

## Dear Friends:

1993 was certainly an eventful year for us. We accomplished a successful re-engineering of the corporation this year, as you recall, by merging our MBO plan with Total Quality Management along with going to a "team" concept. The dynamics of this integration give us a lot of flexibility in servicing an industry which is going through rapidly changing technology and fundamental changes in the way business is done. We have always positioned ourselves for the ever changing media industry to facilitate our clients' needs. This most recent event has created a very positive impact on us through the response from our clients.

I am pleased to report that we have had 13,511 inquiries into our information base this year as compared to 10,268 last year. We have the largest resource of media debtor information in the world. Also, a recent analysis of our clients' business has indicated that those who placed accounts on a timely basis during the economic downturn had a much larger recovery than those that "held on."

Upcoming calendar events include the Broadcast Cable Credit Association convention on February 10th and 11th in Tampa, Florida; Georgia Association of Broadcasters convention on February 15th through the 17th in Athens, Georgia; and the National Association of Broadcasters convention on March 21st through the 24th in Las Vegas, Nevada.

As we enter 1994, we at Szabo Associates would like to express our sincerest hopes for peace, prosperity, and good times ahead for you and your families.

Best wishes,



Pete Szabo, President  
Szabo Associates, Inc.

## Make the Most of Joint and Several Liability!

In our last issue, we featured a discussion with several media credit managers on "real life" implementation of the joint and several liability position. As you know, Szabo Associates strongly endorses joint and several liability because we believe it offers media the best protection if either the agency or advertiser fails to pay. This month, we would like to offer a few tips that will help you give some extra "teeth" to your joint and several liability position:

1. First and foremost, **put it in writing!** State clearly who is responsible for payment. If a matter ends up in litigation, the defendant may testify that there was an oral agreement with either the sales manager or salesperson. If the sales manager or salesperson is gone (which is a distinct possibility when a big deal goes south), you have no other witnesses with personal knowledge to testify on your behalf, and you have no written agreement, then you will have a difficult time supporting your position. Arguments about verbal agreements can be most effectively overcome if you have a signed contract that contains an integration clause. There have been instances in which the courts have ruled according to the conduct of the parties involved and in opposition to liability clauses, but it is unlikely that the courts will decide in opposi-

tion of a fully integrated written agreement.

2. **Get a credit application signed by both the advertising agency and the advertiser.** The more parties you can involve in liability responsibility, the better chance you will have to get paid!

3. **Consider obtaining an Agency Recognition Form from the advertiser.** Executed by the advertiser, this document specifically acknowledges the agency's authority to bind the advertiser. It should also state that, if the advertiser entrusts the agent with funds with which to pay the media, the advertiser will remain liable in the event of non-payment by the agency.

4. **Send copies of everything** – including copies of the confirmation order and the contract (don't forget to copy the back side!) – **to all parties involved in the transaction.** If your course of conduct is to copy both the advertising agency and the advertiser with billings and documents, it would be difficult for a court of law to state that a different relationship exists between the parties.

5. **Confirm all conversations in writing.** You never know when

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information presented in conversation may be useful evidence in litigation. If you have called an agency or advertiser to collect past due money and were told that the ad was great and that they were just experiencing a cash flow problem, write down the date of the conversation and the person with whom you spoke. If the defendant claims in court that there was a problem with the ad, such documentation will help to support your position.

**6. Try to get personal guarantees.** For borderline cases in which you would like to extend credit, ask the individuals whom you want to be financially responsible in the event of nonpayment to sign a personal guarantee. This should be a separate document which references what is being guaranteed. The guarantors must have sufficient financial assets to cover the debt. A personal guarantee is only as good as the guarantor's ability to pay what is owed!

If, after faithfully documenting all your agreements and efforts, you haven't gotten paid, consider engaging the services of a collection agency that has extensive background in your industry. A good agency will check asset information, entity information, and the location of the debtor as well as make efforts to get the debt paid as quickly and efficiently as possible.

