

A PUBLICATION OF THE INTERNATIONAL FACTORING ASSOCIATION

COMMERCIAL

# FACTOR

..... AUGUST 2019 | VOL 21 | No. 4 .....

## FRAUD



**When Thinking  
about Fraud:  
Consider the Risks**

### **ALSO INSIDE:**

**Account Debtor Litigation – Getting it Right**

**Curt Powell: From Pro Shortstop to Factor**

**Verification Calls Are Key Risk Management Tools**

**5 Ways to Detect Fraud**



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# TABLE OF CONTENTS

AUGUST 2019 | VOL 21 | No. 4



- 8** **INVOICE FACTORING: WHEN THINKING ABOUT FRAUD, CONSIDER YOUR RISK**  
*By Linda Miller, Principal, Fraud Risk Practice Lead, Grant Thornton, LLP*
- 16** **HOLD THE PHONE: VERIFICATION CALLS ARE KEY RISK MANAGEMENT TOOLS**  
*By Emma Hart*
- 22** **FROM INFIELD TO CONSTRUCTION FACTORING - FORMER TIGER CURT POWELL SAYS TEAMWORK IS EVERYTHING**  
*By Nadine Bonner*
- 24** **FIVE TYPES OF FRAUD IN FACTORING AND WAYS TO PREVENT THEM**  
*By Paula Claro*

## COLUMNNS

- 12** **LEGAL FACTOR: ACCOUNT DEBTOR LITIGATION – PLEASE GET IT RIGHT!**  
*By Steven N. Kurtz, Esq.*
- 18** **WHAT'S NEW AT IFA**

---

## ADVERTISER INDEX

CapitalOne .....	IBC	IFA .....	13, 18, 27
Decipher Credit .....	5	HubTran .....	IFC
FactorFox .....	5	Utica Lease .....	BC

# FROM THE EXECUTIVE DIRECTOR

BY BERT GOLDBERG



Planning for the future is important, for both your business and personal life. The IFA is dedicated to helping you plan for the future to keep your company and the Factoring industry viable.

The IFA's fall training courses are designed to help you adapt to the changes. A new course that we are offering this year is "Strategic Thoughts: What's Next For Your Factoring Company in Today's Market?" We have assembled a group of experts to help you think about the future and how you need to position your company to achieve your goals. Some topics we will be discussing are M&A, Valuations, Financing, Technology, Competition, Legal and Products. This course will take place October 24 - 25 in Las Vegas.

We are returning with our updated "Supply Chain Finance" training course. Many Factors have started offering this product in addition to Factoring with excellent results. We will be discussing the specifics of what you need to do to add this to your existing suite of products. This course will take place October 21 - 22 in Las Vegas.

Our final Las Vegas course this fall will be "Successful Transportation Factoring Training Course". Although this is the most popular niche for Factors within the IFA, we have many new members each year that plan to specialize in the Transportation sector. Our goal is to make sure that these companies follow best procedures. This course will occur on October 17 & 18.

The focus of our Transportation Factoring Meeting which will be held September 4th - 6th in Austin, TX will be on the current issues affecting the Transportation sector. This sector has seen growth over the last few years, but the outlook for the future may be a bit rocky.

Our Senior Executives Meeting will take place on January 22 - 24 at the Andaz Costa Rica Resort in Guanacaste, Costa Rica. This is the only high-level meeting that exists for senior executives of Factors and Asset Based Lenders to gather and discuss issues of importance to them. Many attendees consider this to be the one meeting that owners and senior executives of Factoring companies should not miss. This year we will focus on planning for the future with our roundtable discussions. Our guest speaker will focus on company and brand identity.

The AFA continues its work representing and protecting the Factoring industry. We have established "Champions" in both the House and Senate in Washington DC that will help protect the Factoring industry from becoming unintended consequences of possible legislation. We have and will continue to drive the discussions in the various States regarding reporting requirements. If you are involved with the Factoring industry, please support the AFA as it supports you.

The IFA also has various webinars and meetings planned on a variety of other topics to support the Factoring industry. Information about our upcoming courses can be found at [www.Factoring.org](http://www.Factoring.org).

We are nearly complete with the schedule for the 2020 Factoring Conference, to take place April 22 - 25 at the Omni Hotel in Nashville. This schedule will be released in October.

Thank you for your support and we look forward to seeing you at a future IFA event.

A handwritten signature in black ink that reads "Bert Goldberg". The signature is written in a cursive, flowing style.



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The International Factoring Association's (IFA) goal is to assist the factoring community by providing information, training, purchasing power and a resource for factors. The IFA provides a way for commercial factors to get together and discuss a variety of issues and concerns about the industry. Membership is open to all banks and finance companies that perform financing through the purchase of invoices or other types of accounts receivable.

The *Commercial Factor* is published bi-monthly by the International Factoring Association. **To subscribe, please email [info@factoring.org](mailto:info@factoring.org).**

The *Commercial Factor* magazine invites the submission of articles and news of interest to the factoring industry. **For more information on submitting articles or advertisements, email [news@factoring.org](mailto:news@factoring.org), or call 805-773-0011.**

*The views expressed in the Commercial Factor are those of the authors and do not necessarily represent the views of, and should not be attributed to, the International Factoring Association.*

# NEWS

## INDUSTRY NEWS

### IFA Releases 2019 IFA Business Profile & Performance Survey Report

The International Factoring Association released the 2019 IFA Business Profile and Performance Survey Report. Now in its 12th year, the annual survey provides a snapshot of factors' operations, client details, business development practices, human resources policies, and other key items.

The survey is the largest in the world for the factoring industry and provides valuable information and metrics on how factors operate their business. The IFA Business Profile and Performance Survey Report was compiled, tabulated and analyzed by Industry Insights, a professional research and consulting firm, which also hosts the cloud-based application. The survey was sent to member firms in the U.S. and Canada and was conducted between January and March of this year.

A sample of metrics available in the survey: 38.8% of gross invoices funded were from the transportation industry, followed by the staffing and construction sectors. 72.6% reported year-over-year growth based on net funds employed. The median client life relationship was 36 months, up from 26 months in 2017. The median number of days receivables were outstanding was 40 days. Same company respondents reported average total write-offs as a percentage of NFE decreasing from 2.6% in 2017 to .7% in 2019.

### U.S. Court of Appeals Reverses Judgement in Durham vs. Ocwen

The U.S. Court of Appeals in the 11th Circuit reversed the decision of the district court in the case of Durham Commercial Capital vs Ocwen Loan Servicing. The district court had awarded Durham \$1,138,626 in damages in its civil case against Ocwen, a servicer of mortgage loans, charging the company had violated §9-406(a) of New York's Uniform Commercial Code.

At trial, Ocwen moved for judgment on a matter of law, contending that a violation did not give Durham a private right of action. The district court dismissed the motion, and the jury awarded damages to Durham. On appeal, the court reversed the lower court's decision to deny Ocwen's motion for judgment and vacated the jury's verdict.

When Ocwen forecloses on a loan, it hires a law firm to perform the foreclosure-related services. In this case, Ocwen hired Connolly, Geaney, Albitt and Willard (CGAW). The firms agreed that CGAW would hand over the funds from the foreclosures to Ocwen, and Ocwen would pay CGAW for services rendered. The arrangement became complicated when CGAW entered into a nonrecourse receivables purchase contract and security agreement with Durham, whereby Durham purchased certain accounts receivables from CGAW and retained a security interest in all of the law firm's accounts.

Durham contended that the factoring agreement entitled it to payments for invoices that Ocwen owed to CGAW for legal services, and the company sent Ocwen a notice to that effect, requesting payment. Ocwen, however, continued to send payments to CGAW. After CGAW declared bankruptcy, Durham sued Ocwen to cover the funds that Ocwen had paid to CGAW after receiving notice of the assignment.

Ocwen argued that the case should be dismissed because the statute did not allow Durham the right to sue. The appeals court confirmed that argument. (See related story page 14)

# NEWS

## Crestmark Receives Award of Excellence from 2019 Communicator Awards

Crestmark was honored by the 2019 Communicator Awards with an Award of Excellence and three Awards of Distinction.

## Crestmark was recognized for its commemorative book and several collateral pieces.

The international competition is one of the largest of its kind and recognizes creative excellence for marketing and communications professionals. Hosted by the Academy of Interactive and Visual Arts, a 600+ member organization of leading marketing and communications professionals from various disciplines, this was the 25th annual Communicator Awards and the 12th consecutive year that Crestmark has received recognition.

Crestmark received the highest honor, an Award of Excellence, in the employee publication category for its commemorative book

that tells the story of Crestmark's 22-year evolution from \$21 million in assets to over a billion before its August 2018 acquisition by MetaBank. Three entries received Awards of Distinction in the collateral category: "2018 Holiday Greeting," and "New Heights" and "Which Direction" in the direct mail subcategory.

The Communicator Awards is the leading international awards program honoring creative excellence for marketing and communications professionals. Founded over two decades ago, The Communicator Awards is an annual competition honoring the best digital, mobile, audio, video, and social content the industry has to offer.

## Millennium Funding Joins RangeMe Services

Millennium Funding, a provider of working capital solutions to U.S. and Canadian businesses, joined RangeMe, an online platform that streamlines product discovery, sampling and sourcing between suppliers and retailers. As part of this expansion, Millennium Funding will be featured as a charter member for the launch of the financial services category.

The Series 2019-1 Financing was issued from a special purpose vehicle, Hana Financial SPV I, a multi-tranche facility with four classes of term notes totaling \$80 million and four classes of variable funding notes totaling \$20 million. The financing included an accordion feature, which will enable HCFI to increase the total facility size to \$300 million at the discretion of HCFI.

Kroll Bond Rating Agency assigned "A" for the top-rated tranches, which represent 68% of the pool, and the remaining tranches were assigned ratings of "BBB", "BB" and "B".

## TradeCap Closes \$3MM P/O Facility for Accessories Company

TradeCap Partners closed a \$3 million purchase order funding relationship with a woman's accessory company in the Northeast.

The company's asset-based lender sought out TradeCap to provide a short-term bridge solution to supplement cash flow constraints of its client. Cash flow was tight as a result of seasonal inventory build coupled with increased outlays related to an acquisition. The lender had been providing financing under a traditional ABL formula and recently agreed to an over advance accommodation to support the said build. Unfortunately, the over advance need grew.

Availability under the borrowing base combined with the over advance did not provide sufficient liquidity to meet cash flow requirements. Payables with suppliers were stretched and the company was unable to keep payments flowing to suppliers during the most critical time of the year. Suppliers began demanding letters of credit and payment for goods in-transit on any amounts in excess of terms already extended. In order to provide a comprehensive solution, the lender called TradeCap.

TradeCap underwrote the transaction, negotiated subordination agreements with other existing lenders and entered into an intercreditor agreement with the asset-based lender within a week.

## King Trade Upsizes Telecom Clients PO Facility to \$13MM

King Trade Capital expanded a finance relationship with an existing client in the telecom business, increasing its facility to \$13 million.

KTC has been providing a \$9 million PO finance facility to allow the telecom clients to increase their sales to the two largest mobile carriers in the U.S.

With King Trade's support, the company added additional sales that are on target to more than triple last year's revenues.

As a result of the continuing growth, King Trade Capital has expanded its PO finance facility to \$13 million so the client can continue to grow its sales keep its supply chain full without having to sell equity do so.

## CANADA CHAPTER EVENTS

### August 20

#### Golf at Angus Glenn

Tee off 4 p.m.

