Recent Case Law Development Under the 2005 Amendments to the Bankruptcy Code—Part II

by Bruce S. Nathan and Scott Cargill

This is the second part in a two-part article discussing recent case law developments under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), which is applicable to bankruptcy cases that were filed on or after October 17, 2005. Part 1 discussed the BAPCPA's impact on reclamation claims, the new administrative priority claim for certain goods shipped to a debtor within 20 days of the bankruptcy filing, as well as the development of new debtor management compensation plans. Part 2 discusses the BAPCPA's requirement that creditors' committees provide certain information concerning a debtor's bankruptcy case to creditors and solicit creditors' comments; a creditor's recourse if it is not appointed to a creditors' committee; and how the BAPCPA can assist trade creditors in defending preference claims.

The BAPCPA added a new Section 1102(b)(3) to the Bankruptcy Code, which imposes new duties and responsibilities on creditors' committees to grant creditors access to information and solicit comments about a bankruptcy case from creditors that are not committee members and whose interests the creditors' committee represents. The new provision does not offer guidance regarding the extent of the "information" a creditors' committee is required to share with creditors, or how a creditors' committee must solicit and receive comments from creditors. Soon after the enactment of BAPCPA, both debtors and creditors' committees were concerned that Section 1102(b)(2) would be interpreted to require committee members to disclose confidential, privileged, or otherwise protected information to their constituents.

The first case to address the requirements of Section 1102(b)(3) was before Judge Drain of the bankruptcy court for the Southern District of New York in In re Refco Inc. Immediately following its appointment, the creditors' committee sought an interim order from the bankruptcy court that the committee was not required to divulge any confidential, proprietary or non-public information concerning the debtors, or information that could constitute a waiver of the attorney-client or other privileges. Shortly thereafter the committee sought, and was granted, a final order establishing procedures for the sharing of information by the committee with its constituents.

The order required the committee to establish a website containing: (i) general information about the debtor's bankruptcy case; (ii) monthly reports summarizing case proceedings, events and public financial information; (iii) summaries of significant events in the case; (iv) a calendar of upcoming events; (v) access to the case claims docket; (vi) an overview of the Chapter 11 process; (vii) press releases of the debtor and the committee; (viii) a non-public registration form for creditors to request case updates by e-mail; (ix) a non-public form for creditors to submit questions, comments and requests for access to information; (x) responses to creditor questions, comments and information designated confidential or otherwise protected. Under the order, the committee had 20 days to respond to a creditor's written request for the committee to disclose information. If the committee denied the request, the order provided for a process for the parties to seek redress from the committee.
Message from Chairman of the Board
Pat Jones

It is a privilege and an honor to be elected to serve as your Chairman for the coming year. Thanks to all who attended the annual meeting on April 26, 2007, and to our speakers Robin Schauseil, President of NACM National, Jeff O'Banion, CCE, CICP, on behalf of the NACM Oregon Foundation, and Cindy Robert, our lobbyist in Salem. I would also like to thank Cheryl Wahlberg, CCE, for her leadership of the Board in the past year and our retiring Directors Ann Wineland; Dave Erickson, CCE; and Lori Kimball, CBA; for their years of service to the Association.

This coming year will be an exciting time for our Association as we begin to roll out new credit reports that will give our members access to a wider variety of credit information. We will continue our strong partnership with Experian, but are now able to provide the new Equifax Business Credit report and, in the near future, we will begin to sell our own NACM Business Credit report. In conjunction with the effort to provide new reports, we want to continue to grow our database. We have set a goal to convince at least 35 new members to contribute to the database in 2007. Trust me, you will soon be hearing from Rod, Kathy, and the rest of the staff (if you haven’t already) about these new reports and data contribution. Please be receptive to their efforts so that we can build the best possible NACM Business Credit report.

On the education front, we will continue to develop and offer one of the most comprehensive educational programs in the country. We have more than 20 credit-related classes and events scheduled for the rest of this year. We are also working to enhance the image of NACM Oregon in our markets. As part of that effort, we are looking to educate financial professionals on the benefits of NACM Oregon membership. We have two events tentatively scheduled in the coming year that are designed to attract you and your boss for breakfast and a presentation by a quality speaker.

We are actively involved in the legislative process in Salem. NACM Oregon, in partnership with the Oregon Collectors Association, has sponsored a bill to raise the small claim limit to $7,500. Cindy Robert reported at the annual meeting that the bill will be signed into law this session. I want you to know that NACM Oregon is committed to be the champion of business credit in Salem.

NACM Oregon is profitable and financially sound. The Board has adopted a budget for 2007 that calls for growth in both revenues and profits. We will continue to pay down the mortgage on our building as funds become available. We recently made another substantial principal payment on the mortgage and our goal is to own the building free and clear in the not-too-distant future.

On behalf of NACM Oregon, thank you for your support of the Association.

Message from the President
Rod Wheeland, CCE CAE

As noted at the annual meeting, our lobbyist Cindy Robert has been very successful in representing the interests of NACM members in the fast and furious legislative session in Salem. We successfully supported one bill raising the limit on small claims, and we understand this has been sent to the Governor’s office for signature.

We continue to monitor a large number of bills, including several proposing changes in the use and storage of consumer and business data. We also are watching several bills requesting changes in the lien laws. Watch for reports from Cindy on our efforts.

