SZABO
COLLECTIVE WISDOM
szabo MEDIA COLLECTION SPECIALISTS
VOLUME 6, ISSUE 2, JUNE 30, 1991

**Dear Friends:**

I am glad summer is here. Atlanta has had one of the more rainy springs that I have ever experienced. I did get a couple of nice reprieves when I had the opportunity to visit Los Angeles–once for the Broadcast Cable Financial Management Association annual conference, where we hosted our 20th anniversary party, and once to visit Media Reports, Inc., which happens to be located on Hollywood Boulevard, on the route of the Desert Storm Parade. Media Reports hosted a cookout on the roof! The spirit of patriotism was phenomenal, and it was a great feeling to see all of the flag waving and cheering.

We did have some fun in Atlanta at the annual Szabo employee picnic in June. We look forward also to the Georgia Association of Broadcasters Convention in Callaway Gardens on August 10th through the 12th.

Have a wonderful summer!

Best wishes,

Pete Szabo, President
Szabo Associates, Inc.

# Usurious Interest
## (It's Not Just Another Made-For-TV Movie)

*The following is an edited and expanded version of the article, "Caveat Vendor–Usury Has Sharp Teeth," by Frank Shaw. Mr. Shaw's law firm, Frank Shaw & Associates, is located in Houston, Texas. We would like to express our appreciation for his contribution to this newsletter.*

As the recent statement by Four A's regarding sequential liability seems to indicate (see Szabo's Forecast, "Collective Wisdom," March 1991), many organizations are now reevaluating their customer contracts to provide themselves with greater financial protection from customer defaults. If your organization is considering altering its contracts, and particularly if you would like to add provisions to collect interest on past due invoices, pay heed to this cautionary tale:

A recent Texas case has brought to the attention of vendors the problems they can encounter when dealing with interest charges to customers.

Risica & Sons, Inc., a sub-contractor, received a bid for construction materials from Tubelite, a materials supplier. In preparing its construction bid to a customer, Risica relied on the price quotation submitted by Tubelite for the materials. After its bid was accepted, Risica sent Tubelite a purchase order giving Tubelite notice to begin work on shop drawings. After receiving the purchase order, Tubelite sent Risica an "acknowledgment" followed by the shipment of the merchandise. The first page of each acknowledgment stated that "Acceptance hereof is limited to the terms and conditions appearing on the front and reverse side hereof." The fourth paragraph on the reverse side of the acknowledgment stated that "Past due invoices will be subject to a service charge of one-and-a-half percent per month at an annual rate of 18 percent."

An invoice followed each shipment of merchandise to Risica. A statement on the invoice referred to the acknowledgment and said: "Past due invoices will be subject to a service charge." Tubelite also sent Risica "Statements of Account," which stated that "A finance charge is computed at the rate of one-and-a-half percent per month A.P.R. of 18 percent on all accounts more than 15 days past due."

Tubelite's credit manager admitted that the original price quotation letter to Risica made no mention of any interest charges. He also said, however, that none of Risica's personnel had objected to any of the later references to interest charges.

Tubelite elected not to bill Risica for the service charges for over a year. Thirteen months after the purchase

– *continued on page 2*

## *Usurious Interest*

*– continued from page 1*

order was sent to Tubelite, it began charging interest at the rate of 1.5 percent on the principal balance owed by Risica of $42,920.25.

After that date, Risica paid $10,000 on the principal amount it owed Tubelite. It was credited to the principal.

Tubelite then brought action against Risica to recover payment for uncollected invoices. Risica counterclaimed, alleging that Tubelite had charged it usurious interest in excess of two times the amount legally authorized.

The lower court entered judgment in favor of Tubelite. The court held that the "dealings" between the buyer and seller gave rise to an agreement wherein the seller could charge the buyer 1.5 percent per month on accounts that were 15 days past due.

Risica then appealed to a higher court, which reversed the lower court's ruling and rendered judgment for Risica. The appeals court held that there was no evidence of any agreement between the buyer and seller for the charging of interest at the rate of 1.5 percent per month. The court further stated that the mere failure of a buyer to complain about interest being added to invoices does not establish an agreement between the parties.

In the state of Texas, a statutory rate of six percent per annum applies in the absence of an agreement in writing by buyer and seller to a higher rate of interest. When such an agreement does not exist, any rate above six percent is considered usurious, and the seller is subject to varying penalties.

The case of Risica vs. Tubelite illustrates the worst scenario possible for a vendor. Tubelite was charging Risica 18 percent per annum, three times the legal rate. Even though the interest had only been charged but had not been collected from Risica, Tubelite was forced to forfeit the entire amount of principal due at the time the interest was actually charged. Since Risica had paid $10,000 after Tubelite began charging interest, Tubelite was ordered to repay that amount as well as to forfeit the unpaid balance. Tubelite was ordered also to pay Risica three times the amount of usurious interest charged that exceeded the amount of interest allowed by law (the difference between the legal amount of $3,256.06 and the amount charged of $9,768.17 multiplied by three, which came to $19,536.33). In addition, Tubelite was ordered to pay attorney's fees of $10,000.

Since the court of appeals rendered this case, it does not go back to the trial court for any further action. It is a "done deal," and the only other

*– continued on page 4*

## True Collections

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

### It Ain't Over 'Til The Spring Runs Dry

Daddy was some wheeler dealer alright. Got it in his mind one year to "awg-ment" his farm equipment inventory. Only thing was, he had no cash and his credit was jack – well, let's put it this way: The only way he kept things goin' was to finagle some unsuspectin' fool from another town into givin' him credit.