### September 10

#### Legal Update

### October 8

#### Fraud Prevention

### November 12-13

#### Two Day Seminar - Fintech & Cybersecurity

### December 10

#### End of the Year Gathering

TBA

#### Meetings Location:

Mississauga Living Arts Centre  
Scotia McLeod Room  
4141 Living Arts Drive  
Mississauga ON L5B 4B8

For more information, call Oscar Rombola at (905) 603-6284 or email [orombola@accutraccapital-itc.com](mailto:orombola@accutraccapital-itc.com). Visit IFA Canada's website at [www.FactoringAssociationCanada.com](http://www.FactoringAssociationCanada.com).

## INDUSTRY TRANSACTIONS

### Sallyport Provides \$750K Facility to Marketing & Merchandising Firm

Sallyport Commercial Finance provided a \$750,000 accounts receivable facility to a newly formed woman-owned business to help the firm move into new markets. The business specializes in on-trend product development, data analytics, creative solutions and global logistics. The company now has the opportunity to expand and win new contracts, opening the door to distribution to markets promoting consumer-related products such as kitchen cookware, bed sheets/linens, hats, bags and clothing.

### Gibraltar Closes \$3.5MM L/C for Chief Supply

Gibraltar Business Capital closed a \$3.5 million line of credit for Chief Supply, headquartered in Charlotte, NC. Chief Supply is a national distributor of public safety products, equipment and services sold to police, fire, EMS, private security, military and individual enthusiast customers. Founded in 1977, Chief Supply offers six product families including duty gear, uniforms, emergency equipment, turn-out (fire) gear, body armor and traffic safety products, selling directly to municipalities and branches of the federal government.

### Hana Financial Closes \$100MM Factoring Facility

Hana Commercial Finance closed a new factoring credit facility through the issuance of \$100 million of Series 2019-1 Factoring Contract Backed Notes. The offering was fully subscribed.

### Rosenthal Provides \$2MM ABL to GAME Sportswear

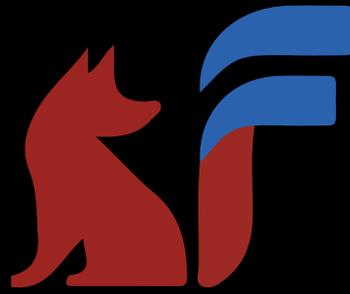
Rosenthal & Rosenthal completed a \$2 million asset-based lending deal with GAME Sportswear, a New York-based manufacturer and importer of apparel for the sportswear and workwear markets and headed up by the daughter of the company's founder, Andrea Cancellieri.

After receiving multiple new orders from new and existing retail customers, the company required inventory financing to fulfill the orders on time. GAME's owner quickly learned that its existing factor was unwilling to provide adequate inventory financing, and turned to Rosenthal's professional financial advisors for guidance.

Already familiar with GAME, Rosenthal was quickly able to assess the company needs and consequently agreed to provide financing to fund GAME's working capital needs at substantially more than GAME's existing lender had offered.

### Crestmark Closes \$51MM in Financing to New Clients in H2/June

Crestmark secured a total of \$51,049,628 for new clients in the second half of June. The company completed \$4.36 million in ABL financial solutions for five new clients. Crestmark Equipment Finance provided \$21,416,745 in seven new lease transac-



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## IFA CALENDAR OF EVENTS 2019

### September 5-6

#### 2019 Transportation Factoring Meeting

The Driskill, Austin, TX

### September 18

#### When It's Over: Considerations For When the Factor-Client Relationship Ends

Webinar, 1 p.m. PDT

### October 17-18

#### Successful Transportation Factoring Training Class

Planet Hollywood, Las Vegas, NV

### October 21-22

#### Supply Chain Finance Training Class

Planet Hollywood, Las Vegas, NV

### October 24-25

#### Strategic Thoughts Training Class: What's Next For Your Factoring Company in Today's Market?

Planet Hollywood, Las Vegas, NV

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tion. Crestmark Vendor Finance provided \$4,976,084 in 78 new lease transactions. The Joint Ventures Division provided \$9,821,799 for one new client, and the Government Guaranteed Lending Division provided \$10,475,000 in financing for five new clients in the second half of June.

### Global Trading Partners Completes 176 P/O Deals in H1/19

Global Trading Partners completed 176 transactions during the first six months of 2019, a 13% increase over the similar period in 2018. Supported clients included a broad-spectrum of industries with peak client transaction exposure exceeding \$2 million down to client transactions requiring the minimum legal lending limit.

### North Mill Finances More than 60 Deals with Truckmaster Warranty

North Mill Equipment Finance has financed year-to-date over 60 Class 8 vehicles with an exclusive Truckmaster warranty included in the transactions, a bundled program first made available in 2019. Developed by Specialty Administrative Services, Truckmaster is the company's flagship warranty product.

### Thermo Credit Closes \$500K Factoring Facility for UC12

Thermo Credit closed a \$500,000 factoring facility with UC12. The 17-year-old Tampa, FL-based company provides cellular network construction, upgrade and maintenance services, including the resources for new construction, as well as repairs and restoration. The financing will be used for working capital and business expansion.

## NORTHEAST CHAPTER EVENTS

### October 22

#### Joint Lending Conference with NYIC, AFBA and DeBanked Topics and Presenters TBA

For more information, call Harvey Gross at (732) 672-8410 or e-mail [hgross4@verizon.net](mailto:hgross4@verizon.net) or visit [www.ifanortheast.org](http://www.ifanortheast.org)

## MIDWEST CHAPTER EVENTS

### Events TBA

For information on upcoming events, contact:  
Robert Meyers  
IFA Midwest Chapter President  
Republic Business Credit, LLC  
[rmeyers@publicbc.com](mailto:rmeyers@publicbc.com)

### Celtic Provides \$3MM A/R L/C to Dog Treat Manufacturer

Celtic Capital closed a \$3 million accounts receivable line of credit for a Washington-based dog treat manufacturer. The company's bank asked it to leave due to the violation of financial covenants. Management was seeking a \$3 million accounts receivable line of credit to replace the bank line and to provide additional working capital. Celtic found the company to be well-run and well managed so it provided the needed credit facility.

### Tradewind Provides \$800K Credit Facility to Honey Exporter

Tradewind has completed a \$600,000 trade finance facility for a high-quality organic honey exporter based in Brazil that sells mainly to buyers in Europe and North America. The exporter will use the facility to increase sales, retain and expand its customer base, and achieve financial independence from its European parent company amidst new growth requirements.

### Alleon Provides \$5MM A/R L/C line to Skilled Nursing Facility

Alleon Healthcare provided a \$5 million accounts receivable line of credit to a Texas-based skilled nursing facility. The company operates four skilled nursing facilities in Texas and is focused on patients who needs health-care services after a hospital stay. In 2018 due to financial hardships and unforeseen events the company was forced to file for Chapter 11 bankruptcy.

Alleon helped the company restructure by paying off its current lender using an asset-based line of credit. The line is comprised of medical receivables due from government and commercial health insurance payors with an advance rate up to 85% on eligible receivables.

### Austin Provides \$3MM Revolver to Plastics Manufacturer

Austin Financial Services closed a \$3 million senior secured credit facility comprised of an A/R and inventory revolver with an M&E T/L to a manufacturer and seller of rotational molded plastic products. The company had outgrown its existing bank line and was seeking a long-term lending partner to support both the existing needs of its business and future growth strategies.

AFS' revolving facility enabled the company to maximize its asset value and access up to \$2 million of additional working capital, which was used to pay off the existing bank facility, provide funding for general working capital needs, and to fund new business opportunities.

### Haversine Closes Three Deals Totaling \$3.25MM

Haversine Funding completed three deals with two clients for a total of \$3.25 million.

They were: \$600,000 inventory participation with Crossroads Financial; \$650,000

inventory participation with Crossroads Financial; and \$2 million purchase order financing participation with Brookridge Funding

### Veritas, Brookridge Provide \$14MM P/O Facility for Importer

Veritas Financial Partners closed a \$14 million accounts receivable and purchase order finance facility in partnership with Brookridge Funding for a New Jersey-based sporting goods importer.

The company recently learned that a large national retailer had significantly increased its planned holiday orders. Brookridge and Veritas were able to quickly underwrite the company, negotiate an intercreditor agreement with the existing ABL lender and fund the transaction, thereby assuring the product was delivered on time to execute on the expanded retailer relationship.

### InterNex Closes Two New Transactions Totaling \$3.5MM

InterNex Capital recently closed a \$2 million revolving line of credit for an Arizona rental property services company and a \$1.5 million revolving line of credit for a Virginia medical equipment manufacturer.

InterNex also upsized two existing facilities: \$900,000 revolving line of credit to a New York security services company and \$950,000 revolving line of credit to an Illinois grocery distributor.

### Continental Closes \$2MM Facility for Outdoor Products Distributor

Continental Business Credit closed a \$2 million factoring and inventory lending facility to a distributor of outdoor products based in Southern California.

This new capital will give the company, which was founded in 2015, the capacity it needs to expand its strategy for 2019 and beyond.

### FSW Closes \$5.5MM L/C for Staffing Firm

FSW Funding completed a \$5 million credit line, including an accordion feature, to a California-based staffing company. The company was having issues with its current lender and was seeking a more partnered relationship. The owners felt that it was time to make a change. FSW was able to use the resources and knowledge in order to get creative and close this transaction smoothly, and within the time constraints provided.

"We are ecstatic to have this growing staffing company on board! In addition to providing funding for our clients, we stress the importance of making all our clients feel like the relationship is a partnership," said Managing Member and Founder Robyn Barrett.

### Citibank Provides \$5.2MM A/R Facility for Polar Power

Polar Power received \$5.2 million in connection with the sale of certain accounts receivable to Citibank to support the company's working capital needs.

Under the agreement, the company may from time to time offer to sell to Citibank certain of the company's accounts receivable relating to invoiced sales made by the company to its largest tier-1 telecom customer and its affiliates. This credit facility provides the company with the ability to receive 100% of the value of the accounts receivable invoiced, less the applicable discount charge of approximately 0.84% of the face value of the invoice. The company receives payment from Citibank within 48 hours of Citibank's acceptance of the invoice.

### CapitalPlus Closes Five Transactions Totaling More Than \$1.7MM

CapitalPlus Construction Services (CPCS) was founded in 1998 to service the construction industry with their cash flow needs. Following is a brief list of clients served in May and June, 2019:

- Spot factored \$60,000 to an excavation contractor for a new public school in Colorado. It was able to use the funds to meet payroll and continue working on its contract with no delays.
- Partnered with a general contracting company out of Florida on a hotel remodeling project, funding the first two invoices totaling \$280,000 on a \$1.5 million project. CapitalPlus managed all lien compliance making sure all subs and vendors are paid and signed lien waivers are delivered.
- \$200,000 factoring facility for a Memphis-based contractor. With the advance funds, its able to meet payroll and purchase the materials needed to continue with the project at a local college and move to the second phase of construction. Additionally, it was able to use a portion of the funds to pay off a higher rate loan.
- \$40,000 to Maryland masonry contractor on two invoices for two different projects.
- \$529,000 purchase order facility for a mining contractor providing slope stabilization material for an Arizona public road project.
- \$300,000 to support the framing and fabrication for a village square in New York City

### J D Factors Closes Five Transactions Totaling \$1.85MM

J D Factors completed five factoring facilities in the first week of June totaling \$1.850 million.