In August, we will hold the NACM Oregon golf tournament at Persimmon Golf Club. Some members may remember former tournaments at this excellent private country club. I hope you will plan to join us on August 20.

We always appreciate your comments and constructive criticism. These help us do a better job of being your trade association and best business credit resource. Please let us hear from you.
Meet the 2007-08 Board of Directors

Pat Jones, Director of Credit, Consolidated Supply Co., was named Chairman of the Board for the 2007-08 term at the April 26, 2007 Annual Meeting of the Membership of the National Association of Credit Management Oregon.

Barbara Davis, CCE, billings and collections manager, Liberty Northwest Insurance, was named vice chair; Doug Jacobson, CCE, credit manager, XPEDX, was named secretary; Darrell L. Robinson, credit manager, E C Company, was named treasurer; and Cheryl Wahlberg, CCE, branch manager, Food Services of America, continues on the Board as senior councilor.

The Board of Directors also includes: Tony Ceniga, credit manager, Industrial Finishes & Systems; Steven Fancy, CCE/CICP, corporate credit manager, Pope & Talbot, Inc.; Kellie Hainline, credit manager, National Builders Hardware Co.; Sue Hein, president, Rapid Bind; Kimi Shelton, CCE, credit analyst, Glacier Northwest, Inc.; Raeann Smith, credit manager, North Pacific Lumber; and Rick Weisman, CCE, financial manager, Graybar Electric Co.

New Members of the Board

NACM Oregon is happy to congratulate the following directors who have recently joined the Board.

Tony Ceniga
Industrial Finishes & Systems
Kellie Hainline
National Builders Hardware Co.
Raeann Smith
North Pacific Lumber

A look at the 2007-08 Board members

Front row (l to r): Tony Ceniga; Darrell Robinson; Sue Hein; Steven Fancy, CCE, CICP; Cheryl Wahlberg, CCE; and Kimi Shelton, CCE.

Back row (l to r) Rick Weisman, CCE; Barbara Davis, CCE; Pat Jones; and Doug Jacobson, CCE.

Not pictured: Kellie Hainline and Raeann Smith.
25-, 50-, and 75-year Members

At the Annual Meeting, several member firms were honored for their continuing support of the association.

25-year Members
- Bob Nagel Distributing Co., Inc.
- Brattain International Trucks
- Core Mark International
- Pacific Seafood Co., Inc.
- Ram Steel, Inc.
- Shindaiwa, Inc.
- Squires Electronics, Inc.
- Star Oilco
- Tube Specialties Co., Inc.
- Westech Rigging

50-year Members
- Albina Fuel Co.
- Hamilton Engine Sales
- Portland Screw Co.
- Ross Island Sand & Gravel Co.
- United Pipe & Supply Co., Inc. - Eugene
- West Coast Paper Co. - Portland

75-year Members
- Darigold
- Standard Supply Co.

Designation of Excellence Awards

The following were presented the Designation of Excellence Awards at the Annual Meeting. From left to right: Marilyn Rea, CBF, North Pacific Group; Barbara Davis, CCE, Liberty Northwest Insurance; Lori Kimball, CBA, NORPAC Foods; Doug Jacobson, CCE, XPEDX; and Dave Erickson, CCE, Allports Forwarding, Inc., 2007 Credit Executive of the Year.

Designation Achievement

Congratulations to the following for their designation achievement: Maren Anderson-Wymore, CBA, Blount, Inc.; Deedra Howes, CBA, First Tech Credit Union; Jaki Plumlee, CBA, Timber Products Co., LLP; Toni Schimming, CBA, Liberty Northwest Insurance Co. (pictured on left); Jeannie Snow, CBA, NACM Oregon (pictured on right); and Niki Tomlinson, CCE, Hewlett Packard.
NACM's 111th Credit Congress & Exposition is the only national convention designed exclusively to meet your needs as today's credit professional. Come meet and network with other credit executives from across the nation. This is the only exposition of this type and is scheduled in the West every second or third year.

The opening general session will feature Mark Sanborn, CSP, CPAE, Sanborn & Associates, Inc. Mr. Sanborn, member of the Speaker Hall of Fame, is known for his ability to both educate and entertain through his work. His presentation, "The Fred Factor: How to Make the Ordinary Extraordinary," explains how you too can become a Fred—providing you the means to reinvent your business and life through self-mastery, vision, empowerment, and services.

The super session will include the NACM Annual Business Meeting and feature John Powers, Powers of Motivation Institute, as the keynote speaker. John's entire career has been one of effectively communicating with audiences. He is the author of four bestselling books. The most recent is, The Junk-Drawer Corner-Store Front-Porch Blues. He has been a guest on hundreds of radio and television shows including Oprah and Today. John has received two Emmy awards for his work in television. He has worked with more than a thousand major corporations and national associations to provide programs on how to succeed in a changing world.

The convention offers attendees several educational sessions for all levels. Listed in the February issue of NACM's Business Credit magazine is a description of each session. Please read each description carefully when choosing a session to attend.

If you are a first-time attendee, don't miss the First-Time Attendee Orientation Session on Sunday, June 10, 3-3:45 p.m. Learn what you need to know to get the most from the conference: where to go, what to do, and how to find what you need.

