and its customers. ♦

\*Court of Appeal of the State of California  
Second Appellate District  
Volume 205, Cal. App Third  
Page 442 (1988)

"Collector's Corner" is our readers' forum for suggestions, comments, and idea swapping. If you have information to share or input on how our newsletter can better serve you, please write or call. We want to hear from you!

**Question:** What happens when an account files bankruptcy? What should I do with my claim?

**S.M., Fargo, N.D.**

**Answer:** When a debtor files bankruptcy, it is protected from the collection and litigation efforts enforced by creditors. In other words, creditors are "stayed" or stopped from pursuing their claims through normal channels.

There are three principal forms of bankruptcy: Chapter 11, in which the debtor plans to maintain operations and repay creditors; Chapter 7, in which there are no assets or assets are liquidated; and Chapter 13, in which there is a personal reorganization with a plan to pay creditors.

Even if your claim is listed on the debtor's schedules, it is always recommended to file your proof of claim with the bankruptcy court or have your agent do so if the claim is placed with a third party. This is to ensure that your claim is protected in the event of a distribution to creditors.

If you would like more in-depth information regarding bankruptcies, please contact Kathleen May at Szabo Associates, Inc., (404) 266-2464.



## CALENDAR OF EVENTS

The following is a list of events that Szabo Associates will be attending this spring. Hope to see you there!

April 9-12 Broadcast Financial Management Association 29th Annual Conference Loews Anatole Hotel Dallas, Texas

April 29- May 2 National Association of Broadcasters 67th Annual Convention Las Vegas Convention Center Las Vegas, Nevada



# True Collections

The following story is true. The names, places, and dates have been changed to protect the persons involved.

## I Got A Bridge I Wanna Sell Ya

I became a bill collector quite by chance in 1973. During the next six months, I found I really enjoyed it. I don't know... maybe it was the challenge of the game, or feeling I was helping creditors get their due, or maybe even that I enjoyed talking to people. I felt that debtors were, as a general group, nice folks who had temporarily fallen on tough times—people just like me, who acknowledged what they owed and intended to pay up just as soon as they possibly could.

I really felt that the “vets”—the collectors who had been playing the game for a number of years—were a pretty jaded lot, judging

from their break room conversations. To listen to their talk, you would've thought the outside world was a desolate place where no one could be trusted—sort of a Mad Maxian desert of deadbeats, you might say. One guy I knew made his mother-in-law sign an IOU when she borrowed his station wagon for her garden club pool. His wife found out and he got divorced shortly thereafter. But I digress.

One morning sometime in my seventh month as a collector, my rosy outlook on debtor/collector relations was blackened. My fool-proof follow-up system indicated that I would receive 11 checks in promised payments no later than that day. Eight had come even earlier in the week than promised. I held two, which had arrived in the morning mail, in my hand. But where was the 11th promised check?

I picked up the phone to call the debtor. He wasn't at work, and there was no answer at home. I managed to locate his next-door neighbor, who told me the debtor

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SO THE POOR MAN DIED "INTESTATE". HIS GIRL-FRIEND GETS NOTHING 'CAUSE HE WENT FROM A STOMACH PROBLEM?

# szabo's FORECAST

At the time of this writing, Chase Manhattan Bank had just raised its prime lending rate to 11½%, the highest we've seen since late 1983 and far higher than the early 1987 low of 7½%. We seem to have reached the peak of our present economic cycle, where the economy looks the strongest but interest rates are spiking upward. Now we must face a period of probable economic downturn, although no one can predict just how hard or soft the landing will be.



Pete Szabo, President

Although no one wants to hear about impending recessions, they're a normal part of the economic cycle. The Federal Reserve Board tightens the nation's money supply, allowing interest rates to rise to a certain point to curb inflation and slow things down a bit. (An interesting side note—historically, whenever a new administrator, particularly a Republican one, enters office, a recession occurs within the first one or two years of his term. The reasoning is fairly simple. By administering a tough dose of medicine to the economy early on, a savvy president can set us up for a brisk economic expansion that would continue through re-election time. If we choose to recall, we experienced a 14-month recession under Reagan from the end of '81 until early '83. We enjoyed similar experiences under the Eisenhower and Nixon/Ford administrations.)

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## True Collections

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had taken his family on vacation to Disney World.

I had at long last fallen victim to a scheming, lying deadbeat. I came unglued. The smiling, optimistic Dr. Jekyll turned into a glowering, vengeful Mr. Hyde. I envisioned tracking down the low-life dog and threatening to cancel his credit cards, right there in front of his wife, kids, and Mickey Mouse.

Bad news travels fast. At least a half-dozen self-satisfied associates took the long way back from the coffee machine to parade past my office. They grinned, they gloated, and some even had the nerve to be patronizing: "Hey don't worry. Maybe it just got lost in the mail." I hated them. And I hated this debtor, whom I'd never even met, for ruining my life.

As I contemplated my plan for vengeance, I noticed the sound of

footsteps growing louder. Probably just another work associate stopping by to torment me further. I'd ignore the intruder. I pretended to be looking up a phone number.

"Mr. Carros?"

I looked up to see a man in uniform, his hand outstretched and holding a brown envelope.

"Special Delivery. I'll need your signature, Sir."

The debtor's note, which accompanied his check, expressed his concern that it would arrive later than promised. Since he was leaving on vacation, he wanted to make sure that there would be no problem.

Of course, I never really doubted that the check would come. And even 16 years later, when I hear, "It'll be in the mail today—I promise," hey, I know it'll be there. ♦

—story contributed by Andy Carros

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The Federal Reserve Board has exhibited a pretty good track record of control over the economy for the past 50 years or so. If we do experience a downturn now, the Board will not continue to keep the brakes on and send us spiraling into a deep recession. If the Board senses that the economy is getting dangerously weak, it will more likely pump money into the economy and reposition us at the bottom of a new cycle of expansion. So the next year or two isn't a time for panic; it's merely a time to exercise caution. ♦

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