Brief details of the transactions are:

- \$200,000 to a transportation company in Illinois
- \$750,000 to a transportation company in Missouri
- \$600,000 to a transportation company in Illinois
- \$200,000 to a transportation company in Quebec
- \$100,000 to a transportation company in Manitoba

### Gateway Provides \$500K P/O Facility to Cocktail Mixer Company

Gateway Trade Funding provided a \$500,000 purchase order facility to a company that makes single serving cocktail mixers to enable it to fulfill an order from Walmart. The company did not have the funds or financing in place to pay its supplier to fulfill the order. It turned to Gateway Trade Funding, and Gateway was able to provide \$500,000 in purchase order financing, allowing it to complete the first of many orders.

The company now has the tools in place to comfortably continue and grow the relationship with Walmart and approach new customers.

## PERSONNEL NEWS

### Bibby Promotes Ciccolo to President/CEO for North America

Bibby Financial Services named David Ciccolo its new president and CEO for North America, replacing Ian Watson who had served as president and CEO since March of 2016.

A 30-year veteran of the commercial banking, factoring and asset-based lending industries, Ciccolo joined BFS as managing director for the U.S. in January 2019. He previously held executive-level positions at Wells Fargo Capital Finance in Denver, including executive vice president/national sales manager of Commercial Services and executive vice president/national manager of Accounts Receivable and Purchase Order Financing.

### Hickox Joins First Business Growth Funding as VP/Underwriting

Violet Hickox joined First Business Growth Funding as vice president, Underwriting. Hickox has more than 25 years of experience in asset-based lending and accounts receivable financing. Prior to joining First Business, she was a vice president of underwriting for 10 years. She began her career in credit as an account manager.

### Axiom Bank Names Leitner VP/ Commercial Relationship Manager

Axiom Bank named Scott Leitner as its vice president, commercial relationship manager. In this role, He will develop commercial relationships and drive revenue growth. Leitner boasts nearly a decade of legal experience, including real estate litigation, commercial banking, as well as experience in account management. He previously served as assistant vice president, small business banker at a national bank.

### Prestige Capital Adds Artman to Sales Team

Factoring firm Prestige Capital hired Larry Artman to join its team as sales director, Southeast. Artman has more than 35 years of experience in the financial services sector and will oversee the growth of Prestige Capital in the Southeast region, specifically Georgia,

Alabama, Tennessee, Florida, and North and South Carolina. Artman will be based out of Atlanta.

### Bowling Joins North Mill Capital as VP

Tammy Bowling joined North Mill Capital as vice president of Invoice Based Financing, East Coast director. Prior to joining North Mill, Bowling worked at Riviera Finance. She has more than 22 years of lending experience ranging from underwriting to senior account executive.

### Republic Promotes Marus to Lead Nashville Expansion

Republic Business Credit promoted Andrea Marus to vice president of business development in its new Nashville Office. Marus joined Republic in 2016 as AVP, underwriter in the New Orleans headquarters. Prior to joining Republic, she spent nearly three years at Wells Fargo Commercial Bank, where she completed the bank's Financial Analyst training program.

Republic plans to appoint a junior business development officer in the future to support Marus so she can keep up with the growing demand for non-bank lending solutions in the Greater Tennessee area.

### MidFirst Hires Poff as BDO in Nashville

MidFirst Business Credit, formerly Presidential Financial, hired Kevin Poff as a business development officer in Nashville. Poff will be responsible for originating, structuring, and funding asset-based financing solutions, with commitment amounts up to \$30 million, for middle-market businesses in the Southeast region.

He comes to MBC from Huntington Business Credit where he was business development officer in the Mid-South through Southern Ohio. Prior to Huntington, Poff worked for 30 years in senior roles helping a number of financial institutions develop and manage asset-based lending portfolios.

### Cogent Bank Expands Specialty Lending Group

Cristina Brabson and Abbey Henderson joined Cogent Bank's Specialty Lending Group, Brabson as vice president-senior operations manager and Henderson as vice president-portfolio manager.

Brabson previously worked in a similar role as a senior account executive, while Henderson most recently worked in a similar portfolio position supporting the Orlando lending team at a national banking group. •



## Invoice Factoring: When Thinking About Fraud, Consider Your Risk

No one wants to believe they are victims of fraud. Being proactive rather than staying in denial is an effective strategy that is not used often enough. Linda Miller examines different types of fraud that can affect factors and provides methods of preventing fraud before it happens.

BY LINDA MILLER, PRINCIPAL, FRAUD RISK PRACTICE LEAD, GRANT THORNTON, LLP

"We don't have a lot of fraud." If I had a dollar for every time I heard that, I'd be writing this from my villa on the French Riviera. If we took all the police officers off the road, we'd have no more speeding either. The fact is, no organization knows how much fraud they have because fraud is invisible until it is discovered. Assuming you have very little fraud can be a costly mistake. The Association of Certified Fraud Examiners (ACFE) estimates the average organization experiences about 5% of fraud. However, the range of fraud



probably runs from slightly less than that level to a great deal more. Where your organization lies in that range depends in large part on the kind of business you are in and how seriously you take managing your fraud risk. The more fraud-aware your organization is, the stronger your antifraud controls, the less fraud you are likely to experience.

Fraud can be addressed either reactively or proactively. Despite the fact that proactively dealing with fraud is the more effective approach, surprisingly few organizations take a this approach to fraud risk management. This is because fraud feels like a back-burner issue—something to help your P&L statements at the margins, if at all. However, companies that have experienced large and embarrassing fraud events will be the first to tell you that, in hindsight, if they could have prevented the event in the first place, they would have.

### How Should Companies Consider Their Fraud Risk Exposure?

In September 2016, the ACFE and the Committee of Sponsoring

Organizations of the Treadway Commission (COSO) jointly issued guidance laying out the framework for a proactive fraud risk management approach (see fig. 1). The Fraud Risk Management Guide describes five phases of a leading fraud risk management program. These include (1) a governance structure with top-level commitment to antifraud efforts; (2) the formal assessment of fraud risks; (3) the development of mitigating control activities aimed at the highest risk areas; (4) a fraud reporting process and an approach for investigating fraud; and (5) an oversight and monitoring function to ensure controls are functioning properly and new fraud schemes are considered.

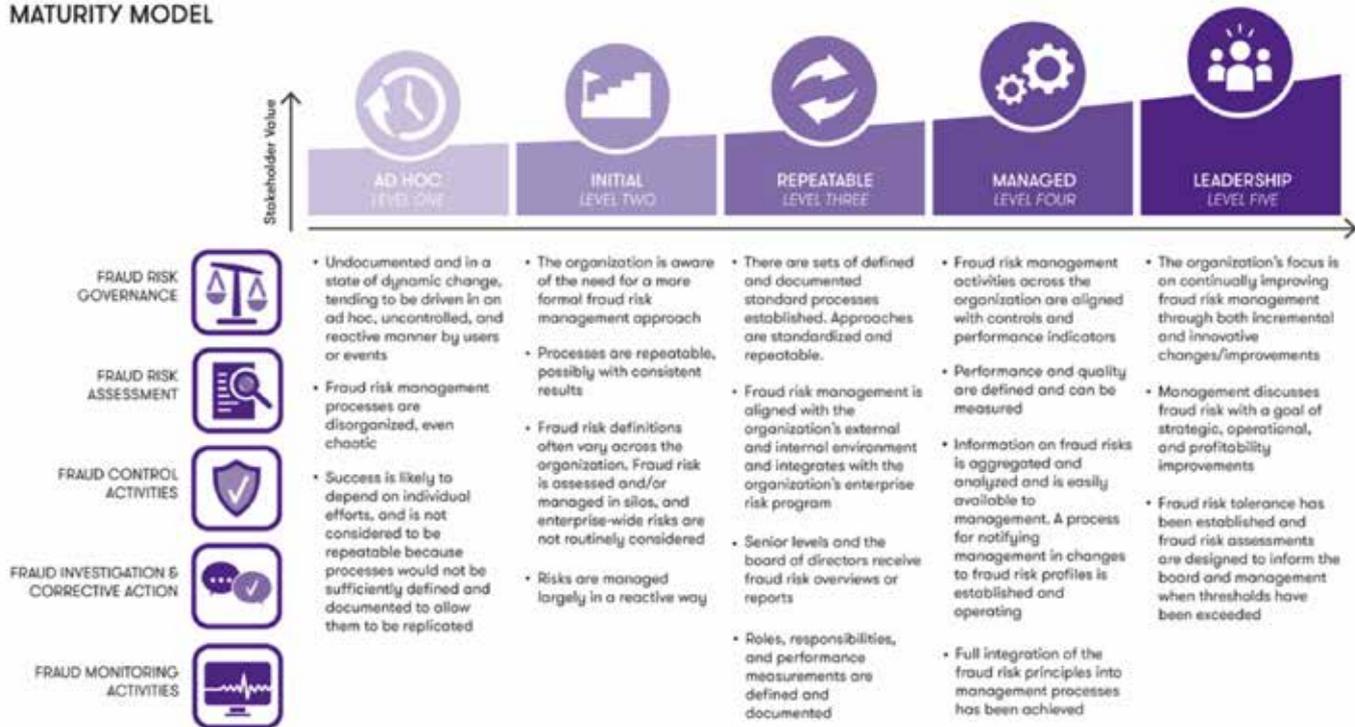
The maturity of an organization's fraud risk management program can be a good indicator of the likely amount of fraud it may be exposed to. Figure 2 shows an example of a Fraud Risk Maturity Model organizations can use to benchmark their current antifraud program.

### Rooting Out Factoring Fraud: Risk Assessment Done Right

Fraud risk assessment has gained momentum in recent years and is no longer seen as confined to financial statement audits. Organizations are increasingly charging a senior executive with fraud risk management responsibility and conducting comprehensive, enterprise-level fraud risk assessments. They are doing this to get ahead of the fraud problem. A fraud risk assessment can take many forms, but below are some important keys to success.

Information-based, rather than perception-based, can yield better results. A common way to assess fraud risks is to survey staff across the organization to gauge their perceptions about the likelihood and impact of a given set of fraud risks. When you ask people to rank likelihood and impact on a 5-point scale, you will get a number back. But the reliability of that number can vary widely, depending on how clearly the survey questions were worded and the context in which the respondent considered the fraud

## GRANT THORNTON'S FRAUD RISK MATURITY MODEL



risk in question. For example, if you ask respondents to rank the risk posed by the exposure of personally identifiable information, they may interpret the risk as a large scale cyber-attack or they may interpret it as employees inadvertently leaving hard copies of sensitive customer information on a printer. The likelihood of those two events occurring are very different. Hence, these risk assessment methodologies can end up providing limited value.

A better approach is to map out the potential entry points for fraud across your organization—such as the actors and channels—and design a set of questions aimed at collecting information on how strong the controls are to protect those entry points. For example, during the invoice submission process, did the factor verify that the invoices are genuine and the customer actually sold the products or services to the companies in

the accounts receivable ledger? If there are not sufficient controls in place within the organization, the process of factoring is susceptible to fraudulent activity. If the questions are standardized, the results can be fairly easily converted into a scoring rubric that will yield a quantitative risk score for each business function. This will allow a prioritization of risk areas across the enterprise.

Scenario-based risk assessment can be more effective. To understand the risks, it helps to develop a common set of fraud scenarios your organization could be vulnerable to. The development of a “fraud scenario library” can be a very useful artifact of this exercise. An example of a fraud scenario would include a customer creating a phony invoice and adding it to a list of real invoices to be factored for financial gain. Once the scenarios are developed and vetted, the fraud risk questions can be targeted to those processes

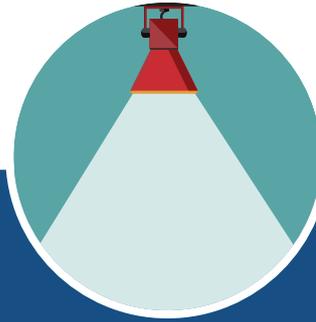
that could be compromised by the various scenarios. This library should be regularly updated as fraud schemes evolve within an industry.