Should you find yourself in litigation, your notification and documentation efforts should reward you with a quick and favorable resolution. The arguments most commonly raised in court by defense attorneys should be effectively disarmed by written

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# True Collections

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

**¿Habla usted español? (and if so, could you kindly direct me to the post office?)**

I think most kids have a need to believe that order and not chaos generally rules the universe, and I was certainly no different. It was easiest to hang on to the myth that order prevailed when I was around five. At that time, the universe was confined to immediate family plus Maria, the raven-haired four-year-old who lived across the street. While my kid brother Freddy shook my perfect world with an uneasy degree of frequency (like the time he proudly took off his diaper to show Maria a newly discovered portion of his anatomy), things usually rolled along in a fairly systematic fashion. Rice Krispies for breakfast,

Dad home at six, mass on Sunday, things like that. Maria even came back to visit a couple of days following the Freddy-diaper incident, after the shock wore off.

Later I started school and there was more order. The nuns taught me that two plus two always equaled four, c-a-t always spelled cat, and punching out your kid brother, no matter the reason, was always a sin. Then around the 5th grade, I learned about the states and how they all conveniently fit into four regions of the country. There was the North, the South, the Midwest, and the West. Yankees lived in the North, where they had a monopoly on all the important events in American history. People in the Midwest spent all their time making cars, since they had to look different every year. The West had cowboys, of course, and that left the South, which was us.

I figured anybody who lived in the South had a day-to-day existence pretty much like mine, which mixed in blissful harmony all the important things in life: sopapillas with hot dogs, mambo with the Grateful

**"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 advantage of joint and several liability over sole liability?

**T.W., Bangor, ME**

**Answer:** Sole liability holds only one party responsible for payment, whereas joint and several liability holds both the agency and advertiser responsible for payment. Joint and several liability gives you the opportunity to recover funds from either party. It also will allow you to pursue an advertiser for payment even though the advertiser has paid the agency. Conversely, it allows you to pursue the agency whether or not it has been paid by the advertiser.



Dead, and All Soul's Day with an unspoken belief in the permanence of our youth. Oh, did I fail to mention that my family moved to Miami when I was two?

After college, we perpetuated our childhood influences and interests. Maria became a psychologist specializing in latent perversions, Freddy became a model for Calvin Klein, and I, refusing to relinquish my fervently held belief that order still prevailed in the universe, became a collector.

A couple of years later, I broke up with my long-time girlfriend Diana after she had ordered the wedding dress and after every living female relative had contributed handmade future heirlooms to her hope chest. Suddenly, Miami was no longer big enough for both me and Diana's three brothers.

I chose a small town in Alabama where I had a few relatives, thinking that to stay in the South was to maintain some kind of constancy

and, well, order. I went to work in a small firm with five other collectors, all of whom were nice enough with the exception of Bill "Moose" Ferguson. Most noteworthy among Moose's numerous personality deficiencies was his boastfulness. He fancied himself the most gifted collector available at any price and stated that the collection nut didn't exist that he couldn't crack. That Moose's commissions didn't exactly measure up to his claims, so to speak, didn't seem to temper his conceit. On the contrary, the leaner the month, the more exaggerated were Moose's estimations of his accomplishments.

There was one thing I almost envied about Moose, though. While I had failed miserably in one of the areas I valued most, Moose had triumphed. His life consisted of a well-ordered sequence of work from 9:00 to 5:00, a six-pack of beer at 6:00, and making sure his wife Belle and the five kids were all present and accounted for by 10:00.

Moose's ordered life didn't leave room for people who didn't speak "American" very well or, heaven help them, at all. So when he was assigned to collect \$5,000 from a Roberto Garcia, the rest of us watched with great interest as Moose attacked the problem like a terrier after a field mouse.

Moose's mouse was elusive, however, and after weeks of failed attempts to contact Garcia, the dogged determination with which Moose had pursued every lead had degenerated into a pitiful display of his second most loathsome trait.

"No speak English?" he bellowed into the receiver. "How can you not speak American? You live here, don't you?"

