

**Dear Friends:**

An update on the BFMA goings-on: Remember our first "Your Check Is In The Mail" party where we held a contest for the funniest debtor excuse? We're pleased to announce that the winner is Bettye Ferguson of KWTW-TV in Oklahoma City. Bettye received a color TV for her excuse, which we'd print here were it not for its rather controversial nature. Anyway, congrats to Bettye.

We'd like to encourage everyone involved in radio, TV and cable to attend the Broadcast Credit Association convention in Scottsdale, Arizona on October 17th and 18th. We'll also be attending the Advertising Media Credit Executives Association convention in Albuquerque, N.M. October 9th through the 13th, the Magazine Publishing Congress in New York City October 31st through November 2nd, and the Television Bureau of Advertising convention in Los Angeles November 13th through the 15th.

Our year ending July 31st was our best ever in the 18 years Szabo Associates has been in business. Our thanks to all of you. As we move into the global arena in the coming year, we will work diligently to continue to provide the quality service our clients expect and deserve.

Best wishes,



Pete Szabo, President  
Szabo Associates, Inc.

## Protect Yourself Against Fraudulent Transfers!

*Author's note: The companies named and incidents described in the following article are fictional. Any similarity in names and/or circumstances between these and actual companies is purely coincidental.*

Cool Pool, Inc. was heavily in debt. In May of 1985, the company's principals negotiated a bulk transfer of Cool Pool's assets to General Pool and Pond, Inc. Included in the transfer agreement was an entire list of Cool Pool's current creditors, who were to be paid on a pro rata basis by General Pool and Pond. General Pool and Pond was to receive credit toward the transaction for this application of proceeds.

The following year, the principals of General Pool and Pond, Inc. also found themselves drowning in indebtedness. In April of 1986, Aquatic Concepts, Inc. purchased all of the stock of General Pool and Pond, Inc. and merged it into Aquatic Concepts.

In May of 1986, Joe Luckman noticed a crack in the concrete in his pool, which had been constructed by Cool Pool prior to the transfer and which was still under warranty. In the same month, WXVA-Radio, with which General Pool and Pond had an outstanding balance due of \$15,000 for advertising, decided to file suit for money owed.

Joe Luckman, having no one to seek out for damages but Cool Pool, found himself out of luck since Cool Pool had no assets and was out of business. Since Joe was not a known creditor of Cool Pool at the time of the transfer of assets to General Pool and Pond, and his name was not included on the list supplied to General Pool and Pond, the transferee could not be held responsible. WXVA, on the other hand, went to court with its lawsuit and received a judgment in its favor. And the defendant? Aquatic Concepts. By acquisition of General Pool and Pond's stock and subsequent merger, Aquatic Concepts had incurred all debts that General Pool and Pond still owed at the time of the sale.

This fictional scenario illustrates the reasons why "bulk transfers" have become common occurrences, particularly during times of adverse economic conditions. And in these litigious times, we can expect them to increase even more in "popularity." While the terms and methods employed have been numerous and varied, most of these transactions are founded in both the buyers' and sellers' intentions to protect themselves financially.

From the standpoint of the seller, who has incurred substantial debt,

—continued on page 2

## Protect Yourself

—continued from page 1

conveying assets to a third party often constitutes an attempt to render himself “judgment proof.” From a buyer’s point of view, purchase of assets only as opposed to purchase of the entire company offers protection from potential liability such as ex-employee claims, product liability, or actions resulting from other causes that might be brought against the company because of the conduct of the former owners or management.

Legislators, acknowledging the difficulties surrounding the collection of accounts and attempting to frustrate dishonest debtors, passed the Uniform Fraudulent Conveyance Act in 1978. The Act, which was adopted in 24 states, defines fraudulent conveyance and outlines creditors’ rights and remedies with respect to these transactions.

In those jurisdictions where the Uniform Fraudulent Conveyance Act has not been enacted, the rights of creditors are governed by the common law and statutes. These laws usually provide remedies similar to those provided by the Act. In addition, the Uniform Fraudulent Transfer Act, approved in 1984 and more comprehensive than the Uniform Fraudulent Conveyance Act, has been adopted by a number of states.