Facilitated fraud risk workshops are vital. Any passive risk assessment process, no matter how well designed, will only get you so far. The results can provide you a baseline, but the key next step is to conduct in-depth fraud risk workshops, where you convene key stakeholders to discuss specific risks and the associated controls. These sessions allow participants to think like a fraudster, considering how certain schemes could be perpetrated given existing controls. They often result in several “aha!” moments as stakeholders consider the myriad ways controls can and likely are being circumvented and where improvements can be made to address previously unknown vulnerabilities. However, the fraud risk workshops can be time

consuming, so it makes sense to develop a structured set of interview questions first in order to assess programs and functions across the enterprise and target the highest risk areas for deeper workshops.

**Consider the environment.** Risk assessment is more successful in organizations that are culturally risk aware. If your organization sees risk as a bad word, the stakeholders involved in the process may be less inclined to provide an honest assessment of the strength of their controls and less likely to consider the possibility that fraud could occur. This can be mitigated to some extent by designing structured questions that reduce or eliminate perceptions and/or bias. It can also help to explain the process isn't intended to be punitive, but a collaborative effort to identify and mitigate the organizations' vulnerabilities. When stakeholders feel assured the finger won't be pointed at them when weak or non-existent controls are identified, they will be more likely to participate enthusiastically and effectively. Likewise, often staff assume the best intentions of their customers and colleagues, which limits their skepticism, a crucial aspect to effective antifraud efforts. Disseminating factor fraud schemes in regular antifraud training can be helpful in building awareness of the potential for fraud in various processes and functions.

**Success is Iterative.** The first fraud risk assessment should be seen as a baseline and lessons learned should be internalized for the next assessment. Fraud risk assessment is more art than science, and how it works best at one organization could look very different from how it works best at another.



## FACTORING FRAUD SCHEMES SPOTLIGHT

**FALSE INVOICES.** In this scheme, a fraudster creates an authentic-looking false invoice and adds it to the list of real invoices to be factored. This is easy when there is no direct communication or verification between the factoring company and the debtors. The money is paid for these false invoices.

**INVOICE LAPPING.** In this scheme, a later fraud is committed to hide an earlier fraud. To do this, the fraudster creates and factors a new false invoice. The money from that new false invoice is used to 'pay' the money owed to the factoring company for the earlier false invoice. As both the new factored invoice and the collection of the old invoice are reported to the factoring company at the same time, they will usually simply be netted off. Effectively no money changes hands. As the first false invoice appears to have been collected, it will not appear suspicious. Because the first fraud is eliminated (the invoice has been collected), there is little chance that this particular fraud will be uncovered at a later date. And finally, due to the fact that the dealings between the factoring company and the customer revolve around the two reports and the netting of amounts owed, the money from the false invoice never actually has to be paid - one report will create a new debt, the other remove the old debt, and so on. This scheme can be conducted indefinitely.

The road to effectively managing your organization's fraud risk is a long and winding one. When getting started, keep in mind that any assessment is better than no assessment. Start by building a fraud scenario library, initiating antifraud training to enhance the organizational buy-in and designing a structured interview process to collect information on fraud risks across your organization. Once the baseline is established, subsequent steps will help your organization continue to understand what it doesn't know about fraud lurking in the corners. •



**Linda Miller** leads the fraud risk practice at Grant Thornton. She was the principal author of GAO's Framework for Managing Fraud Risks in Federal Programs and served on the task force for the COSO/ACFE Fraud Risk Management Guide.

# Account Debtor Litigation – Please Get It Right!

If a debtor fails to pay the secured party, it seems obvious that the factor should be able to file a claim and win in court. However Steven Kurtz points out that the lawsuit must be correctly structured, especially when trying to claim protection under UCC §9-406. Two recent cases illustrate this point.

The factoring industry is grounded in the ability to purchase accounts, notice the account debtors to pay the factor, get repaid from the account debtors, and be secure in the knowledge that the UCC will protect the factor if the account debtor pays over notice. Indeed, the UCC offers a broad array of provisions that protect the factor from the debtor's paying over notice.

Included within the vast spectrum of statutory protections in the UCC, is §9-406. This section requires the account debtor to pay the secured party after the account debtor receives a notice of assignment (a redirection notice) from the factor. Failure to honor the redirection notice does not discharge the account debtor's payment obligation to the secured party and the account debtor is not relieved of its obligation to pay the factor if it disregards it.

While §9-406 is clear about the consequences if the account debtor pays over the factor's notice, courts often have trouble requiring an otherwise honest person, who is also likely a victim of the factor client's fraud, to pay twice on the same bill. There has been a troubling recent trend in account debtor litigation, where the factor only pleads a claim for payment over notice,

as provided for in §9-406 and completely ignores all of the other statutory protections set forth in the UCC, as well as general contract and common law which, when properly put before a court in conjunction with a payment over notice claim, should result in a victory for the factor. There are now two diverging lines of cases dealing with payments over notice. One recognizes a claim for payment over notice, and the other line of cases state that there is no direct claim under §9-406.

## ***Durham v. Ocwen***

On May 29, 2019, the U.S. Court of Appeals for the 11th Circuit, in *Durham Commercial Capital v. Ocwen Loan Servicing* (No. 17-15572) struck a blow to the entire lending industry when it issued a written opinion which denied the private right of action by the secured party

against the account debtor for payment over notice when the claim is brought solely under §9-406.

The facts in *Durham* are straightforward. Durham Commercial Capital factored the accounts of a law firm which specialized in mortgage foreclosure cases. Durham purchased the accounts in a non-recourse factoring arrangement and sent a redirection notice to the defendant/account debtor, Ocwen Loan Servicing. Ocwen failed to honor the redirection notice and, instead, paid the law firm directly.

The law firm, of course, kept the funds and later filed for bankruptcy. In the U.S. District Court action, Durham sued Ocwen, alleging only a single cause of action for a *Breach of the Statutory Duty to Pay Accounts* based on the alleged violation of New York's adoption of §9-406. The case proceeded to



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trial on that single claim. The only theory of liability upon which the district court instructed the jury was §9-406(a). Durham based proposed jury instructions solely on this basis. Ocwen objected to the complaint by filing a combination motion to dismiss and for judgment as a matter of law. It filed a renewal motion after it rested its case and filed several post-trial motions — all of which argued that, as a matter of law, there is no private right of action under §9-406. The district court ruled against Ocwen on its pre-trial and post-trial motions for judgment as a matter of law and entered judgment in favor of Durham. Ocwen appealed the decision.

### Reversal in Court of Appeals

The 11th Circuit Court of Appeals in *Durham* reversed the district court's ruling. However, this ruling should be applied narrowly given the limited issues and facts raised in that case. There, the only UCC provisions cited were §9-406 and §1-305 (which provide for affirmative claims when there are violations of rights contained in the UCC). Moreover, at oral argument, Durham's counsel conceded that it failed to introduce any evidence of its assignment of the accounts but instead argued that the security interest it received via the factoring agreement was sufficient to enable it to qualify as an "assignee" thereby giving rise to the statutory duty under §9-406 to pay Durham. Durham further failed to present the vast body of contract and common law which, when taken together with multiple other sections of the UCC, protect the factor.

In addressing Durham's arguments, the court of appeals found that §9-406 makes no specific reference to a secured party, so a claim under §9-406 must be an implied claim. The *Durham* Court went on to examine the purpose of §9-406. It found the law was drafted to benefit the account debtor because

it clarifies how it can discharge its debts by providing who it can pay before it receives a redirection notice and the account debtor's duties after it receives the redirection notice.

### Factor Fails to Structure Proper Claim

It held that Durham, the secured party, is not an intended beneficiary

under §9-406. Accordingly, the *Durham* court did not think that the statute provided for an implied private right of action. The *Durham* Court did note that UCC §9-607, which discusses the secured party's rights to directly collect accounts after default, or if agreed to in the contract, does give the secured party a right of action. However, because the factor only plead a

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# LEGAL FACTOR

AUGUST 2019

single claim for relief under §9-406 and failed to offer any other theories or evidence to support its claims, the 11th Circuit Court reversed the trial court, and the factor lost. While I disagree with the court's analysis of §9-406 not benefiting the secured party, who is in fact the assignee referenced in §9-406, the factor did not do itself any favors in structuring the claim.

## **Reading v. Suffolk**

The contrary line of authority and what may be the best case for the factoring industry is *Reading Co-Operative Bank v. Suffolk Construction.*, 464 Mass 543 (2013). In *Reading*, the factor closed a line of credit with its borrower. When the line was increased to finance the borrower's HVAC installation project, the bank decided to collect directly on the borrower's accounts and sent a notice of assignment to the defendant account debtor, which was acknowledged by a high-level person.

The account debtor's high ranking person neglected to notify the payable department about the redirection notice. The account debtor paid \$3,822,500.49 over notice to the borrower, who of course failed to remit the payments to the bank. The borrower defaulted on the loan and owed the bank \$1,499,149.42. Before filing suit, the bank recovered monies from a different party, which brought the claim down to \$533,348.62.

The bank subsequently sued the account debtor for the entire amount paid over notice, and in addition to the UCC specific claims for "breach of statutory duty to pay", the bank sued the account debtor on the various contract claims which constituted a part of

## **A defective presentation will result in a bad decision and unfortunately, the bad decisions results in bad consequences for the lending and factoring industries.**

bank's collateral. The trial case was presented as the bank enforcing the borrower's contract claim because of the bank's standing as a secured party with a perfected lien against accounts. The trial court also had a payment over notice claim on the theory that the bank had the right to collect the accounts under §9-607, and that the account debtor failed to discharge the debt because it paid over the redirection notice, with liability for the payment over notice set by §9-406. After trial, the jury awarded the bank \$533,348.49 which was the contractual amount owed when the lawsuit was filed. The judge, however, awarded the bank \$3,015,000.49 for the breach of statutory duty to pay, and, in doing so, gave the account debtor credit for a guaranty the bank held against a guarantor. Both sides appealed (the bank probably filed a cross-appeal, after the account debtor appealed).

## **Supreme Court Reversal**

The Massachusetts Supreme Court reversed the trial court and awarded

the bank the full amount that the account debtor paid over notice – \$3,822,500.49. In rendering its decision, the Massachusetts Supreme Court gives the reader a nice guided tour through the relevant portions of the UCC, and provides a solid analysis of the payment over notice rules. The *Reading* Court recognized the bank's right to collect accounts under §9-607. The court then went through a detailed analysis of §9-406. The court recognized that the damages for a payment over notice are for *all* monies paid over notice. The *Reading* Court was clear that §9-406 does not allow a court to reduce the award if the bank is owed less than the amount paid over notice. The account debtor's duty, after receiving a proper notice, is to pay according to the notice, or suffer the consequences. The *Reading* Court then discussed what expenses the secured party is allowed to assert in collecting accounts. The court then went on to discuss how funds are disbursed when there is a surplus, with the ultimate surplus funds going back to the debtor/borrower. The *Reading* Court held the account debtor holds a remedy against the borrower and is able to assert a claim to the surplus as part of its claim against the borrower.

