

NACM Oregon
Business Credit Journal

December 2008



*Happy
Holidays*



As the year ends, we think about all we are grateful for. Thank you for your continuing support.

The NACM Oregon Board of Directors and staff wishes you and your family a wonderful holiday season and a prosperous
New Year.



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Antitrust Part II—The Robinson-Patman Act

By George J. "Jack" Cooper

In the first article of this three-part series (BCJ, November 2008) it was noted that an underlying objective of the United States antitrust laws is to enhance competition in the economic marketplace, with a primary goal of promoting the highest possible quality of goods and services at the lowest possible price.

In the face of these objectives, Congress in 1936 enacted antitrust legislation purportedly designed to assist small businesses by preventing so-called "price discrimination." Known as the Robinson-Patman Act, this amendment to Section 2 of the Clayton Act remains an enigma within the overall antitrust framework and, to a large extent, is inconsistent with the fundamental principles and objectives of the antitrust laws. Of all the antitrust laws, Robinson-Patman is arguably the least understood.

While the Sherman Act expects that businesses will engage in robust price competition, Robinson-Patman potentially impedes the type of negotiations that would ordinarily lead to market-driven price differences, and further places limits on the ability to undersell a competitor in the normal course of business.

As a threshold matter, Robinson-Patman requires at least two actual and contemporaneous sales of commodities in interstate commerce from a single seller to at least two different purchasers. Note that the Act applies only to tangible products. It does not apply to services or intangible items, such as leases, licenses, advertising, insurance, medical services, etc. However, keep in mind that many state versions of Robinson-Patman, including Oregon, cover intangible goods and services.

To fall within the coverage of the Act, the sales also must be of commodities "of like grade and quality." Products that are physically and chemically identical have been found to be of like grade and quality, even though they may be labeled differently and may appeal to different consumer segments. On the other hand, competing goods which are physically dissimilar will often not be found to be of like grade and quality. These determinations are highly individualized in nature.

In order to violate the Act, the seller must discriminate in price between the products being sold. The term "price" is generally the amount actually

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**Chairman of the Board
Barbara Davis, CCE**

Happy fall to everyone! As the weather is getting colder and the days are getting shorter, we've got some great events lined up in the coming months that will keep us warm and well-informed.

On December 11, join us for the 2008 NACM Oregon/CFDD Portland Holiday Breakfast at the DoubleTree Lloyd Center. This is a great gathering to celebrate the holiday season with fellow members. We are getting a great program lined up and there will be drawings for the Baskets of Cheer again this year. We've had some great baskets in past years and I am sure they will not disappoint this year.

We also have a great event on February 5, 2009. We will be holding a Membership Appreciation Breakfast featuring Cindy Robert, NACM Oregon Legislative Representative. She will give an update on the upcoming Legislative session. Following the breakfast will be a "Credit Tune-up" series of classes co-sponsored by NACM Oregon and CFDD Portland. Look for more details in upcoming editions of the *Business Credit Journal*.

Also be sure to visit the new Business Credit Learning Center on-line. There are some great live webinars scheduled for the next few months plus many recorded webinars that can be taken at any time. If you wanted to attend a class but find it difficult to leave the office to do so, then this option is for you! Visit the website at www.businesscreditlearningcenter.com

Barbara Davis, CCE
Liberty Northwest Insurance Corp.
BarbaraA.Davis@libertymutual.com

**President & CEO
Rod Wheeland, CCE/CAE**



The recession surely has arrived in the Pacific Northwest. We are hearing from more and more members about actions taken to address limited demand, growing inventories, and slow receivables. We have a number of programs focused on helping you, the credit professional, as you address the management of your company's accounts receivable.

- Participate in the NACM Oregon education program. Our focus in the coming year will be on technical credit topics, and every session will include practical tips and pitfalls to avoid in the subject area.
- Join a CFDD chapter to gain the benefit of networking with other credit and A/R staff facing similar issues and problems, and to learn from their excellent monthly education programs.
- This is one of those economies demanding careful consideration of risk from prospects and the existing customer base, credit limits and overrides, disputes and deductions, and delinquencies. NACM Oregon has a variety of readily available credit information resources. Don't end up the last in line!
- One of the best resources for information about your customers and their current situation is the competition. If you belong to an industry credit group, I encourage you to fully participate by submitting information and comments, in addition to the usual trade line information, and by attending the group meetings, coming prepared to comment on the discussion accounts and add new ones in which you may have an interest (or a problem). Make the group work for you!
- Know when to say "uncle." When you just can't chase a delinquency any longer and you can see the probability of a bad debt, let us provide collection services up to and including litigation. At a minimum, use the letter service for the impact of a third-party becoming involved. (Ten-day demand letters and the two-letter series are free to NACM Oregon members.)

