SZABO
COLLECTIVE WISDOM®
szabo MEDIA COLLECTION SPECIALISTS

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Dear Friends:

I hope March has been blowing winds of good fortune your way as 1990 gets into full swing. We're in full swing convention-wise, too. The Broadcast Credit Association was in Atlanta February 13th and 14th, during which time Szabo Associates was pleased to host an open house and luncheon at our offices. We wish to thank all of you who were able to attend.

Our calendar for the next couple of months is marked to attend the National Association of Broadcasters annual convention on March 31st through April 3rd in Atlanta. San Francisco will host the Broadcast Financial Management Association annual convention April 18th through April 20th. (Incidentally, this year marks the 30th anniversary of that very fine organization.) And finally, we'll be back home in Atlanta to attend the National Cable Television Association annual convention on May 20th through the 23rd. As always, we look forward to seeing many of you there!

Best wishes,

Pete Szabo, President
Szabo Associates, Inc.

Tread Carefully With Chapter 11 Debtors!

Acme Clothing Stores has filed Chapter 11, under which it has remained in operation with a plan to repay creditors. Acme has requested air time to advertise its end-of-season sale on the station you represent. Should you extend credit given Acme's precarious financial circumstances?

The answer is, "maybe," but only after paying considerable heed to warnings about Chapter 11's. Extending credit to debtors remaining in possession or to their trustees under Chapter 11 may involve considerable risks. In general, extend credit only if you feel that the debtor has the ability to pay your bill out of its available cash flow and that there are more than sufficient equities in assets to pay your claim if things go awry. More specifically, it is critical that you become familiar with the legal aspects regarding each particular case.

In Chapter 11, the debtor in possession or trustee is allowed to continue operations. The debtor alone has up to 120 days to file a plan of reorganization that will describe repayment of debt. The first step you should take before extending credit should be to ascertain, from the creditor's committee or counsel, or by examining the court records in the clerk's office, what the stated assets and liabilities are, including secured debt. Credit should not be extended if all assets are encumbered.

Court orders on Chapter 11's vary regarding the terms upon which purchases may be made. If the order authorizes purchases on a C.O.D. basis only, then obviously you should not sell on any other terms. If the order explicitly authorizes purchases on credit, they will be paid out of the costs of administration assuming there are sufficient funds in the estate. And if the order omits mention of purchases on credit? You may still expect to be paid from the cost of administration for sales on credit if that has been the debtor's customary manner of doing business, but make sure this is the case by taking notice of the debtor's arrangement with its lienholder.

Claims that arise before the date of bankruptcy are usually unsecured and may or may not be paid in full. Most major companies that file Chapter 11 have financing by secured lenders. These lenders usually have a comprehensive lien on all assets; that is, inventory, accounts receivable, etc. Debtors must obtain consents from these lenders in order to use proceeds from collateral (i.e., accounts receivable, inven-

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FORECAST

Pete Szabo, President

The economic softness we are experiencing is likely to continue into 1991. The sogginess in retailing, housing, and automobile sales creates for advertising media a difficult climate in which to sell.

Many organizations are responding to this economic situation with innovative, aggressive marketing and deal-making. In addition, this approach to sales has been accompanied recently by a resurgence of "the customer is king" attitude with regard to conducting business, which often even affects the credit side of the business.

In times when everyone is fighting for new sales and trying to preserve existing customers, there is a natural tendency to become somewhat lenient in enforcement of credit terms. Perhaps instead of taking action when an account is 120 days old, a credit department will decide to wait until 180 days have passed without payment.

When a sales climate begins to influence credit policy, the result is

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Tread Carefully

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tory, etc.), or they must procure an order from the court authorizing the use of this collateral. You, as a creditor, should confirm that such consent has been given or order entered before extending post-petition credit.

In either case—when the order authorizes purchases on credit or when the lender gives consent to the debtor to use proceeds, go one step further: Get a letter from the debtor stating that there is financing in place to pay advertising bills as well as confirmation of your new terms of payment.

Assuming all of the above are in order, monies owed for bills incurred after the date of the bankruptcy (post-petition) become priority claims along with administrative expenses, which are positioned for payment ahead of pre-petition debt. So what can go wrong? Unfortunately, a number of things:

The lender could cease allowing the use of proceeds of collateral—accounts receivable, sale of goods, and so on—to pay administrative claims. Or, the Chapter 11 is converted to Chapter 7 (liquidation). Under this arrangement, your position near the top of the list of payees suddenly drops. Generally, the order changes as follows: secured creditors, Chapter 7 expenses, unpaid Chapter 11 expenses, taxes, administrative claims, and finally, pre-petition claims.