These two cases illustrate that appellate courts can only decide a case based upon the record before it. However, depending upon the status of the record, radical and horrible results can and do occur. The appellate court record consists of what the parties plead in their claims, answers, various motions and admissible evidence put before the trial court. The difference between these two cases, both decided by high level and

distinguished courts, lies in the presentations made to the trial court. The *Durham* plaintiff only plead a claim under §9-406 and offered nothing more. The *Reading* plaintiff basically gave the court a tour of the UCC and presented both the borrower's contract claims and the UCC specific claims as a complete package. A defective presentation will result in a bad decision and unfortunately, the bad decisions results in bad consequences for the lending and factoring industries.

## Successfully Processing a Claim

To collect upon your account collateral, you must plead the underlying claim that your factor client has, based upon its agreement with the account debtor and the relevant facts. Typically, one would start with a claim for breach of contract, as there was an underlying agreement to perform services or sell goods. If there is a written agreement, then one must plead breach of the written agreement and satisfy the rules of pleading a written contract. This usually means attaching the contract and alleging a proper claim. If there is no written agreement, then there is likely a breach of an oral agreement, which requires pleading the essential terms of the oral agreement. It's not hard to say "my factor client sold goods to the account debtor on terms, the goods were delivered, accepted, and now the buyer has a duty to pay for the goods."

This hypothetical sale of goods claim will also require the plaintiff to be cognizant of the rules in UCC Article 2, which governs sale of goods and is often your best friend when litigating this type of claim. There are also likely common law type claims relating to selling goods or providing services on an open account as well as claims for a declaration of your rights. When you are unsure as to

what has been paid over notice, or believe that may have happened, then you have the right to allege an accounting claim, which puts at issue the entire transaction and what was paid, if anything, and to whom. Finally, careful attention must be paid to the fact that you, as the secured party, under the UCC and your agreement, are the assignee of the right to payment.

As a secured creditor with a security interest in accounts, general intangibles, and proceeds, and presumably a reasonably well written agreement, you have the right to collect upon your account and payment intangible collateral (a payment intangible is an obligation to pay money only and is a sub-set of general intangibles). Indeed, your automatic right to proceeds of collateral, includes certain litigation claims. Now it's time to provide the court and the other side with a basic understanding of your rights under the UCC. You can start with §9-109, which provides that Article 9 applies to the sale of accounts. A reference to §9-201 is helpful as it establishes that the terms of your security agreement (which for most of you will be contained in your factoring agreement), is binding upon your debtor and all of its creditors (which includes the account debtor in a payment over notice claim). Reference to §9-318 is warranted because upon purchase of an account, the debtor/factor client no longer has an ownership interest in the purchased account because you own it. Next comes a reference to §9-607 and its official comments, which give you the right to collect upon the accounts directly when so agreed, which is what your factoring agreement says, and gives you a claim to enforce the payment rights against the account debtor. You may want to state that collateral proceeds includes litigation claims to collect as provided for in the definition section in 9-102. A reference to §1-305 is required, which gives

you the right to assert claims for breaches of various rights contained under the UCC. And, finally, you now reference §9-406, which governs that upon receipt of a proper redirection notice, the account debtor only discharges its obligation upon payment to the assignor (you, as the factor). These UCC sections provide you with a good claim for breach of a statutory duty to pay.

Hopefully it's clear that if you just plead a case under §9-406, you will lose. You will lose because a naked claim under §9-406 will invoke judicial sympathy because the account debtor is often a victim of fraud. You will also lose because the naked §9-406 claim is devoid of any real analysis. The UCC is one of the best-drafted pieces of law. At the risk of being a labeled a nerd, it's a work of art, worthy of being studied. Taken together, the UCC provides a framework for pleading a case to enforce your collection rights in accounts or payment tangibles, and sets you up to deal with many of the possible defenses. In addition to the *Durham* Case, there are some other bad decisions, resulting from a naked §9-406 claim, one of which the IFA is writing an amicus brief.

We don't want this problem to get any worse. Therefore, as a service to the commercial finance industry, we are going to provide samples of complaints against account debtors, which will be available at the IFA website. We ask, in return, that upon downloading the samples, that you make a donation to the American Factoring Association, which is the lobbying arm of the industry representing your interest. Alternatively, please make a donation to the charity of your choice. Better yet, do both. Thanks for reading and apologies for exceeding my usual allotted length. Next up, I'll take you through a stroll of the UCC as it relates to protecting your rights to collect accounts. •



## Hold the Phone: Verification Calls Are Key Risk Management Tools

**There is no question that technology is helping factors function in a more efficient, cost effective manner. But Emma Hart points out that sometimes the old-fashioned methods work best, especially when it comes to keeping close to your debtors.**

**BY EMMA HART**

After more than three decades in this industry, I have found that more-often-than-not, it is not debtors that cause monetary loss for a factor, it is clients! Rarely does a debtor fail “out of the blue” or refuse to pay for no good reason. Plenty of times they refuse to pay, and their reasons are varied: quality issues; late delivery; missing product; contractual contingencies – all of which is down to the client to ensure performance.

Staying close to your debtors, however, is key to mitigating the risk of loss. These days more and more contact is made electronically via email, accounts payable vendor portals and websites. However old-fashioned as it may seem, building a relationship with a debtor is easier via telephone than by email.

Calling debtors is positively encouraged. In fact it is a requirement, in our organization. Our credit controllers and account executives are targeted and incentivized to make calls and we have a dedicated credit

controller who does nothing but make collection and verification calls all day long.

A debtor is more likely to “tip you off” to a problem over the phone, rather than commit in writing to something, even more so if you have built a relationship with that debtor.

### **Trust the Telephone**

Collection calls and verification calls are the most important facet of our risk mitigation tools. Yes, we have systems and platforms to identify

trends and risk in the portfolio and highlight deteriorating aspects of our client's facilities. We have a risk manager delving into the detail and analyzing data and training our team to spot the risks. We have processes and controls to mitigate against and ensure oversight of areas that could create a risk situation, but none of that can replace a debtor telling you that your client has asked them to verify an amount that bears no resemblance to what they actually owe, or that they have been asked to mail a check to the client directly. A debtor is generally wary of putting this type of information in an email, due to their ongoing relationship with their supplier.

Losing money is an inevitable part of lending money. Keeping that loss to a minimum requires a certain amount of skill, and buckets full of tenacity, persistence and momentum, and it doesn't hurt to have a British accent apparently!

Since arriving in the U.S. in 2008, with already 20 years of factoring and ABL under my belt, my colleagues were adamant that it was my accent, and not my experience, that was the key to my success. My calls were returned, where theirs were not, and I was able to reach agreements with debtors and clients alike to collect back what we were owed. I can even write "stropky" emails in a British accent, apparently, and illicit a response where none had been forthcoming prior to that. After more than 10 years on this side of the pond, I will finally admit that there may be some truth to that, however I favor tenacity and a dogged determination to speak to the debtor/client to collect on the amount owed.

Some client's businesses fail — that is part of the circle of life. And when ongoing supply to the debtor has ceased, it is much more difficult to collect on all of the open invoices. Yet this is when it is vital to pick up the phone and maintain contact

## Staying close to your debtors, however, is key to mitigating the risk of loss. However old-fashioned as it may seem, building a relationship with a debtor is easier via telephone than by email.

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with the debtor until they have paid. Many times, debtors need reassurance that despite their supplier having failed, they actually do still need to pay their invoices in full. You can be helpful in suggesting they seek their own legal advice to verify this, so as to not delay the payment, and these calls should take place sooner rather than later so you can head off any delays, confusion or uncertainty about what they should do.

### Time is Critical

Momentum is critical in a collect out. Once you allow time to come between the invoice becoming due and when you reach out, debtors have the opportunity to decide that they no longer want the product, that it now is not good quality, or they do a deal with an incoming supplier such that they don't need your product any longer, all of which will dilute your ability to collect back your exposure. It is easy for account executives to become distracted by those clients that are very active and demanding, and lose sight of the quiet one that has failed, so we incentivize our account executives to collect out our exposure in full, with an additional bonus if they collect enough to cover fees too.

Visualizing a collect out position is good for the account executive and management to see the position

at a glance. Back in the early '90s, before we had personal computers, let alone Excel, I won an "award for innovation" for inventing/designing a method for visualizing a collect out. It was a pad of paper with rows and columns and all details were hand written. We have the same system now — modernized somewhat in Excel, so that at a glance, we can see what portion of the accounts receivable is collectible, uncollectible and unknown, as it relates to our funds employed. The account executive is motivated to see an increasing "collectible" column, and management can immediately determine if a secondary exit route needs to be implemented to recover our exposure.

As an industry we seem to be modernizing away from the basics of speaking to debtors, instead favoring technology and electronic communication. There is certainly room for both — nothing beats an email trail of evidence when needed. With the continued increase of phishing emails trying to manipulate and misdirect payments, building relationships with debtors and maintaining regular verbal contact should not be underestimated as the ultimate risk management tool. •



**Emma Hart** is chief operating officer, Sallyport Commercial Finance. She was

previously the EVP of operations with Bibby Financial Services. Prior to joining Bibby, Hart spent 20 years with Lloyds TSB Commercial Finance in the UK. In operational and risk roles, she spent the initial 10 years within the factoring division, in portfolio and staff management, where she also set up and launched LTSB's first online offering, and the second 10 years in the ABL division, as a client manager, where she managed a portfolio of high-risk and turnaround ABL clients.



## AFA Delegation Educates Legislators About Factoring

BY KEVIN WOOD, MANAGING DIRECTOR, CHESAPEAKE BANK

July 16, 2019 was the 50th anniversary of the Apollo 11 Moon launch. Not only did that successful launch lead to placing the first humans on the moon four days later, it also affected our day-to-day lives, bringing new products and innovations that were created as part of the Apollo missions. Things like computer microchips, cordless tools, CAT scanners, satellite television and numerous other inventions that make our lives better resulted from the efforts of those Apollo missions.

Fifty years later, on that same day, three AFA members, along with our AFA Lobbying Group, launched another successful visit to Washington to lobby Congress and several key committees to continue the important work of the AFA.

The AFA seeks to influence our elected leaders and regulatory authorities to make our lives better for our factoring community from both a legislative and regulatory perspective.

Our two-day fly in was led by Palmer Hamilton of Jones Walker and included Debra Wilson from BAMfi and Tania Daniel from ENGS Commercial Capital. It was great to have such an experienced and knowledgeable team on our visit.

Not having participated in a previous fly in, I did not know what to expect, but Palmer and the team at Jones Walker had everything planned out for our meetings and had prepared focused agenda topics for discussion. We had a detailed agenda and reading material to allow us to quickly get up to speed on the topics.

Our main focus for this visit was to continue to differentiate factors from MCA lenders and to work to insure that Section 1071 of the Dodd-Frank Act would not be improperly applied to factoring. This section of Dodd-Frank will require lenders to gather and report information on applications based on race, gender and other components.

Since factors do not lend money, but rather purchase assets, we wanted to make our position known to as many influencers as possible and to ensure that factors would not be inappropriately required to comply with the regulation implementing Section 1071. Not only would this be a difficult and onerous burden on individual factors, it would also distort the information that Congress hoped to have compiled, since factoring is not a lending function.

Our two days started with a strategy meeting with Palmer and then we



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- **EDUCATION**, training courses, meetings, webinars & relevant events for the Factoring Industry.
- **DISCUSSIONS, MEETINGS & FORUMS** Access to the IFA Member Community Discussion Forum.
- **STORE** - Purchase Factoring books, forms, reports, webinars and more.
- **JOB BOARD** - Search for or list jobs.