NACM Oregon is available to take your registration. Contact Jeannie Snow, CBA, at 971.230.1186, 800.622.6985 ext. 186 or email jsnow@nacmoregon.org

Annual NACM Western Region Credit Conference
October 17-19, 2007, Monte Carlo Resort & Casino Las Vegas, Nevada

Be there for the 20th Annual NACM Western Region Credit Conference (WRCC). The conference is designed for anyone who performs the business credit function at your company. Our educational tracks support entry level to executive experience, from the Credit Analyst to the CFO. Contact Jodi Owens at jowens@creditservices.org for more information.

2007 Golf Outing
August 20
Persimmon Country Club, Gresham, Oregon

Mark your calendar and watch for more information!
International Corner

by Alice Knight

During the April International Group meeting an FBI agent from Portland gave some safety tips for business and personal travel. Here are a few highlights for your use:

♦ When you travel, register with the State Department and provide your itinerary. If there is a natural disaster or a political problem, any and all help will be needed. “We can’t help you if we don’t know you are there.” You can register online at travelregistration.state.gov.

♦ Before you leave, make two copies of your passport, driver’s license, tickets, itinerary and any needed prescriptions. Leave one copy with a friend in the United States and keep one with you, but well away from the original documents. In the event you are mugged or lose the documents you will need this information ASAP.

♦ Be sure the prescription medicine you are taking is legal in the country you are visiting. Even when the medicine is in the original prescription bottle you might have problems with some medicines, particularly amphetamines or pain killers. Take only the amount of medicine you need for your trip, and leave the rest at home. If you buy medicine in a foreign country, only buy the amount you will need until you return home. If you buy large amounts you might be charged with buying to distribute.

♦ When you book your hotel, pick a room on the second through seventh floors. The second floor and above will help protect against illegal entry. Special equipment is needed for fire fighting and evacuation above the seventh floor, and this may not be readily available in many countries. Just as in the U.S., make note of stairways and exits. Always know who is knocking before opening your door. Keep the door locked while in your room.

♦ Be very careful discussing confidential business information in your hotel room. Many countries routinely record conversations in hotel rooms. This usually affects business travelers, but in some countries any foreign traveler may be monitored. Also, when flying on foreign airlines, be aware that your conversation may be recorded. Again this usually is reserved for high-level business travelers but can be general.

♦ It is highly recommended that if you take a laptop with you it should not contain any sensitive business or personal information, such as bank accounts or passwords. A case was discussed where the laptop of a company president was stolen while he was at an internet café. The thieves had access to the company’s computer access codes and passwords, bank account information and passwords, and other sensitive information. A personal computer often has account numbers, credit card information, and other private data. If it is stolen or lost you’ll need to change all the accounts for safety’s sake, even if the information is never used.

Alice Knight is Vice President of Finance & Administration for Paper Products Marketing (USA) Inc., Ms. Knight has more than 35 years of experience in International Finance and is an active member of FCIB and NACM. She has served as Co-Chair, Panel Member and Presenter at Annual Global Conferences, as President of FCIB Forest Products Group, and participated in FCIB Conferences in Mexico, Puerto Rico, Munich, and Brussels. She is currently a member of FCIB Board of Directors and the FCIB Hotline Committee.
Downstream Corner
by Kimi Shelton, CCE

Have you ever wondered what all the hype is about regarding contractor’s license numbers? And why is it so important that you check to make sure a contractor is licensed? “They had such a good price, they could get the job done right away, and he seemed like such a good guy.” In the states of Oregon and Washington, it is illegal to operate as an unlicensed contractor or unregistered contractor and the monetary penalties are severe.

Contractors in the state of Oregon and Washington are required to take an exam demonstrating their knowledge of construction and other related topics. In addition, they are required to show proof of insurance and bonds in applying for their license. It creates an unlevel playing field when contractors operate without a license. Unlicensed contractors do not have the expenses that a licensed contractor does to maintain that license, so they can bid jobs lower and sometimes take work away from the licensed contractors who are playing by the rules.

As a material supplier selling to an unlicensed contractor, you do not have any rights to file a lien on a job because the contractor was not licensed. In addition, you do not have any insurance or bond to seek payment from. Selling to an unlicensed contractor runs the risk of only collecting a portion of the money due, partial payment, or in the worst case scenario, the sale turns into a bad debt write off. You do have the option of taking the contractor to court, but the first question you will be asked is if this contractor is licensed or did you check that before selling to this contractor.

Not only is there a risk of financial loss selling to an unlicensed contractor there is also a loss of time spent trying to collect.

A general contractor that has hired an unlicensed contractor to work on their job as a subcontractor can be fined by the Construction Contractors Board for using that unlicensed contractor.

Unlicensed activity hurts everyone—Material Suppliers, Contractors and Homeowners. The website for checking a contractors license in Oregon is www.oregon.gov/ccb; in Washington the website is www.lni.wa.gov.

Kimi Shelton, CCE, is the credit analyst for Glacier Northwest, Inc., Oregon/southwest Washington territory. Prior to joining Glacier Northwest, Inc., in 1998, Kimi worked for Emerson Hardwood Co., for nine years in various roles as accounting and credit manager. Ms. Shelton is a graduate of Linfield College with a B.S. in Finance. She has been an active member of NACM since 1994, and served as chairman of several industry groups. She is a current member of the Aggregate and Concrete Industry Group and in 2001 joined the Credit and Financial Development Division (CFDD), serving as Secretary in 2003-04. Kimi achieved her CCE designation in July 2003.