Statutes regulating the sale or transfer of goods, wares, merchandise, and fixtures in bulk (bulk transfers) have been enacted in every state as part of the Uniform Commercial Code. These statutes are not designed to prevent a merchant from selling his stock of merchandise and equipment to someone else. Rather, they intend to give creditors of the seller a chance to protect themselves against possible fraud by re-

quiring that creditors be notified of the impending sale.

Generally, the transferor must provide the purchaser with a list of existing creditors, including names and business addresses, amounts due when known, and names of all persons known to assert claims, even though they are in dispute. The purchaser must then notify all persons whose names are shown on the list of creditors (and, in some states, all other persons known to the purchaser to hold or assert claims against the transferor) that the bulk transfer is about to be made. This notice must also include the names and business addresses of the transferor and purchaser as well as all other business names and addresses used by the transferor within the past three years. Finally, the notice must state whether or not all the transferor’s debts are to be paid in full as they fall due as a result of the transfer, and if so, the address to which creditors should send their bills. If the debts are not to be paid in full as they fall due, the notice must offer additional information regarding the transaction. Upon receipt of the notice, a creditor may pursue whatever

—continued on page 4

## True Collections

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

### Jambalaya, Crawfish Pie, and a Pot of Trouble

Before I get into this, I need to make one qualifying statement. I am about to relate an incident that happened in an area of the country with which I am intimately familiar. When you grow up in South Louisiana Cajun country, and especially if you share a French heritage with just about everyone you run into, you can’t help but become a bit protective of its image and people. And so I am and make no apology for it.

That much said, there are several qualities Cajuns have that you should know about. (Bear with me—they figure in this story.) Cajuns love good food, good times, and above all, family—all of which make for

—continued on page 3

**“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 does the “statute of limitations” mean regarding debt collections?

**T.L., Seattle, WA**

**Answer:** A law that cuts off a creditor’s legal right to pursue its claim after a fixed period of time elapses. In most states, it begins from the date of transaction or date of last payment, whichever is most recent. For open account unsecured claims, the time restriction is usually from two to four years, depending upon individual state statutes.

 **COLLECTOR'S  
CORNER**

## True Collections

—continued from page 2

a terrific culture, but which at times can cause a severe “mal de tete” (headache) for the uninitiated outsider.

The Badeaux family (pronounced BAD-Oh) was such a clan. Not a single son, daughter, niece or nephew had strayed far from their native town, a small fishing and farming community near the Atchafalaya Basin. Years ago, Antoine Badeaux, Sr. started a family restaurant called Chez Badeaux, the success of which spawned a second restaurant, Badeaux Et Toi, and a crawfish packing operation called Badeaux Seafood.

The trouble started when “T-John” Badeaux, Antoine’s nephew, purchased advertising for Badeaux Seafood in a national trade magazine, *Seafood Express*. T-John failed to pay the magazine, and the case was eventually placed with a collection agency, which ended up placing it with a Louisiana attorney, Eldon Smith, for litigation.

“*Seafood Express* vs. T-John Badeaux d/b/a Badeaux Seafood” had been filed and a judgment received when T-John let it be known that he had never owned an interest in Badeaux Seafood. It was, he said, owned and had always been owned by his uncle Antoine. The judgment was set aside, the lawsuit was revised to pursue the corporation rather than T-John himself, a new judgment against Badeaux Seafood was received, and all the while, court costs and attorney fees continued to accrue.

That was when attorney Smith decided to get court approval to make “THE BUST,” and the parish sheriff, Alcide Romero, was appointed to seize all currency in the debtor’s cash register. Sheriff Romero, whose family had begun feuding with the Badeauxs three generations back over fishing territory, looked at this task as an opportunity for vengeance—in the name of the law at that—and dutifully emptied the register of approximately \$600 in cash, \$350 in credit card receipts, and \$1500 in personal checks.

—continued on page 4



YOUR MEMO SAID YOU WANTED LOTS OF “TEAR SHEETS” FOR OUR MAGAZINE AD, SO I BOUGHT ALL I COULD FROM THE GROCERY. I GUESS THAT AD DIDN’T DO SO WELL, HUH?