Seems this particular fool, who happened to run an equipment dealership about fifty miles away, had inherited a little plot of land next to Daddy's. Word got around this fella

*– continued on page 3*

## 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:** What is the purpose of an "answer" in civil litigation?

**M.F., Raleigh, N.C.**

**Answer:** The purpose of an answer is to give notice as to which allegation in the plaintiff's complaint will be contested by the defendant and to provide notice of any affirmative defenses the defendant is raising. In other words, an answer is a procedural device intended to clarify and limit the issues of dispute.

## *True Collections*

– *continued from page 2*

had an idea to raise herbs commercially, only he needed a regular water supply. Well Daddy put on his finest suit (he was really quite a dandy when he put his mind to it), told a neighbor his old truck had broke down and asked could he borrow the Cadillac just for a couple of hours, then he drove on down to this dealership.

Well, this guy, seein' Daddy as one hot prospect in his sharkskin suit gettin' out of this fancy Cadillac, starts actin' real friendly, talkin' about farmin' and like that. Daddy says how good the land is where he is, and ain't he lucky to have this underground spring when everyone else just about is dryin' up for the drought.

Well the fool's eyes just about pop out of his head when he finds out just where Daddy's land is. Make a long story short, within half an hour Daddy had himself title to one fine tractor and the fool had rights to use the spring to water his yet-to-be herb crop.

'Course, everybody in the county knew that spring went dry the summer of '54. Unfortunately for the dealer, he didn't find out 'til six months later when he finally got his herb crop goin' and lo and behold – no water. Thing was, by that time Daddy had already had a fine time with his new tractor. Good-lookin' crop that year, too, I seem to remember.

Then the dealer, madder'n hell as you can well imagine, hires these collection boys to repossess the tractor. 'Course Daddy, havin' been in deep ca-ca with creditors more than a few times, could spot 'em in a minute. "Somethin' in the eyes," he used to say.

Anyway, he sees these collection fellas comin' up the road. Gets in his truck just in time so they can recognize him and chase after him. I did forget to mention that Daddy's other talent aside from the finaglin' one was drivin' a pickup like there was no tomorrow. The Mario Andretti of dirt and gravel, he was.

Well there was this hairpin turn that was sorta hard to see, and Daddy comes wheelin' around it, lookin' in his rear view mirror just in time to see these two fellas comin' into the turn and keepin' on goin'.

– *continued on page 4*


"'YOU-SURIOUS'? OF COURSE, I'M SERIOUS! THAT'S WHY I CALLED YOUR LAW FIRM TO REPRESENT US!"

## A Few More Words on Liability

It sems as if every advertising media association has voiced opposition to the 4A's statement on sequential liability. Many Szabo clients are reviewing their contracts to decide how their media property will operate in a credit economy. Items of focus include:

1. Who is liable for payment of bills?
2. Is there a contract in the purchase of time or space?
3. If so, who are the parties to that contract?
4. Who should write the contract?
5. Since disputes are bound to arise, how can they be resolved expeditiously?
6. Are incentives practical and of value?
7. Can penalties be made to work?
8. How do we deal with notification to both the agency and advertiser?
9. Who do we begin the collection process against – the agency or advertiser?

If your organization is engaged in reviewing its contracts, remember to keep in mind whom you're dealing with and what your agreements are. It is also a prudent idea to establish a system to monitor your process.

## *Usurious Interest*

– *continued from page 2*

alternative is for Tubelite to appeal to the Texas Supreme Court.

This case should make vendors' hair stand on end. It should also compel them to review their billing procedures carefully.

Each state has its own statutes with regard to usurious interest. To insure that your organization is not in jeopardy of violating your state's usury statutes, it is strongly recommended that you review procedures with an attorney who practices law in your state.*

*In March 1991, the Texas Supreme Court granted writ of error, meaning that it will review the holding of the lower court. A decision should be handed down in the next few months as to whether the case will stand as is or will be reversed. If reversed, the Supreme Court will enumerate, or point out the reasons for reversal, and send back to the lower court for possible further proceedings. ♦

## *True Collections*

– *continued from page 3*

Daddy had a conscience, though. He did go back to pull 'em out of the car, which unfortunately had met its end in the dried up spring bed. Got 'em both out, bruised up a bit, nothin' serious. And just as they were about to come to blows, what happens but this water comes bubblin' up out of the spring bed, just under the blown right front tire.

Struck dumb, all of 'em. I dunno, it always seemed to me there was some kind of cosmic justice in all of this, although I'm not exactly sure what. All I know is, the dealer's herbs started lookin' pretty good, and Daddy, takin' the spring revival as some kind of sign, mended his ways and paid cash from then on out. Even paid cash from that year's crop earnings for a brand new pink Cadillac.

Sometimes, though, I think that if we have a choice about what our personal heaven is, then Daddy is up there makin' deals with angel-faced dummies, barterin' harp tuners for the Milky Way. At the core, wasn't nothin' could ever change Daddy. ♦

— story contributed by Steve Dailey

szabo

Szabo Collective Wisdom® is a publication of Szabo Associates, Inc., 3355 Lenox Rd., Suite 945, Atlanta, Georgia 30326 Telephone 404/266-2464



FIRST CLASS
U.S. Postage
PAID
Permit No. 747
Atlanta, GA