Credit Today’s 2007 Salary & Job Satisfaction Survey Is Now Open!

It’s time for Credit Today’s 2007 Salary & Job Satisfaction Survey. Your participation is very important to help ensure a robust sample size to enable us to “drill down” in the data to have meaningful data in various segments.

As a special thanks for your participation, all Credit Today Members will receive a free copy of the entire $175 report. Non-members will receive a free copy of the Executive Summary. Make sure you use the signup page following the survey to let us know you participated!

The survey should take about 10 minutes, depending upon whether or not you’ve got your salary data handy. The survey has a total of 50 questions, broken down into 6 “bite-sized” sections. You’ll see a progress bar at the bottom of each page so you can see how far you’ve gone.

Keep in mind that your answers are saved as soon as you move on to the next page. If you close your browser in the middle of a page, or refresh your screen, you will lose only that page. Also, the survey is anonymous.

For your information, there are 6 parts to the survey:
- Tell us about you and your company.
- Credit staff positions
- Description of your job
- Your department
- Your job satisfaction

Go to http://credittoday.surveys.squizmo.com/ to complete the questionnaire.
Check Guarantee—Investment or Expense

by Steve Becker, American Check Management

When the economy cools down and revenue slows, it is natural for companies to tighten their belt and look for ways to cut unnecessary costs. This is admirable and should be an ongoing process—not one reserved for just the slowdowns.

One area that frequently comes under review is the cost associated with maintaining a check guarantee program. Check guarantee in the NACM world is commonly used in such B2B markets as building supply, industrial supply, transportation, and heavy equipment. Examples include roofing, plumbing, electrical, HVAC, lumber, flooring, siding, drywall, restaurant supplies, equipment repairs, track parts and repairs, concrete, stone, tile, flooring, aggregate, construction equipment rental, landfills, refrigeration parts, commercial tires, nurseries, garage doors, moving services, fence companies, metals, and many more.

Most sales and revenue are credit-based—usually 80% to 90%—and because they meet the company’s credit criteria they have earned the right to receive credit and favorable terms. However, 10% to 20% are what are called “cash transactions.” These can be onetime transactions at the counter by unknown customers, customers who have lost credit privileges, customers who for various reasons prefer to pay in cash, or COD transactions in which a check is being picked up at the time of delivery. This is certainly an area of exposure, risk, and considerable loss. Quite often, the 80/20 rule applies here. Eighty percent of the credit manager’s time can go into twenty percent of the revenue in trying to resolve NSF’s. It is on these transactions that check guarantee has application. Essentially there are two options:

1) The “Cross Your Fingers” approach: Hope the check is good and allocate the internal resources to deal with NSF’s that slip through. Usually the credit manager is given this responsibility regardless of his or her normal job duties. With only so many hours in a day, they must satisfy their company’s A/R collection needs, sales, credit limits, NACM industry group meetings, put out unexpected “fires,” and wrestle with any NSF that comes across their desk. In a worse case situation, they can easily spend a day in court winning a bad check case, but never receiving any money for their efforts. This approach has obvious and not so obvious costs associated with it. There is the obvious cost of write-offs as well as outside collection and legal costs. Another cost is the time spent on the NSF recovery efforts (how many hours, how many phone calls, how many letters). But less obvious, and often more expensive, is opportunity lost: the true cost of not being able to adequately focus on higher financial priorities. Examples include proactively meeting filing deadlines in order to secure and maintain security on receivables such as filing preliminary lien notices (What is the cost of missing just one deadline?), dispute resolution on complex and difficult customer/invoice situations, rushing through new customer credit applications and not making quality decisions, lacking the necessary time to make all the A/R calls to improve DSO, contract negotiation in conjunction with sales, spending time in court on legal matters, training staff, etc. The demands on a professional credit manager are numerous and in order to do a quality job they must have the proper time to do it right the first time.

2) Implement a third-party check guarantee program. This is a service the company has decided to invest in because there is a return greater than the obvious investment. The cost associated with it is usually one half to a third the cost of accepting a credit card, which by itself is a big savings! A good check guarantee service can accomplish several desirable cost-saving goals: 1) Reduce the number and amount of NSF’s and write-off’s by providing (database and screening) eyes and ears on the front end; 2) Increase sales by allowing checks as an acceptable form of payment (some companies prohibit check acceptance for cash sales, especially for COD); 3) Eliminate the time and expense spent in chasing down check returns; 4) Eliminate third-party collection costs, including collection agencies, attorneys, and court fees; 5) Increase time to focus on higher financial priorities that have a larger bottom line impact on the company; and 6) Efficiently leverage

...continue on page 9
Check Guarantee...continued from page 8

the company’s time and financial assets in order to be more strategically competitive in the marketplace.

During this recent slowdown, it is no secret that many businesses, and check guarantee companies, have witnessed an increase in NSF’s, including fraud. **This is a double whammy: reduced cash sales + increased risk.** Not a good combination. To help weather the storm and stay strong for the future, it makes good business sense to invest in an extra set of eyes and ears. A check guarantee service can provide their quality database and expertise in screening checks so that your company can focus its energies on its strengths and not get sidetracked by areas of exposure and weakness. By investing in a good check guarantee service, a credit manager’s company can be well-positioned for the inevitable ups and downs in the economy and help create a brighter future.