6627 Bay Laurel Pl, Ste C, Avila Beach, CA 93424 | 805-773-0011 | factoring.org

met with leadership from the Small Business Administration; leadership from the Consumer Financial Protection Bureau (CFPB) which is crafting the actual regulation implementing Section 1071; House Financial Services Committee staff; the financial liaison for a US Senator and, finally, a House Member and his team.

Even though we had to suffer in 95 degree heat with the high Washington humidity, we had a very successful discussion in

every meeting. We were all very impressed with the Representative from Colorado, Ed Perlmutter, who, as a former bankruptcy attorney, knew quite a bit about the details of factoring!

Everyone we met was aware of factoring and our concerns which speaks to the effectiveness over the past 10 years of our lobbying firm and the numerous members of the AFA who have spent time and money to attend and educate our elected officials.

All of the people with whom we met understood our point of view and were receptive to our ideas. Because the CFPB regulations implementing Section 1071 will not be finalized until 2021, we must continue to educate and inform Congress and request Congressional help to make sure we have the best possible opportunities to help fund small businesses across the U.S. and provide creative solutions to helping businesses grow.

*Continued on page 28*



## 2019 Members

*As of August 8, 2019*

### **Diamond Member (\$10,000+)**

Accord Financial, Inc.  
Apex Capital Corp  
BAMfi, LLC  
Crestmark Bank  
D & S Factors  
Great Plains Transportation Services, Inc.  
Gulf Coast Business Credit  
International Factoring Association  
J D Factors  
MP Star Financial, Inc.  
Sallyport Commercial Finance, LLC  
TBS Factoring Service, LLC  
Triumph Business Capital

### **Platinum (\$5,000–\$10,000)**

FSW Funding  
Interstate Capital Corporation  
LSQ Funding Group  
Mickey Seeman –  
Owner, Sunbelt Finance  
Millennium Funding  
Phoenix Capital Group, LLC  
PRN Funding  
Republic Business Credit, LLC  
United Capital Funding Corp.

### **Gold (\$2,500–\$5,000)**

Advantage Business Capital  
American Funding Solutions LLC  
AmeriFactors Financial Group, LLC  
Assist Financial Services, Inc.  
Bay View Funding  
Commercial Finance Group  
Evergreen Working Capital  
Far West Capital

FirstLine Funding Group  
Goodman Capital Finance,  
a division of Independent Bank  
Interstate Billing Service  
Lenders Funding, LLC  
Match Factors, Inc.  
Mazon Associates, Inc.  
Prime Capital Group, Inc.  
Prosperity Funding, Inc.  
Rioux Capital  
SevenOaks Capital Associates, LLC  
Southwest Commercial Capital, Inc.  
Transport Factoring, Inc.  
Xynergy Capital Group LLC

### **Silver (\$1,000–\$2,500)**

AGR Financial, LLC  
Amerisource Funding, Inc.  
Ameritrust Capital Corp.  
Brookridge Funding  
Business Finance Corporation  
Capital Solutions Bancorp, LLC  
Cash Flow Resources, LLC  
Commercial Business Funding Corp  
Commercial Finance Consultants  
Commission Express National, Inc.  
Commonwealth Capital, LLC  
David Jencks – Jencks & Jencks, PC  
Diana Luoma –  
Owner, Sekady Capital  
Factor King, LLC  
J.O.B.E. Services, Inc.  
K.W. Receivables  
Levinson, Arshonsky & Kurtz, LLP  
QC Capital Solutions  
Nationwide Capital Funding, Inc.

New Century Financial  
Orange Commercial Credit  
Paragon Financial Group  
Primary Funding Corporation  
Raffi Azadian – CEO, Change Capital  
Spectrum Commercial Services Company  
The Hamilton Group

### **Bronze (\$500–\$1,000)**

ACS Factors  
Business to Business Capital Corp.  
Chesapeake Bank  
Concept Financial Group  
Entrepreneur Growth Capital  
Exchange Capital Corporation  
Finance One, Inc.  
Firmco Business Funding Inc.  
Grace Capital Resources, LLC  
Integrated Logistics & Associates  
MarcFunding, LLC  
Neville Grusd – EVP/COO,  
Merchant Factors Corp.  
Sherri DeJong – Vice President, Great  
Plains Transportation Services  
Terry Keating –  
President, Accord Financial, Inc.

### **Other (Under \$500)**

David B. Tatge, PLLC  
FactoringClub  
Hawaii Receivables Management, LLC  
Kevin Wood – Managing Director,  
Chesapeake Bank  
Plus Funding Group  
Stonebridge Financial Services, Inc.  
TradeGate Finance, Inc.

# WHAT'S NEW AT IFA

AUGUST 2019



Our Preferred Vendors have undergone a screening and evaluation process. When you contact the Preferred Vendors, you will need to indicate that you are an IFA member to receive your benefit.

*If you offer a good or service to the Factoring Industry and are interested in applying for Preferred Vendor Status, please contact the IFA at 805-773-0011.*

## ASSOCIATIONS

The following trade associations offer member pricing for events attended by IFA members:

**Beijing Commercial Factoring Association (BCFA)**

**Colombian Association of Factoring (CAF)**

**Commercial Factoring Expertise Committee of China (CFEC)**  
[www.cfec.org.cn](http://www.cfec.org.cn)

**Ecuadorian Factoring Association (ASOFACTOR)**  
[www.asofactoring.org](http://www.asofactoring.org)

**FCI**  
[www.fci.nl](http://www.fci.nl)

**Romanian Factoring Association (RFA)**  
[www.asociatiadefactoring.ro](http://www.asociatiadefactoring.ro)

**World of Open Account (WOA)**  
<https://woa.community/>

## BROKER

### Rainstar Capital Group

Rainstar Capital Group is a multi-strategy private equity firm based in Grand Rapids, Michigan that makes direct investments and provides advisory debt capital. Rainstar partners with factoring firms who have clients seeking debt capital products separate from the factoring solution for growth needs. Through its multiple lending platforms with over 250 registered lenders, Rainstar provides factoring firms' clients debt financing product lines for commercial real estate, corporate finance, small business and equipment needs. Product lines include: Unsecured Lines of Credit, Revenue Based Lines of Credit, Revenue Based Advance, Merchant Cash Advance, Business Lines of Credit, Inventory Financing, Purchase Order Financing, Equipment Leasing, Accounts Receivables Factoring, CMBS loans, Agency loans, Bridge Financing, Hard Money and Commercial Contractor Credit Lines. Rainstar's lending platform finances clients from \$10k to \$300M and covers all credit profiles across the listed product lines.

Kurt Nederveld: [Kurt@rainstarcapitalgroup.com](mailto:Kurt@rainstarcapitalgroup.com)  
(616) 953-6036 • [www.rainstarcapitalgroup.com](http://www.rainstarcapitalgroup.com)  
**IFA Member Benefit: Rainstar Capital Group will pay your IFA membership dues. Members will pay IFA directly and Rainstar will reimburse member within 30 days of payment. Members will be eligible for membership fee reimbursement if they either:**

- Fund a client that was presented by Rainstar during the preceding 12-month period.
- Refer a company to Rainstar that is funded through a Rainstar funding source during the preceding 12-month period.

## CERTIFIED MAIL

### RMail

Go Paperless. Switch to RMail to send your important notices. RMail services allow factors to end disputes attributed to missing, misplaced or denied receipt of notification emails for notices of assignment, notices of default, borrowing base certificates, and other important notifications. It also helps speed invoice collections with proof of invoice delivery irrefutably starting the accounts receivable aging clock.

[www.rpost.com/ifa](http://www.rpost.com/ifa)

**IFA Member Benefit: IFA Members save \$300! Subscribe to 1000 units RMail plan for only \$390! (Normally \$690)**

## COLLECTIONS

### NEW! The Collection Law Group, Inc.

The Collection Law Group ("TCLG") is a group of lawyers who collect past due commercial accounts receivables from businesses across the United States. Our collection approach has been helping finance and factoring organizations collect past due amounts more quickly more efficiently and more cost effectively than other approaches. Our approach combines the best of collection agencies with the best of law firms giving our clients higher recover amounts more quickly with less cost. At TCLG we call our approach our "Attorney Driven Approach".

Brad Magill • [brmagill@tclginc.com](mailto:brmagill@tclginc.com)  
[www.tclginc.com](http://www.tclginc.com) • 888-304-4347

**IFA Member Discount: For the first five collection files sent to TCLG by IFA members that are \$10,000 or more in amount due, TCLG will offer a reduced fee from our normal 20% contingency fee to a 15% contingency fee. Future discounts if any will depend on the volume of files and nature of the files.**

### VeriCore

VeriCore is the pioneer of ZERO fee collections! A ZERO fee collection takes place when VeriCore compels the debtor to pay for the cost of collection. ZERO fee collections don't happen every time, but many IFA members have already experienced ZERO fee collections over 100 times! VeriCore is a contingent, fully licensed and bonded agency with an A+ rating with the BBB and a strong focus on compliance. Our proprietary process is designed to create constant and methodical pressure on a debtor which compels them to prioritize you at the top of their AP list. We have a national and international presence and we would relish an opportunity to show you how good we truly are.

800-433-4903 x1162

Chris Dawson: [chris.dawson@vericore.com](mailto:chris.dawson@vericore.com)  
[www.vericore.com](http://www.vericore.com)

**IFA Member Discount: Contingency rate of 22% or will match the rate of any agency that is fully licensed.**

## CONSULTING

### FactorHelp

FactorHelp has come to be regarded as the factoring industry's premier resource provider. Their manuals, in use on every continent of the world, are setting the industry standard, and their reputation as the one-call solution for factoring problems is growing. By consistently introducing innovative, viable products, vigilantly cultivating an extensive alliance of Strategic Partners and providing the professional expertise demanded of an industry leader, FactorHelp strives to maintain its goal of providing the unparalleled service the factoring industry expects from a solutions partner.

972-722-3700 • [www.factorhelp.com](http://www.factorhelp.com)

**IFA Members receive a discount of 10% on their consulting fees and 5% discount on all FactorHelp products in the IFA store.**

## CREDIT

### Ansonia Credit Data

With more than 250 Factors and over \$800 billion in data, Ansonia provides Factors and ABL lenders an innovative way of managing debtor and fraud risk. Our business credit reports feature current and historical days-to-pay information collected directly from the accounts receivable departments of small and large factors and other companies across all segments.

855-ANSONIA • 855-267-6642 x.103  
[www.ansoniacreditdata.com](http://www.ansoniacreditdata.com)

**IFA Member Benefits: Free VIGILANTE™ Portfolio Analysis. Try Ansonia's unique new program for monitoring credit portfolio risk. Call today to receive a comprehensive review of our entire portfolio.**

### Credit2B

Trusted by all of the majors because of the sheer volume of Factor trade and 98% third-party data coverage of active businesses in North America, Credit2B is a cloud-based platform that empowers accurate and timely decisions by connecting the experiences of trade credit grantors around their common business customers. We combine this highly valuable trade network information of approximately \$700B in recent receivables with live bureau and public filing information to provide comprehensive financial risk profiles, all in real time. Our dashboard also provides Factor specific scoring, Factor client risk pools, monitoring, peer benchmarks and comprehensive trade data pack solutions for integration into your enterprise software.

212-714-4500 • [www.credit2b.com](http://www.credit2b.com)

**IFA Member Benefits: Join the largest virtual factor community. Receive 10% price discounts for being an IFA member. Complimentary invitations to our hosted events in NYC.**

## FactorsNetwork

FactorsNetwork provides an online platform where Factors share trade experiences with each other. Members are able to pull unlimited Credit Reports as well as monitor and analyze their portfolio. Transportation Factors benefit from our CarrierMonitoring and ChameleonCatcher programs and their clients profit from our LoadBoard. We even offer a Sales Tool to help you find new clients.