# szabo's

## FORECAST

The U.S. economy continues to muddle through the summer without any major problems, and more importantly, without a recession in sight. This current economic environment has spawned a brand new economic theory, however, in the now popular “soft landing” scenario.



Pete Szabo, President

The definition of a “soft landing” for our nation’s economy simply means a slower growth rate with lower levels of inflation, but without a recession. This is achieved when the Federal Reserve Board raises interest rates, tightening the money supply (which it’s been doing for about two years), until economic weakness forces it to lower rates before a recession begins.

The “soft landing” is obviously the Fed’s ideal strategy, given its concern with the relatively high levels of debt in this country. Even so, there is no guarantee that the landing won’t be bumpy. At the time of this writing, the statistics show more strength in the economy (especially the employment numbers) than the Fed expected, thereby limiting its ability to lower interest rates in the near term. The rise of the dollar is also a source of concern, making U.S. goods less competitive on a price basis worldwide.

The point to be made here is simple: while a soft landing is obviously preferable, it is by no means a certainty; it would also be an unprecedented economic phenomenon. For those who exercise caution and keep abreast of the changing economy, the rewards will be large. ♦

## Protect Yourself

—continued from page 2

remedies are available under the general state law, such as attachment or injunction.

The purchaser must keep the list of creditors, along with a schedule of property transferred, for six months following the transfer. Any creditor of the transferor must be able to inspect both the list and schedule during that time.

The transferor is totally responsible for the completeness and accuracy of the list of creditors. If the name of a creditor is omitted from the list and the purchaser is unaware of the creditor's claim, the purchaser is fully protected by law. Also, if the property is subsequently sold by the purchaser to another without intent to defraud, creditors of the transferor may not pursue subsequent purchasers for payment.

In spite of laws designed to protect creditors, credit managers who have to deal with bulk transfers face a number of problems. Most states require only 10 days notice prior to the date of transfer. Some states require only that notice be given by way of advertising in the transferor's local newspaper. In most states, the required filings (including schedules) are recorded in the Secretary of State's office

and are not directly furnished to the creditors. And finally, a single unsecured creditor would have to expend considerable time and money in an effort to prevent the sale. Unless the amount of money at stake is substantial, such efforts are usually not warranted since in most cases there is ultimately nothing to be gained.

In view of these problems, it would be wise to research the statutes regarding bulk transfers in your particular jurisdiction before you decide whether or not to take action. ♦

## True Collections

—continued from page 3

The wheels of justice continued to roll as Smith then acquired and sent an order demanding the debtor to endorse all of the checks and credit card receipts for payment to *Seafood Express*. It was about that time that Smith was contacted by yet another attorney representing Antoine Badeaux, Sr.

It seemed that Sheriff Romero, who had the unfortunate reputation for striking first and thinking later, had struck Chez Badeaux on a particularly busy Friday night, when a large graduation party for one of the younger Badeaux nieces was in full swing. The honoree and her 100 or so guests were about to

toast dear Uncle Antoine for throwing such a grand party when Romero, brandishing his .38, swaggered into the large dining room demanding the whereabouts of one Antoine Badeaux.

Now Antoine owed much of his business success to being quite the canny Cajun, so he saw what was about to ensue as an opportunity not only to discredit a Romero but also to finance college educations for the next 20 generations of Badeaux children. No, Antoine Badeaux wasn't about to discourage Sheriff Romero from carrying out his mission by informing him that Chez Badeaux was a different corporate entity than Badeaux Seafood.

The lawsuit for wrongful seizure, "Antoine Badeaux, Sr. vs. Sheriff Alcide Romero, Eldon Smith, Esq., and *Seafood Express*" in the amount of 1.5 million dollars is still pending. Subsequent attempts to construct a case for appeal have been fruitless, with potential witnesses making muttered references about ending up as alligator bait. Of course, the only real alligator bait in this tale turns out to be *Seafood Express*—the only defendant with any money to speak of, the only one totally without fault in the case, an innocent creditor that, in simply trying to get its due, unwittingly fell prey to incompetence, small-town politics, and plain old bad luck. ♦

# szabo

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

Szabo Collective Wisdom®. All rights reserved. Materials may not be reproduced or transmitted without written permission.

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