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**Steve Becker is a National Account Executive for American Check Management and serves the Oregon market.**

ACM specializes in cash management tools to increase efficiency and productivity in credit departments. He can be reached at www.acmeft.net

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Legal Corner

by William G. Fig

Some cases do go to trial. Thus, a good litigator will handle every dispute, from its inception, as if it will be presented to a jury. You cannot delay working on a lawsuit until three weeks before trial. At that point, it is way too late to “get your act together.”

Each case is fact specific and the devil is usually in the details. Gathering all the background facts regarding a dispute can be time consuming and, therefore, expensive if done by legal counsel. However, this does not mean that the initial case preparation needs to be costly. Most of the initial leg work can actually be done by the client with only minimal supervision by the attorney.

A civil lawsuit is usually, in some form or fashion, about one party who claims that another party owes them money. A creditor cannot “prove” its claim by simply having its attorney show up in court and state that the debtor owes the creditor money. The creditor is required to prove its claim via the submission of admissible evidence at trial.

In the case of a delinquent account, the evidence used to prove the creditor’s case is usually in the form of documents and witness testimony. In most cases, there will be a credit application with terms and conditions, unpaid invoices sent to the debtor, and an account statement showing the balance owed on the debtor’s account. All of these documents are very helpful in proving what the debtor agreed to and that the debtor is in breach of that agreement.

There will also be employees who have knowledge of the debtor’s account. In most cases, the most knowledgeable people will be the sales person and the account receivable person. The former will testify about the goods or services provided to the debtor and the latter will verify the obligation owed by the debtor.

No one knows your case like you do. You can save a significant amount of legal fees by doing the basic leg work prior to turning a dispute over to your attorney. Provide your attorney with a short written summary of the dispute. A chronology and list of the “players” is also helpful. The attorney should be

...continue on page 10
provided with the balance owed, all of
the account documents, and the names
and contact information for the potential
witnesses. Most importantly, all of this
information must be well-organized.
By providing your attorney with the
“basic” information regarding your
case, you will be providing him/her a
running start, which should reduce your
legal fees. If you are unsure what to
provide, simply ask. Any attorney
worth his or her salt should welcome the
opportunity for the client to be actively
engaged in a matter.

William G. Fig is an attorney with Sussman
Shank, LLP. His practice focuses on
business litigation, construction law,
environmental litigation, and consumer debtor/
creditor matters. Bill represents creditors,
general contractors, subcontractors, and small
to mid-sized businesses. He holds a specialty
certificate in environmental law with a focus
on hazardous wastes. Mr. Fig has been active
as a speaker and presenter at various NACM
Oregon seminars. His email is
billf@sussmanshank.com.

HB 2316 Success

Small Claims Limitations Increased in Oregon

by Cindy Robert, NACM Oregon
Legislative Representative

Working with the Oregon Collectors Association on a
joint requested bill, NACM Oregon has made one of its legislative priorities a
reality. HB 2316 raises the small claims court limitation from $5,000 to $7,500
making the judicial process more effective and accessible to Oregonians. The cap
was last amended in 1999 when it was raised from $3,500 to $5,000.
The Small Claims Reform Project (a national campaign to publicize the
existence and advantages of small claims courts) advocates for raising the limit
calling it “a critical first step to opening up the system” and increasing consumer
access to the small claims courts.
Small claims courts, which use simplified procedures, require basic language
skills, provide consumer assistance and often prohibit lawyers, are a tremendous
means of empowering ordinary people to take charge of their own basic legal
needs.
HB 2316 passed the House and Senate unanimously. The bill awaits
signature from the Governor, and upon his endorsement will go into effect
January 1, 2008.

Surrounding State Comparison

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(2007 legislation to raise it to $7,500)
Some Questions About Credit Reports

Are you tired of being forced into an annual or multi-year contract for credit reports?

Have you had enough of paying $50 or more for a lot of verbiage and dated credit experience?

How would you like to pay $20 or less and get less blather and more timely credit experience?

How would you like to buy credit reports as needed, rather than as someone projected a year or two ago?

How would you like to get real customer service from Portland, rather than some boiler room in New Jersey that treats you like you are an interruption rather than a customer?

How would you like immediate answers to your questions?

Isn’t it about time you said NO to the old, old, old, high-priced spread and came over to NACM Oregon?

We value our customers and strive to deliver the right product, on time, at the right price.

Call us today at 503.257.0802 or 800.622.6985.
2007 NACM-Oregon Foundation Scholarship Funds

- Five (5) $500 scholarships to the Pacific Northwest Credit Congress (PNWCC), September 20-22, 2007, Tacoma, Washington
  Deadline: August 17, 2007

- NACM Seminars - $1,000

- Certification Fees—to establish files and for continuing certifications and recertifications. $2,000

- College Courses approved and required for Accreditation and Certification. Includes online courses offered through NACM National Education Department—proof of completion required—$2,000

- Certified International Credit Professional Fee—FCIB on-line course $350

- Phylliss Clark Scholarships: Three (3) $500. Applicants must be a CFDD member and first-time attendee at the Pacific Northwest Credit Congress. Each chapter—Portland, Salem, and Eugene is allocated one (1) scholarship.
  Deadline: August 17, 2007

Contact Lou Rice, Pacific Metal Co., for an application or more information at 503.454.1051 or lrice@pacificmetal.com.

