SZABO
COLLECTIVE WISDOM®
szabo MEDIA COLLECTION SPECIALISTS
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Another Landmark Decision Favors Media

Dear Friends:

Thanks to all of you who dropped by our first annual "Your Check Is In The Mail" party at the Broadcast Financial Management Association convention. The Dallas conference was very successful, and we had a great time, too.

It was an unexpected and wonderful surprise when BFMA presented me with its President's Award. I was so flattered, since BFMA is such a special and worthwhile organization for the broadcast industry. I'd like to say "thank you" again to those of you who extended this great honor.

Our summer calendar includes the annual convention of the Georgia Association of Broadcasters. This year's event takes place at Callaway Gardens on August 5th through the 7th. I hope to see many of our Georgia friends there.

In the meantime, have a fun and sun-filled summer!

Best wishes,

Pete Szabo, President
Szabo Associates, Inc.

Our last issue's feature article focused on a court case involving agency liability for payment of air time on behalf of its client advertiser. The court case described in the following article also addressed agency liability, but the central issue in question was the authority of the agency's employee to guarantee the advertising debt.

In March of 1987, our litigation department placed the account of KVUE-TV, an Austin, Texas television station, with Arkansas attorney William J. Walker. The case involved a claim by the station against Rothman and Lowry, Inc., an advertising agency located in Little Rock.

In 1985, Debbie Dollar, the media buyer for Rothman and Lowry, arranged to run spots on the station on behalf of the agency's client, Home Craftsman, Inc. In accordance with its standard practice, the station requested an "Application for Agency Accreditation" on the agency. This form provided a list of references and authorized a release of the agency's credit information. The application also included a statement, printed in capital letters just above the signature line, that read, "I (WE) GUARANTEE PAYMENT TO KVUE-TV FOR ALL TIME AND SERVICES ORDERED BY THIS COMPANY." Dollar filled out the form and signed it on October 30, 1985.

The station was to bill the agency for advertising ordered for Home Craftsman. The agency was to pay the station at a rate based on 85% of the total advertising cost while collecting 100% from the client, an arrangement that earned the agency a 15% commission.

Scheduling for the spots was negotiated by phone and confirmed in writing. Dollar would send a "broadcast order" to the station, which was signed by a station representative and returned to her. In return, the station would send a "confirmation order" to Dollar, who would sign it and return it to the station.

The broadcast order and the confirmation order contained conflicting provisions regarding the agency's responsibility for payment of ordered services. The agency's order form provided that the agency would be responsible for payment to the station except when the client defaulted in payment to the agency, in which case the station would not hold the agency responsible for any liabilities incurred on behalf of the client. The station's order form provided that the agency, as the principal contractor for the advertising, was solely liable for payment.

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The station and the agency conducted business by this arrangement for one year. In October, November, and December of 1986, Dollar ordered advertising for Home Craftsman in the amount of $15,045. In December of 1986, Dollar notified one of the station's account executives that there was a payment problem with Home Craftsman and that the agency would no longer be ordering advertising until the debt had been paid. Home Craftsman subsequently declared bankruptcy, and the $15,045 debt remained unpaid.

On April 9, 1987, KVUE-TV filed suit against Rothman and Lowry, Inc. to collect the debt. At the jury trial held on March 17, 1988, the jury found in favor of the station and assessed damages against the agency in the amount of $15,045.

In April of 1988, Rothman and Lowry brought the case before the Arkansas Court of Appeals. The agency argued that the jury lacked sufficient evidence at trial to conclude that Rothman and Lowry, as principal, had given Debbie Dollar, its agent, either actual or apparent authority to guarantee the debts of a third party, Home Craftsman. The agency contended that the only testimony on this issue was that of the agency's corporate officer, who stated that Dollar had not been given authority by the corporation to incur any debts of any kind. The agency argued further that Dollar had no apparent authority because such authority requires that the principal say or do something upon which the third party reasonably relies. Since there was no evidence that the agency was aware that Dollar had signed a guaranty, no evidence that the agency knowingly permitted Dollar to assume that authority, and no evidence that the station was reasonably diligent in investigating the actual authority of Dollar to enter into such agreements, the agency contended that it was not responsible for the debt.

On March 1, 1989, the Arkansas Court of Appeals upheld the trial court's ruling.* The court concluded that since Dollar's position in the agency was that of "media buyer" and that negotiating terms and conditions in agreements with the media through which the agency's client would be served was a central function of that position, the station had the right to believe that the agency had given Dollar the authority to sign the agreements. In addition, the agency failed to supervise or review Dollar's actions. This continued omission reinforced and made reasonable the

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"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 should I look for when establishing a credit limit on a new account?

A.L., Denver, CO

Answer: Look at three basic qualifying factors:

1. Length of time in business.
2. High credit with other media properties.
3. Net worth of business (if financial statements are available). The credit limit you extend should not exceed 10% of the business's net worth.

COLLECTOR'S CORNER

THIS MAN AT THE MAGAZINE SAID HE'D 'SHORT RATE' YOU FOR CANCELING OUR AD. HOW DID HE KNOW WHAT YOU LOOKED LIKE?