This litany repeated itself day after day, phone call after phone call, with Moose's face turning a deeper shade of purple with each successive conversation, until one day Moose joined the rest of us at the coffee machine. With uncharacteristic calm and predictable self-satisfaction, he announced that the Garcia case was closing.

"You talked to him?" I asked.

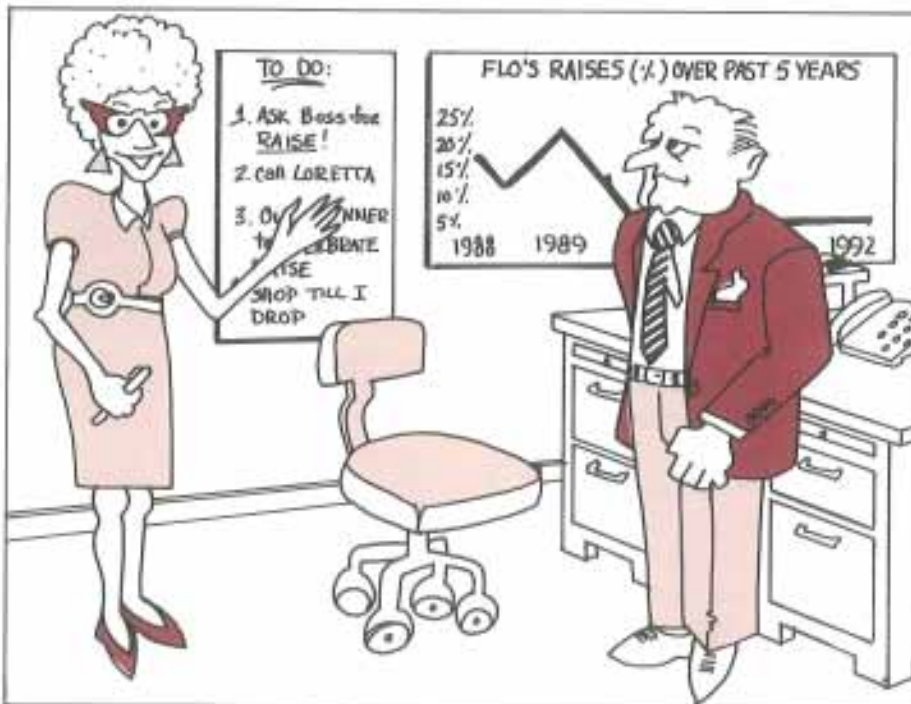
"Uh, no," replied Moose, "but I know where he is, and it's not worth it to pursue him."

"Where?" the five of us asked, in unison.

"Korea."

That evening, as everyone was leaving the office, I said I needed to make a couple of last calls, and I'd be sure to lock up. Moose's desk was a war zone of mashed Coke cans, half-eaten Snickers bars, and crumpled paper, but I found the Gar-

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"WELL EVER SINCE YOU HAD THAT MEDIA CONTRACT DISPUTE, YOU TOLD ME TO PUT EVERYTHING IN WRITINGS!"

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## True Collections

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cia folder without much trouble.

Roberto answered on the first ring. Our conversation, in Spanish, took less than five minutes, during which I learned that Roberto did, in fact, speak English very well indeed. Otherwise, he would not have gotten his job at “el coreo,” the post office. The money, he promised, would be paid right away.

I said nothing three days later, when the check arrived and was placed on Moose’s desk, and I decided after careful deliberation never to mention

my interference in the Garcia case. After that day, though, I noticed that Moose regarded me with increased suspicion, particularly after I placed on my desk a photo of me and my Cuban friends at a “Carnaval” celebration.

The following month, I moved to Miami, lured back to the “South” that I knew and loved the best, secure in my place in its chaotic cultural order as well as in the knowledge that Diana had married someone else. ♦

— contributed by  
Randolph Carmenaty of Szabo

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evidence of your agreement and communications.

By establishing a well-documented joint and several liability position, however, you can significantly reduce the number of cases that require third party collection efforts or litigation. Remember, joint and several liability offers the best line of defense in the event of nonpayment, but only if you give it some real “teeth” with proper credit and notification procedures. ♦

# szabo

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

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