So—should you extend credit to Acme? The answer is still "perhaps," assuming you've taken all of the above precautions. Of course, your safest bet in dealing with any debtor in Chapter 11 is a simple one: cash in advance. ♦

Voidable Preferences in Bankruptcies

The trustee is authorized to avoid transfers that are preferential in nature. A preferential transfer is a transfer which:

1. is made for the benefit of a creditor;
2. is made on account of an antecedent debt owed by the debtor prior to the transfer;
3. is made while the debtor is insolvent. Insolvency is presumed within 90 days of the filing of the petition;
4. is made within 90 days of the filing of the petition, or between 90 days and one year before the filing of the petition by an insider. The Code defines an insider as one who, because of his close relationship with the debtor, will be "subject to closer scrutiny" than another person dealing with the debtor. If the debtor is an individual, then insiders include relatives of the debtor. If the debtor is a partnership, insiders would include a partner or relative of a partner, and if a corporation, then insiders include directors, officers, persons in control, and their relatives;
5. enables the creditor to receive more than he would have received in a liquidation case or if the transfer had not been made.

True Collections

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

Dreams, Schemes, Scams and Hams
(or: If there really is a godsend, why am I still selling pig feed?)

Dave Bittelman and Mike Falsey, "that couple of hotshots" as they came to be called in Nashville ad circles, were talented, confident, and willing to take risks. For them, starting Bittelman Falsey Advertising held all the significance of exploring the Final Frontier: They would go where no ad men had gone before.

Hadn't they, after all, helped turn a two-bit livestock supply outfit into the largest purveyor of hog feed in the Southeast? Indeed, their "Hog Wild" TV spots, replete with stampeding pigs, flying grain, and gyrating pork chops, had set the ad community on its ear and literally left the competition in the dust. "Today the Seed and Feed Feuds, tomorrow the Cola Wars," Dave had then become fond of saying.

Then one day, out of the North, strode Al Jiverson. The question of why Al, who owned a dozen technical schools throughout the country, flew all the way from New York to enlist the services of Bittelman Falsey was never given much consideration by Dave and Mike. To them, Jiverson was simply the godsend who would launch Bittelman Falsey beyond the Great Barrier of small-town advertising budgets into the realm of their dreams.

Bittelman Falsey's campaign to recruit students for Al's school in North Carolina brought in twice as many enrollments as expected. On the basis of that success, Jiverson offered Dave and Mike a deal: They could create and place advertising for his nationwide campaign, for which they would be compensated $350 per paid tuition. If their efforts were even half as successful as the North Carolina campaign had been. . ."Well, the

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Collector's Corner

"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: Our station ran spots for an advertiser which did not pay its ad agency. The agency ceased its operations and has employed an attorney to collect its receivables. What options are available to us to collect the money owed?

K.T., Phoenix, AZ

Answer: There are three basic courses of action you may take:

1. Call the advertiser directly and attempt to collect 85% of its bill with the understanding that it still owes the agency 15%.

2. Call the attorney and ask for an assignment of the receivable.

3. File suit against the agency and obtain judgment, then levy on the receivables.

"WELL, WHEN YOU SAID LORRAINE WAS HAVING HER PAYCHECK GARNISHED, I THOUGHT IT MIGHT BE NICE TO DO EVERYONE'S THAT WAY."

Forecast

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often a greater loss of revenue rather than greater profits. Precedents of leniency remain set in the minds of customers, the loss of whom may not be preventable in any case.

If any adjustment is to be considered during economic times such as these, it should be to tighten up on credit policies—never the opposite. The short-term benefits you perceive by awarding leniency will come to haunt you in the form of long-term loss of credibility and revenue. ♦

True Collections

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figures are too mind-boggling to even comprehend," Mike was overheard saying while conducting a preliminary price check at the local Lamborghini dealership.

Dave and Mike quickly farmed out their "nickel-and-dime" local accounts in order to pour their hearts and souls into the Jiverson campaign. The following month, they purchased $750,000 worth of air time from 30 radio and TV stations across the country. Subsequently, one day before the spots were to air, Al Jiverson faxed a memo to each station, excusing himself from responsibility for payment. The spots, which aired before the memo reached the stations' credit managers, in turn failed to produce the expected return in the form of enrollments; Dave and Mike consequently failed to pay the advertising bill; and Al Jiverson, in a series of well-publicized statements to the stations, then accused Dave and Mike, "those two young punks from moonshine country—I mean what d'ya expect?" of running a scam agency that was in reality a front for a drug ring.

As of this writing, Dave and Mike, having forsaken their dreams of striking it rich in advertising and deciding instead to capitalize on their recently acquired expertise in the feed field, are working for their old and still-grateful client, the livestock supply company.

Their lawsuit for slander against Al Jiverson is still pending. New enrollments for Jiverson's schools have thus far produced $25,000 for distribution to creditors, a figure that Al has managed to keep from the stations involved but not from the collection agency assigned to the account. If the collection agency is successful in getting an assignment of receivables, the stations can hope to be compensated approximately three cents on every dollar owed. If Al Jiverson is successful in his newest venture, a tattoo reversal chain based in Key West, he plans to retire next year to a remote island off the coast of Malaysia. ♦

—story contributed by Andy Carros

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