Scholarship Recipients

The following individuals were recipients of scholarships awarded by the Foundation:

Elizabeth Gangi
Richards Packaging Co.
2007 NACM Credit Congress

Lori Kimball, CBA
NORPAC Foods
2007 NACM Credit Congress

Annie Koenig
Marc Nelson Oil Products
2007 NACM Credit Congress

Toni Schimming, CBA
Liberty Northwest Insurance
Completion of Financial Statement Analysis

Kimi Shelton, CCE
Glacier Northwest, Inc.
2007 NACM Credit Congress

Dana Taylor
Evraz Oregon Steel Mills,
2007 NACM Credit Congress

Lissa Thoreson
Tube Service
NACM Seminar: "The Art of Getting Paid"

Steven Taff, CCE
Steelscape,
Graduate School of Credit and Financial Management, 2nd year support

Maren Anderson-Wymore, CBA
Blount Inc.
2007 NACM Credit Congress
Education

Good Morning Credit!

The Good Morning Credit! series is an excellent way to learn fundamental credit and collection management techniques, to train new staff, or to have a good review. The program starts at 7:30 a.m., so you or your staff can head back to the office by 9. Join us for these informative sessions packed with practical tools for immediate use.

Second Tuesday of each month (except August), 7:30 - 9 a.m.
NACM Oregon, 7931 NE Halsey, Suite 201, Portland
$35 (M); $45 (NM)
.15 CEU per class

June 12—Checking Credit References
July 10—Litigation for Commercial Creditors
September 11—Credit Enhancements: Personal Guaranties, Standby Letters of Credit, etc.
October 9—Out-of-Court Workouts & Liquidations
November 13—International Credit Methods
December 11—Bankruptcy Basics for Creditors

Webinars

Education at your desk!

May 15, 2007
"Washington Construction Lien Law," presented by William G. Fig of the Sussman Shank Construction Group
Bill will present an overview of the Washington State lien process.

June 19, 2007
"Idaho Construction Lien Law," presented by the Sussman Shank Construction Group
This group will provide an overview of the Idaho State lien process.

All sessions are scheduled from 9 - 10 a.m. (PDT) and require high-speed internet connection and telephone line for participation. $49.95 per registered site. Continuing education credits (.10) for registered attendees only. For more information contact Jeannie Snow, CBA, at 971.230.1186 or register online at http://members.nacmoregon.org/events/

Half-day Seminars

June 7—Exceptional Customer Service in the Credit Department, presented by Jean Boudreau, Columbia Sportswear
8:30 a.m. - 12 p.m.
NACM Oregon, 7931 NE Halsey, Ste. 201, Portland
$95 (M); $170 (NM)

July 17—How To Give An Effective Presentation, presented by Marsha Johnson, TEC Equipment
8:30 a.m. - 12 p.m.
NACM Oregon, 7931 NE Halsey, Ste. 201, Portland
$95 (M); $170 (NM)
How To Succeed In Small Claims

by Linda Johnson

How well I remember the first time I represented a member in Oregon Small Claims Court! There I was, sitting on a bench, waiting with other people, planning my strategy—a complete rookie. How should I approach the court? I paid close attention as the next case was called. The plaintiff presented her case first. She described an item she’d sold through eBay. The buyer had seen the item and agreed to the price. She had shipped the item in return for a promise to pay. The buyer received it, but didn’t pay for it or return it. The buyer testified by telephone that he had received the item, but it wasn’t as described, and he had returned it via UPS. However, he couldn’t produce anything to substantiate his claim that he had returned the item. Surely, I thought, this is a slam dunk for the seller/plaintiff!

To my surprise, the plaintiff lost her case. I overheard others saying that it was anyone’s guess how the rest of the cases would go that day. I sat there in bewilderment—so this is small claims court!

Since then, I’ve learned that the unpredictable does indeed happen. Lady Justice sometimes tips her scales the wrong way. There is no proven, guaranteed method that will ensure your victory in small claims court. However, if you will pay close attention to the following tips, you can increase your chances of leaving the courtroom with a judgment.

First of all, be sure you have all the documentation to support your claim. This would include a credit application, invoices, statements, a time line of events, and of course, all the notes and records of calls and other communications with your debtor. Be familiar with all the details of your claim and have the all facts at hand for ready reference.

Next, you need to provide evidence that proper notice was served on your debtor. And finally, when you’re in the actual courtroom, your demeanor and attitude should reflect poise and confidence, but respect and deference toward the court.

Once your case is called, if there are any weaknesses in it, call it to the attention of the court yourself—in particular if your debtor has made an issue of anything in mediation. For example: your company did some work for a customer and, due to a change in accounting systems, they weren’t billed for it until nearly a year later. You might address this to the court as follows: “Your Honor, due to revisions in our computer system, and changes in accounting department personnel, the defendant did not receive an invoice until several months after the work was completed. However, when the error was discovered, an invoice was immediately sent and payment was requested. We were very surprised and disappointed at the defendant’s response, indicating they should use our services for free simply because they did not receive an invoice in a timely manner. We point out that accidents and mistakes do happen, but that doesn’t relieve the defendant from the obligation to pay for the services they received.”

Don’t let the defendant entice you into an argument. Stay your course. In order to prevail, you must provide 51% of the evidence in your favor, but the defendant has only to provide reasonable doubt.