435-659-4612

[www.factorsnetwork.com](http://www.factorsnetwork.com)

**IFA Member Benefits:** 50% cost savings for the monthly membership fee. It is normally \$1,000 per month, but IFA members will pay \$500 per month.

## CREDIT CARD PROCESSING

### NEW! Clarus Merchant Services

Clarus Merchant Services offers a custom program developed specifically for how the Factoring Industry processes their credit card transactions. Our program provides detailed reporting that allows tracking of each invoice and fee transaction for easy account reconciliation with their customers and clients. We work with each member to ensure all processing costs are covered and that they are doing so within the guidelines of MasterCard / Visa. In addition we provide IFA members direct access to their account manager for immediate response and support.

David Powers • [dave.powers@clarusdc.com](mailto:dave.powers@clarusdc.com)  
540-222-3925 • [www.clarusdc.com](http://www.clarusdc.com)

**IFFA Member Benefits:** IFA members that purchase the CardX program receive a one-time \$200 rebate\*

\*Once the member has processed a whole month using the program

### ePaymentAmerica

ePaymentAmerica is the nation's leading provider of processing services for the factoring, A/R financing, and P/O financing industries. They offer IFA members exclusive VISA, MasterCard, American Express and Discover pricing, a discount on their virtual gateway, and a discount on PCI Compliance Certifications.

901-385-5327 • [www.epaymentamerica.com](http://www.epaymentamerica.com)  
[factoring\\_program@epaymentamerica.com](mailto:factoring_program@epaymentamerica.com)

**IFA Member Benefits:** Interchange Plus Pricing\* Bundled Monthly Service Fee of \$30.00 (includes IRS regulatory compliance, account maintenance, PCI compliance, virtual gateway & online management tool.)

\*Based on volume/transaction count.

## FUNDING

### Liquid Capital Corp.

Liquid Capital has been in the Factoring industry since 1999 and entered into a partnership with Next Edge Capital in 2015. This relationship has allowed them to pursue an aggressive growth strategy focused on the following key initiatives:

- The acquisition of A/R portfolios from Factors looking to exit the industry  
**Member benefit:** Trailer fees for the life of the acquired accounts

- Soliciting Factors to join the Liquid Capital network to gain access to additional capital, a robust range of working capital and trade finance products, extensive marketing and back office support  
**Member benefit:** Liquid will pay your IFA membership or Annual Conference registration fee for the following year.

- ABL referrals from existing Factors who would not normally fund this type of transaction  
**Member Benefit:** The referring Factor will

earn an origination fee and have the opportunity to participate in the funding.

Robert Thompson-So • 866-272-3704  
[www.Liquidcapitalcorp.com](http://www.Liquidcapitalcorp.com)  
[rts@liquidcapitalcorp.com](mailto:rts@liquidcapitalcorp.com)

## MARKETING

### 50 Words LLC

50 Words is a marketing outsourcing firm for companies that either do not have a marketing department or that need to add more manpower to their existing marketing team. They serve as your dedicated marketing department.

610-631-5702 • [www.50wordsmarketing.com](http://www.50wordsmarketing.com)

**IFA Member Benefits:** IFA Members will receive five free hours of marketing services with the purchase of any marketing service. (Offer for new clients only)

## RECRUITMENT AGENCY

### Commercial Finance Consultants

Established in 2002, CFC is the premier provider of human talent to the factoring industry. CFC's goal is to provide their clients with the best available human capital and the most current industry information to assist in accomplishing their growth potential.

469-402-4000 • [www.searchcfc.com](http://www.searchcfc.com)  
[dar@searchcfc.com](mailto:dar@searchcfc.com)

**IFA members will receive an additional 60 days added to the guarantee on all placements.**

## SOFTWARE

### Artis Trade Systems

Artis Trade Systems offers ArtisPay, the revolutionary Supply Chain Finance (SCF) app that allows banks and lenders to provide buyers and suppliers with a flexible, customizable, easy-to-use enterprise-grade software. ArtisPay is a fully cloud-based software-as-a-service (SaaS). Partnering with Artis Trade endows lenders with a high-tech innovative partner with deep industry experience that will help market and grow their SCF program.

480-250-8186 • [www.artistrade.net](http://www.artistrade.net)

**IFA Member Benefits:** IFA members will receive a 33% discount on the registration fee.

### FactorFox

FactorFox Cirrus is a cloud application for factors, their clients, brokers, lenders, and others who enter or access data. Entries can be made and reports accessed from any internet-connected computer, tablet, or smart phone. As a web-native program, there is no extra cost for setting up your account or to access your data; further, you receive three hours of free training online. FactorFox's various versions make it suitable for nearly any size factor.

866-432-2409 • [www.factorfox.com](http://www.factorfox.com)

**IFA Member Benefits:** In addition to the one-month free trial for everyone, IFA Members receive an additional month to try the complete program.

### Finvoice

Finvoice offers traditional factoring companies and asset-based lenders a simple-to-use and comprehensive software solution to help them become a modern and efficient online lender. Finvoice came out of a passion to help small businesses who generate 67% of jobs and 50% of the world's GDP.

Andrew Bertolina  
310-951-0596 • [www.finvoice.com](http://www.finvoice.com)

**IFA Member Benefits:** Complimentary landing page review/optimization for digital conversion. 15% discount on pricing for the first year.

## HubTran

HubTran is the leading provider of back office automation technology for factoring companies. HubTran's SaaS platform streamlines invoice processing, document management, and exception handling. Customers increase productivity 4X, reduce errors and increase capacity. HubTran's innovative technology leverages Optical Character Recognition and Artificial Intelligence to simplify back office work without requiring massive investments of time in training and integration.

Matt Bernstein

630-544-0459 • [www.hubtran.com](http://www.hubtran.com)

**IFA Member Benefit:** 1 week trial and waived setup/integration fees

## ProfitStars®

ProfitStars® is an industry-leading provider of portfolio management systems for commercial finance, and offers a common framework for factoring, asset-based lending, inventory finance, and lines of credit. Our dynamic Commercial Lending Center Suite™ incorporates all-digital loan origination, decisioning and portfolio management workflows that save time, improve accuracy and improve the overall borrowing experience.

205-972-8900, option 3 • [www.profitstars.com](http://www.profitstars.com)

**IFA members will receive 10% off new ProfitStars lending solutions product purchase. For IFA members who are currently ProfitStars customers: Free one day FactorSoft refresher course, per year, at ProfitStars' training facility in Birmingham, AL.**

## TAX COMPLIANCE

### Tax Guard

Tax Guard fills a critical gap in a commercial lender's credit risk management toolset with efficient, real-time and actionable insight into the true, non-public IRS tax compliance status of their prospects and clients. Our due diligence reports, tax compliance monitoring and resolution solutions support commercial lenders throughout every stage of the funding life-cycle.

646-502-4478 • [www.tax-guard.com](http://www.tax-guard.com)

Rich Porterfield: [rporterfield@tax-guard.com](mailto:rporterfield@tax-guard.com)  
**IFA Member Benefits:** IFA Members will receive ten free IRS Tax Return Transcripts within the first 30 days of service. One time offer also extended to current IFA members.

## UCC SEARCH

### First Corporate Solutions

First Corporate Solutions is a full-service public records provider specializing in the research, retrieval, and filing of public records nationwide and internationally. Their services include industry standards such as UCC, lien and litigation searching, UCC and corporate filing services, nationwide registered agent coverage, and real property title searching, as well as unique solutions such as state and county account monitoring designed specifically for Factors.

800-406-1577 • [www.ficoso.com](http://www.ficoso.com)  
[info@ficoso.com](mailto:info@ficoso.com)

**IFA Member Benefits:** IFA members will receive a 10% discount off of the retail rates of their signature state and county account monitoring product.

## From Infield to Construction Factoring – Former Tiger Curt Powell Says Teamwork is Everything

After three years in the Detroit Tigers farm organization, Curt Powell was tired of being on the road six months a year and was in the market for a new career. Baseball led him to CapitalPlus President Scott Applegate, who sold Powell on factoring. Powell fell in love with factoring and explains how he uses his old teamwork skills in his new profession.

BY NADINE BONNER



It's pretty safe to say that no little boy ever planned to become a factor when he grew up.

Many of them, like Curt Powell, dream of playing professional baseball. After the six-foot right-handed shortstop graduated from the University of Georgia, he was drafted by the Detroit Tigers and it seemed as if he was on his way to fulfilling that dream.

But, as anyone who has seen the movie "Bull Durham" knows, the road to the majors is plagued with potholes. For three years, Powell played for different Tigers' farm teams, making it up to AA ball with the Erie (PA) Seawolves. But, by 2013, he was tired of being on the road most of the year and missed his wife and family back in Nashville.

"I truly enjoyed it, and I wouldn't change it for the world," says Powell, looking back on his years in the Tiger organization. "But the 13-hour bus rides and being gone six months out of the year when I had my wife back home just got a little old."

Giving up professional baseball didn't mean giving up baseball all together, however. Powell remained active in the sport and at one point was helping the son of CapitalPlus President Scott Applegate improve his game. Powell's wife, a nurse practitioner, had a job about an hour away from Knoxville, and Powell was interviewing for a job in that area. He asked Applegate if he would serve as a professional reference.

Applegate said, "no problem," Powell recalls, and then invited him for lunch.

"He told me a little bit more about his business. He said he had a position for me and asked 'why do you want to go out there when you could work for me?'" Applegate explained that Powell could still move to be near his wife's job and work as a sales representative for CapitalPlus from anywhere.

Powell began as the company's only sales rep. As CapitalPlus has grown in the last three years, so has the staff.

Recently he was promoted to director of Sales.

When announcing the promotion, CapitalPlus Executive Vice President Brent Chambers tagged Powell as, "a natural leader."

## The Team is Key

Anyone familiar with baseball knows that the shortstop is often the spark-plug for a team, and Powell points out that many of the skills that develop success on the baseball diamond can be applied to factoring.

The team aspect, he notes, is key in both baseball and factoring. "In baseball, you've got nine positions and if all nine people are doing something different, they're not working towards the common goal and you're gonna lose every game.

"There's nothing different in my mind with your company. The people you work with are your teammates, and everybody's got to be on the same page and working for one goal."

"If you look back at the end of the year and the whole company is succeeding, that means that everybody else is doing their job. If everybody's working towards one common goal, then that means everybody is succeeding at the same time."

Powell admits that he knew virtually nothing about factoring when Applegate recruited him.

"When you go to school, you take business classes, and they don't tell you a lot about factoring. But once I got started with Scott, he started breaking it down for me, and I fell in love with it."

Part of what he loves is the client service aspect of factoring.

## KEEP THE CLIENT HAPPY

"We don't lock the client into any long-term contract," he explains. "I love that aspect. We try to keep the client happy, and we're not making

*Continued on page 28*

# FRAUD

AUGUST 2019





# Five Types of Fraud in Factoring and Ways to Prevent Them

**While technology offers new and exciting ways to help factors work more efficiently, it also unleashes new methods to perpetuate fraud. Paula Clara describes the most prevalent fraudulent methods that affect factors and offers strategies to help factors avoid them.**

**BY PAULA CLARO**

Fraud continues to thrive in the industry, and factoring companies face a growing threat each year despite new processes and risk mitigation methods in place to reduce it. Not only do factors face the traditional forms of fraud that have always plagued the industry, but several converging trends have increased the scale and sophistication of fraud in recent years. The growth of online commercial lenders, a robust economy with greater access to capital, more availability of information on businesses and individuals, the Dark Web, and the increased speed of lending are just some of the trends contributing to newer and more sophisticated fraudulent schemes. The good news is that new methods of detection can be used to prevent new as well as traditional types of fraud schemes from the outset.