True Collections

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

A Bad Day At The Races

(or: You Can Lead A Horse To Water, But You Can't Make A Lady Use A Port-O-Let)

It was a fine day in Crow County when the state legalized pari-mutuel betting. The 850-acre fairgrounds that for 25 years had hosted the annual rodeo, 4-H Club livestock competitions, and the county's yearly cut-throat jam and jelly fair now had a grander purpose. The Fair Association would build the finest racetrack in the tri-state area and in doing so would provide the county with unprecedented revenue.

The principals, pledging the fairgrounds property as collateral, sold bonds to construct the track. So they didn't sell quite enough to finish the facility. At least the track itself was in place, and revenue earned during the first racing season would pay to finish construction.

The association started an advertising campaign, blitzing Crow County with newspaper ads, radio spots, and television commercials, created and placed by Hugo West of Great West Media, Inc. The initial bill for pre-opening ads was $30,000.

What the association didn't count on was that the citizens of Crow County, who flocked to the much-anticipated opening day dressed in their Sunday best, were not inclined to troop from a make-shift parking lot to the racing stands through mud up to their knees. Nor were they happy to be seen lined up in humble homage to those gods of desperation known as Port-O-Lets.

Even though the crowds continued to dwindle as the season moved to a close, and there was no money to finish the track, and the association was millions more in debt than when the season began, the principals continued to advertise for the following season. Meanwhile, they looked for investors so they could finish construction.

The situation became desperate, at which time the city saw the opportunity to get the track at a "distress sale" price. The offer came in at 70 cents on the dollar, all of which would go to the bond association and none of which would go to the principals. The offer was turned down, and the Fair Association filed a Chapter 11.

By this time, the advertising bill with Great West Media approached $45,000. The media was after Hugo West, who had provided them with a personal guaranty for the money, and Hugo West was after the Fair Association, which still owed him $31,000. Meanwhile, the media collection agency, on behalf of the newspapers and radio and television stations, filed a proof of claim on the bankruptcy and went after Hugo on the basis of his personal guaranty.

Hugo's attorney then entered the picture, alleging that the personal guaranty was signed not by Hugo himself, but by Lorraine West, Hugo's wife. The lawyer contended that Hugo wasn't responsible for something he didn't personally sign. The collection agency countered by offering Hugo two alternatives.

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Szabo's FORECAST

Pete Szabo, President

There has been considerable, understandable concern and much debate recently over our country's budget and trade deficits. A national budget deficit of about 150 billion dollars and a current trade deficit of 8.86 billion dollars clearly represent problems that must be addressed by this administration.

Debt problems alone, however, are not enough to create a depression, and a debt burden, even of this size, is manageable. Much of the money involved in our national debt doesn't come due until 20 or 30 years from now. As long as Congress under this administration puts forth a 5–10% per year debt reduction plan, concern over the deficit should abate. At that rate of reduction, we can actually move into a surplus category long before the money that we've been borrowing over the last five to seven years comes due.

The budget deficit affects the economy and vice versa, and both affect the balance of trade. Traditionally, there have been points to which interest rates have risen and the dollar has fallen in order to balance the trade gap. When interest rates rise, our appetite for foreign goods is squelched. We recently have seen the consumer shift his emphasis from consumption to savings; therefore, we may have already seen the recent rise

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station's belief in Dollar's authority.

As was the court case featured in our last issue, this case is important to those of us involved in collections because of the precedent it sets regarding agency liability to the media. Szabo Associates, Inc. appreciates the efforts of attorneys William J. Walker, our main counsel at trial, and Frank A. Poff, Jr., who presented oral arguments on appeal. ♦

*Arkansas Court of Appeals CA 88-246

True Collections

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He could either honor his personal guaranty or prosecute his wife for fraud. Since he figured he had a better chance of finding another suitable wife than of coming up with $45,000, Hugo opted to prosecute Lorraine.

The second racing season came and went without the association's participation. The portable toilets went too, and the racetrack parking lot is now a tire-rutted, dried-mud relic of one shining season of hope for the defunct Fair Association. Lorraine left Hugo with a judgment in her favor and an $8,000 bill from his lawyer. And so far, no money has been received by anybody from anybody.

Last October, little Bernie Switzer was playing construction worker on the grounds inside the track. He excavated some pottery pieces, and a professor at the local college announced that the site was an ancient Indian burial ground. The last event at the fairgrounds was in November, a demonstration which got national television coverage. It seems the Indians want their racetrack back. ♦

—story contributed by Andy Carros

Forecast

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in interest rates accomplish its goal. Correspondingly, when the dollar goes down in value, our goods become more competitive in foreign markets, thus helping to solve the trade deficit problem. These phenomena, of course, also slow down the economy.

This isn't the first era in which we've been saddled with a great burden of debt. At the end of World War II, our national debt approached 127% of the GNP because of the large sums of money the U.S. pumped into war bonds and into Europe. Presently, our debt is 60% of the GNP. We've had trade deficit problems before as well, in the late 1970's, and they were remedied by higher interest rates and cheaper dollars.

So what's the point to be made here? Only that our current trade deficit and budget problems, just like the impending recession which I discussed in our last issue, are not causes for alarm. These are times to extend credit carefully while we weather the inevitable storms of cyclical economic change. ♦

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