While in court, always maintain your poise and keep your emotions in check! Needless to say, making hissing noises or rolling your eyes when the defendant is speaking are real ‘no-no’s.’ However, if the debtor is stretching the truth, you can interject with “Your Honor, that is not true!” The judge may wave you off, but has now been apprised there are two sides to that story and will usually provide you an opportunity to respond with your side.

Once you have the judgment, don’t forget about collecting your money! Many people leave the courtroom satisfied with their judgment and there ends the matter. The court will not collect your money for you. However, your judgment gives you the right to attach assets, including garnishing a bank account or paycheck. As you might imagine, your work has just begun: the most difficult part of collecting your judgment can be locating assets that you can attach.

I’ve learned whenever possible to ask the debtor for a check while in front of the judge. Usually, the judge will look at...
the debtor, waiting for his/her response. The debtor will then make some kind of promise to pay. If it appears the judge is more interested in moving on to the next case, invite the debtor out into the hall to make arrangements. You won’t always get paid on the spot, but it’s worth asking.

In conclusion, small claims court is a people’s court. Demonstrating honesty and integrity, and having substantial backup documentation for your claim, will give you a significant advantage in this arena.

National Summary of Domestic Trade Receivables—Annual Report for 2006

We received the National Summary of Domestic Trade Receivables Annual Bad Debt report for 2006.

Based on the results of this report, it should be pointed out that the Allowance for Uncollectible (Reserve for Bad Debt) is the absolute lowest it has been in the last 40 years. Bad Debts across all industries is also very low for 2006 coming in at 0.03% of sales.

Please contact your NACM Oregon Customer Service or your Member Services Representative for a copy.

National Summary of Domestic Trade Receivables—1st Quarter 2007

We received the National Summary of Domestic Trade Receivables for the first quarter of 2007. As you may know, the Credit Research Foundation has published this summary each quarter since 1960. DSO decreased from the prior quarter from 42.00 to 40.44. A year ago the measure was 41.21. Best Possible DSO was 31.36, as compared to 31.38 last quarter and 30.95 a year ago. Average Days Delinquency decreased to 5.90 from 7.10, as compared to 6.43 a year ago. The percent reported over 90 days past due decreased 0.80 from 0.90, as compared to 0.90 a year ago. Medians for 28 different industries are included in this summary.

This report include indicators for certain industries, and copies are available. Please contact NACM Oregon Customer Service or your Member Services Representative.
We’re here to help!

Did you know that Credentia Staffing Resources is available to assist you with your direct hire, temporary staffing, and pre-employment screening needs? Here is a sampling of the positions we are currently recruiting for:

**Credit Manager**
Family-owned and in business for over 50 years, this PNW electrical supplier is seeking a credit manager for their Beaverton office. This fantastic opportunity is being offered on a temp-hire basis.

As the credit manager in this high-volume department, you will be responsible for:

- Oversight of the credit originations process for a large assigned customer base including investigation of new and existing customers through a variety of means
- Determining and establishing credit limits on new and existing customers
- Collecting on delinquent accounts
- Developing and maintaining effective relationships with customers, sales staff, and other personnel as needed

In order to be successful in this position, you need to possess the following skills:

- 5+ years of commercial credit management experience in the construction industry
- Demonstrated skills and knowledge of lien laws and bond claims processes
- Ability to excel in a high volume, fast-paced stressful environment
- Adaptability to a 100% paperless environment
- Advanced level skills in MS Office products including Word and Excel; high-level of proficiency with computers and all small office equipment
- Knowledge of and experience with AS400 preferred
- Excellent decision-making abilities
- Team player yet able to work independently

**Commercial Collector**
Excellent opportunity to join a progressive organization! This facility controls technology company, established for more than 15 years, is looking for a commercial collector for their Tigard headquarters office. This position is being offered on a temp-hire basis.

As a commercial collector, you will be responsible for:

- Daily cash application
- Collection efforts on past-due accounts through phone calls, emails, written correspondence
- Invoicing
- Research and reconciliation

Qualified applicants will possess the following skills:

- 2+ years of experience with commercial collections
- 2+ years of experience with AR processes focused on cash application and reconciliation
- Customer service-oriented
- Ability to multi-task
- Word/Excel proficiency; Access a plus

Let us help you achieve your goals! If you are interested in these positions, please contact us for immediate consideration!

Credentia Staffing Resources
p. 503.246.8952
f. 503.245.6055
staff@credentiastaffing.com
Credit Manager’s Index

The seasonally adjusted Credit Manager’s Index (CMI) rose 1.6% in April, recouping last month’s losses as eight of the 10 components of the Index rose. The increase was driven by gains in the sales component and in both collections components.

“While overall the report was positive, there was a disparity between the manufacturing sector, which rose 3.3%, and the service sector, which was unchanged,” stated Dan North, chief economist with credit insurer Euler Hermes ACI. He noted that comments from the respondents echo a familiar refrain that the demise of the housing market has been a major drag on distributors of goods into that industry. “Median prices on existing homes have now fallen for eight consecutive months on a year-over-year basis,” he noted. “This is an unprecedented event since house prices almost never fall, and they have never fallen for more than two months in a row in the 38 years that records have been kept.”

The continued deflation of the housing market bubble as seen in this data, combined with the lagged effects of monetary policy tightening and the prospect of higher gasoline prices, suggest that the economy will continue to slow throughout the year.