## **LOAN STACKING FRAUD**

Loan stacking has become a major issue in recent years. With the growth of online lenders giving fast approvals, multiple business loans are taken out by borrowers who present themselves to factoring companies and attempt to hide

other loans. The ease of access to online loans and loopholes in online lending can result in multiple lenders making loans to the same borrowers, often within a short period, without the full picture of their rising obligations and declining ability to pay. What can be done? Encourage prospects to embrace technology. In an era of open banking, prospects can now allow lenders to connect directly to their bank accounts to extract information that is very difficult to alter. This is becoming more and more mainstream and businesses are more open than ever to provide information to secure working capital. Don't just rely on PDF documents or information sent by prospects, but insist that they connect their bank accounts directly. By having direct read-only access to their bank account data, factors can monitor dates and amounts of transactions to detect loan stacking.

## **BUSINESS IDENTITY FRAUD**

This occurs when prospects act as business owners or representatives of legitimate companies by using real company information obtained via the Dark Web or by

accessing readily available information online. Unfortunately, business and personal identity information can be easily obtained, and while you may think you are dealing with a real prospect, the person and/or business may be misrepresenting themselves. What can be done to detect prospects that present personal identification, financial statements and bank statements that are purchased and are real -- just not theirs?

Offer all digital onboarding mechanisms and consider adding Two-Factor Authentication during the application process to confirm your prospect's phone number as well as gather other types of revealing data from the point of application. Go a step further by asking for address verification in the form of utility bills, lease agreements and use social media to verify companies and the individuals that work there. Look for phony email addresses and consider incorporating cutting edge services that analyze social media, email addresses, and corporate domains and give you results quickly.

### **MISDIRECTED FUNDS/WIRE FRAUD**

Often this type of fraud is unintentional, but frequently payments are incorrectly misdirected to the client as opposed to the factor, and by the time the factoring company realizes and the client starts to age, it's too late. The money is already gone, leaving the factor in a bind. To detect misdirected funds early on, connect to prospect's bank accounts at the point of application and pull the bank data at consistent time intervals to monitor large deposits or ones coming in from a specific payee so you can quickly detect unintended mistakes and redirect the payments back to the factor or detect intentional fraud and stop it right in its tracks.

### **INVOICE FRAUD**

This involves misrepresenting accounts receivable and/or modifying invoices and is common in factoring. Typically, when applying for a factoring facility, prospects want their accounts receivable to look better so they can be approved even though their AR might be aged. So, they modify invoices.

Traditionally, factoring staff calls or emails to verify if the invoices and amounts are real and may even obtain copies. In this scenario, the invoices and amounts may be correct, but how can the factor be sure that the invoices submitted have not been modified, especially the dates? Factors spend a lot of time and money underwriting a prospect to approve them and during spot verification might be able to catch that some of the dates were changed in the accounting system data. Depending on their methods, they may or may not be able to catch this type of fraud since it depends on the quality of the information coming back and how thorough the verifying person is. In this scenario, the factor often must wait to get paid and may even get paid on the invoices sooner or later. But the factor could have revealed this character issue with the client in the beginning and avoided this situation all together.

So how can a factor be sure that invoices weren't changed in the accounting system? Factors can connect directly to client's accounting systems at the point of application. Lenders can detect whether or not an invoice was modified before or close to the time of application and not after funding -- which often becomes a ticking time bomb. Connecting directly enables lenders to extract "metadata" that regular users cannot see. This meta data tells when the invoice was created, when it was last modified in

their accounting system, who modified it and other information that internal users of their accounting system will not be able to see.

### **SHELL COMPANIES**

These are fictitious entities created for the sole purpose of committing fraud. These businesses may appear real, have a physical address, a state license, a local telephone listing and even a receptionist answering calls. But they are not real companies. How can factors detect a fake company? Use multiple third-party data services to cross reference information.

Frequently, factoring companies are too cost conscious and rely only on one or two particular data services. The best practice is to cross reference information from multiple data sources and ensure that the data services being used tell you the source of their information. Take the time to understand each data service, ask what the source of their information is and don't accept vague answers like "multiple sources". Demand that data service providers tell you exactly where their information is coming from to cover all your bases. If one data service doesn't completely look at every data point you need, use another to help you cross reference information.

Combining the latest methods in fraud detection with traditional risk mitigation practices and being aware of more sophisticated fraud schemes can help factoring companies reduce costly fraud from the beginning. •



**Paula Claro** is marketing director at Decipher Credit Solutions. She

can be reached at [paula@deciphercredit.com](mailto:paula@deciphercredit.com).

# The World's Largest Association for the Factoring Industry

TRAINING COURSES  
ANNUAL CONFERENCE  
AMICUS BRIEF PROGRAM  
AE CERTIFICATION PROGRAM

LEAD GENERATION  
[www.factorsearch.com](http://www.factorsearch.com)  
FACTORIZING SURVEY AND LEGAL FORMS  
MENTOR PROGRAM

DISCOUNTED PRODUCTS  
DISCUSSION GROUPS  
SOCIAL MEDIA COMMUNITY  
MEETINGS, FORUMS & MORE

## 2019/20 UPCOMING EVENTS



### TRAINING COURSES & EDUCATIONAL MEETINGS FOR THE RECEIVABLE FINANCE INDUSTRY

Sep 4 - 6	2019 Transportation Factoring Meeting	The Driskill, Austin, TX
Sep 18	When It's Over: Considerations For When the Factor-Client Relationship Ends	Webinar - 1pm PDT
Oct 17 - 18	Successful Transportation Factoring Training Class	Planet Hollywood, Las Vegas, NV
Oct 21 - 22	Supply Chain Finance Training Class	Planet Hollywood, Las Vegas, NV
Oct 24 - 25	Strategic Thoughts Training Class: What's Next For Your Factoring Company in Today's Market?	Planet Hollywood, Las Vegas, NV
Jan 22 - 24	2020 Presidents & Senior Executives Meeting	Andaz Costa Rica Resort Guanacaste, Costa Rica
Mar 3	Annual Meeting with the NYIC & IFA Northeast Chapter	Arno Ristorante, New York, NY
Apr 22	Factoring Essentials Training Class	Omni Nashville, Nashville, TN
Apr 22 - 25	2020 Annual Factoring Conference	Omni Nashville, Nashville, TN

**REGISTRATION INFORMATION** 805-773-0011 [www.factoring.org](http://www.factoring.org)  
[info@factoring.org](mailto:info@factoring.org)  
International Factoring Association, P.O. Box 39, Avila Beach, CA 93424-0039

**Payment Method:** Check, VISA, MasterCard, Am Ex or Discover. **Cancellations** made 30 days or more before the course, will be refunded the registration fee less a 20% cancellation charge. No refunds for cancellations after the 30 day deadline. You may substitute attendees without penalty. **Accommodations:** Special room rates have been negotiated for all training courses & meetings. Refer to the **International Factoring Association rate** when calling for hotel reservations. **United** is the official airline of the IFA. Call 800-426-1122 or visit [united.com](http://united.com) and put in Offer Code: ZFS6291314. (Codes are good for 2019 classes only)



The IFA offers CLE credits for upcoming programs. For information on approved programs & states, please contact Heather Villa at [info@factoring.org](mailto:info@factoring.org) or 805-773-0011 ext. 301.



These training courses are approved for CAEF credits. For information contact Terri Baker at 805-773-0011, ext. 303.



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## PROFILE

*Continued from page 23*

an obligation. We're here when the client needs us. We're here to help their business grow. We're not here to hinder their business in any way."

CapitalPlus was founded in 1998 in Knoxville with a special area of expertise – construction lending. The company specializes in helping construction companies in all trades with working capital in the form of receivables financing and enhancing their back office with bookkeeping, lien rights compliance, risk management and contract compliance services.

Powell finds many aspects of the business appealing, acknowledging that there are few other lenders with such a specialized market.

"Every deal is different. And that's another reason I love it. It keeps you on your toes. You're always looking for a creative way to help the client out to get over an obstacle. You got to keep up with lien rights, lien compliance. You have to worry if you're assisting a subcontractor if they have any subs on them, if they're paying their vendors. If you're working on a government contract, you have to make sure all the subs are paid."

### Many Moving Parts

There are many moving parts to construction lending Powell explains, which means the lenders have to concentrate on all parts of the loan.

"If you're being pulled in multiple directions, and you let something slip up on the construction site, it can come back and bite you," Powell says. "That's a part of what makes this business unique, and that's also the reason that other factoring companies tend to stay away from it."

He adds that because there are a lot of balls in the air, the team aspect is especially important and "everybody has to be on the same page."

CapitalPlus is a national lender doing business in all 50 states, and Powell proudly points out the company has helped out in Puerto Rico and the Virgin Islands after the hurricanes swept through the island nations. Powell also gains satisfaction from the fact he can work with a large, national electrical supplier one day and a local concrete company the next. Powell said he recently helped a contractor who was installing guardrails along the highways in the State of Georgia.

CapitalPlus, he adds, also works with other lenders who don't specialize in construction.

"We're not in competition with them," explains. "The main thing other factors should know is we spend 100% of our time on construction. That's all we do. We're able to do bonded or non-bonded jobs. We can always take look."

So, while most little boys might not believe that a career in factoring can be as compelling as playing ball every day, Powell might be able to convince them otherwise.

"It's fascinating," he says of factoring. "It caught me at the very beginning. It was one of those things you don't know about, and once you learn it, you just realize how great a fit it can be for so many different companies. That's the part I like most about my job. We've helped so many companies. It's always great to see a company come in and use our services for as long as they need. It just gets their company back in the green." •

## AFA UPDATE

*Continued from page 19*

Being new to the fly in process, my main takeaways from the two days were:

- The depth of knowledge and the amount of groundwork that is required to set up these meetings
- The willingness of our elected officials to hear our side of the story and be open to our point of view
- The knowledge and professionalism of our IFA and AFA members and their willingness to contribute time and money to help the industry overall
- The need for more people to get involved and contribute either time or money to help direct legislation that will create a better future for the Factoring industry

We must continue to be diligent in monitoring and managing the receivables. We need to be just as diligent in monitoring and managing the legislation and regulations that affect our industry and our livelihoods.

Just as the launch of Apollo improved the lives of all of society, the continued launches of AFA visits to Washington will hopefully help the lives of factors now and in the future.

*The goal of the AFA is to increase membership and financial support from every IFA member. We urge every IFA member to contribute to the AFA as we are in the midst of our annual membership fund drive. Currently, we have Bronze Members who have contributed as little as \$500, up to Diamond Members who have contributed in excess of \$10,000. This is a very inexpensive insurance policy to help protect our industry from needless regulation which will be both costly and prohibitive. Please consider supporting the American Factoring Association.* •



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Note: Rank excludes banks with high non-loan asset concentrations: Goldman Sachs, Morgan Stanley, BONY, State Street, Charles Schwab. Ranks as of 12/31/2018. Based upon total gross loans and total aggregated domestic deposits for bank holding company. Sources: SNL, FDIC, company reports. Subject to credit approval. Additional terms and conditions apply. Products and services offered by Capital One, N.A., Member FDIC. © 2019 Capital One.

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