Combined Manufacturing & Service Sectors (seasonally adjusted)

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<th>Component</th>
<th>Apr '06</th>
<th>May '06</th>
<th>Jun '06</th>
<th>Jul '06</th>
<th>Aug '06</th>
<th>Sep '06</th>
<th>Oct '06</th>
<th>Nov '06</th>
<th>Dec '06</th>
<th>Jan '07</th>
<th>Feb '07</th>
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<td>52.5</td>
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<td>Dollar collections</td>
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<td>64.0</td>
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<td>65.3</td>
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CFDD Chapters

Salem/Albany
This chapter of the NACM Credit & Financial Development Division meets the second Tuesday of each month.
Meeting Date: Tuesday, May 8, 2007

Power Lunch
Location: Geppetto’s Restaurant & Bar
616 Lancaster Dr. NE Salem
Luncheon: 10:30 - 11:30 a.m.
Topic: “Avoid the Excuses—How to Respond To Nonpayment Issues”
Presenter: Gina McKenzie, Senior Credit Representative, Air BP Aviation Services, Inc.
Coordinator:
Theresa Quillard
503.362.3633
tquillard@airbpaviation.com

Eugene/Springfield
This chapter of the NACM Credit & Financial Development Division meets the second Wednesday of each month.
Meeting Date: Wednesday, May 9, 2007
Location: Downtown Athletic Club Conference Center,
999 Willamette St., Eugene
Networking Time: 5:30 p.m.
Dinner: 6 p.m.
Topic: “Introduction To Financial Statement Analysis”
Presenter: Michael Stapleton, CCE, Senior Credit Analyst, Levi Strauss & Co.
Coordinator:
Mary Ann Gridelli
541.681.7201
maryann.gridelli@farweststeel.com

Portland
This chapter of the NACM Credit & Financial Development Division meets the second Thursday of each month.
Meeting Date: Thursday, May 10, 2007
Location: Red Lion Convention Center, 1021 NE Grand Ave., 6th Floor, Portland
Networking Time: 5:30 p.m.
Dinner: 6 p.m.
Presenter: Kathy Linscott, Vice President, NACM Oregon
Coordinator:
Marilyn Rea, CBF, Pacific Architectural Wood Prod.
503.284.0024 ext. 18
marilynr@pacificwoodproducts.com
Recent Case Law Part II
...from cover

court. The protocol also required that the committee notify Refco, or the third party source of protected information, of the committee’s intent to provide the protected information to a requesting party. Refco, or the third party, then had 15 days to object to the committee's production of the information. If an objection was filed, the bankruptcy court would resolve the dispute if the parties were unable to reach agreement. The protocol established in Refco has been widely followed, and expanded upon, by many bankruptcy courts throughout the country, including in Oneida, J.L. French Automotive Casting, Inc. and Calpine Corp.

The BAPCPA’s modifications to Section 1102(a) of the Bankruptcy Code has also made it easier for a creditor to challenge the U.S. Trustee’s decision to deny the creditor membership on the creditors’ committee. Prior to the amendment, there was a split of authority among the courts concerning whether a bankruptcy judge had the power to review appointment decisions. The court clearly has the power to review appointment decisions. However, the court suggested that the BAPCPA did not address the issue of what standard of review a court must apply when considering the U.S. Trustee’s selection (abuse of discretion or de novo), and whether a court can specifically name an entity to be appointed to the committee, rather than directing the U.S. Trustee to adjust the committee’s composition. However, the parties in the Werner case reached a settlement on the committee composition prior to the court issuing a decision.

The BAPCPA modified the preference provisions of the Bankruptcy Code to make it easier for trade creditors to satisfy the ordinary course of business defense. According to Bankruptcy Code Section 547(c)(2), to utilize this affirmative defense, the recipient of a preference payment must prove that the transfer paid indebtedness incurred in the ordinary course of business of the debtor and the creditor, and the transfer was made either: (i) in the ordinary course of business of the debtor and the creditor, or (ii) according to ordinary business terms. For bankruptcy cases filed prior to the BAPCPA's enactment, creditors were required to prove both of the above elements. The bankruptcy court for the Eastern District of North Carolina in In re National Gas Dist., LLC, considered the ordinary course of business defense in a post-BAPCPA case and held that an analysis of the "ordinary business terms" defense required an examination of the relevant industry standards for both the creditor’s industry and the debtor’s industry. However, in pre-BAPCPA cases, courts have reached different conclusions. The law is still unsettled in determining the relevant industry that governs "ordinary business terms" under this affirmative defense.

Mr. Nathan is a partner in the Bankruptcy, Financial Reorganization & Creditors’ Rights Group in Lowenstein Sandler PC’s New York City office. He concentrates on all aspects of creditors’ rights and workouts in bankruptcy, out-of-court matters and other types of insolvency cases for secured creditors, creditors’ committees, trustees and other creditors. Mr. Nathan can be reached at bnathan@lowenstein.com.

Mr. Cargill is Counsel to the firm’s Bankruptcy, Financial Reorganization & Creditors’ Rights Group. Mr. Cargill’s practices focuses on representing debtors and creditors in complex bankruptcy proceedings. Mr.

Cargill has advised clients with specific bankruptcy and insolvency issues including commercial lease issues, financing issues, and employee benefit programs.
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