If you are not sure about a particular service or you have unique needs relating to management of Accounts Receivable, please feel free to call Kathy Linscott, VP Sales & Service, 971.230.1164, or Brenda Terreault, Collection Manager, 971.230.1196. NACM Oregon is a member-operated, not-for-profit association, and we are here to help our members!

Rod Wheeland, CCE, CAE
Direct: 971.230.1158
rwheeland@nacmoregon.org



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SBA Loans to Small Business Exporters Buck National Trend *SBA Guaranteed Export Loans Increase in 2008*

During 2008 export growth was the driver of the national economy as U.S. export businesses benefited from global demand and a shrinking value of the U.S. dollar. The number of SBA export loans grew by 11% in 2008 compared to the previous year and bucked the national trend of a declining SBA loan volume. The rumbling in the international financial system which began in August 2007 has since unfolded into a global credit crunch. While access to capital is tightening, SBA export loans are an indication of the global demand. The SBA Office of International Trade reported that 3,305 loans for \$1.05 billion had been approved in 2008 to small business exporters.



In fiscal year 2008, the national SBA business loan volume dropped by 30% compared to the previous year. Banks tended to make fewer but larger SBA guaranteed loans, nationally as well as in Oregon where the SBA loan volume shrunk by 25%. In contrast, SBA export loan dollars were up by 30% nationally and the export sales volume supported by SBA export loans grew by 19%. The average loan size made to exporters increased by slightly under \$50,000.

Through its Export Assistance Program, the SBA has played an important role in helping more small

businesses grow and expand their export operations or break into the international trade game.

Not only did the SBA set a record in export financing, it also:

- counseled and trained more than 10,000 small businesses; and
- advised 3,000 lenders on SBA export finance loans.

The SBA guaranteed loans can help exporters with financing through two specialized export loan programs. The **Export Express** program provides loans up to \$250,000 for export financing in working capital and term loans for export expansion. The **SBA Export Working Capital Program** loans support export transactions/sales and its maximum is substantially higher at \$2 million per exporter, thanks to a co-guarantee program with the Export-Import Bank that extends financing when the SBA's loan limit is reached. Visit www.sba.gov/ or and click on International Resources for the fact sheets on both programs.

Inga Fisher

Williams is the Small Business Administration's regional export finance manager at the U. S. Export Assistance Center in Portland, Oregon. She covers Idaho, Montana, Oregon and SW Washington and can be reached at (503) 326-5498, or at inga.fisherwilliams@sba.gov

Other SBA Web References

Export Working Capital Program

<http://www.sba.gov/services/financialassistance/SpecialPurposeLoans/ewcp/index.html>

Export Express

<http://www.sba.gov/services/financialassistance/SpecialPurposeLoans/exportexpress/index.html>



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Business Credit Learning Center

FIRST TIME
ON THE WEB!

Negotiate. Influence. Succeed.

Barry J. Elms presents the *Key Elements of Negotiation*

Tuesday, December 16, 2008

1 p.m. (Eastern)

10 a.m. (Pacific)

\$149 (NACM members); \$199 (Nonmembers)

Meet Barry J. Elms — America's Business Coach for Negotiations

Barry, president of Strategic Negotiations International, is well-known to NACM audiences throughout the country.

During a speaking career that spans more than 20 years, Barry has given more than 2,000 presentations worldwide. His energetic style and dynamic message will keep you on the edge of your seat.

His entertaining and

inspiring material is appreciated by a portfolio of clients that includes General Motors, Ford Motor Credit, American Express, Verizon, Dell, Shell Oil, The Federal Reserve, and many other leading companies.

Born and educated in England, Barry has worked in sales, customer service, and credit management, as well as being CEO of companies in both Europe and America. In addition to being a world class public speaker, Barry also is the author of numerous video and audio programs including "Negotiate Your Way to Success," "Advanced Negotiation Skills," "Dialing for Dollars" and "The Art of Getting Paid."

To register:

1. Go to www.businesscreditlearningcenter.com
2. Scroll down & click "Webinars (Live)"
3. Click "Key Elements of Negotiation"

NEW USERS: If this is your first Business Credit Learning Center course, you'll need to create a new account and set up your profile before registering.



What You'll Learn In Barry's 90-Minute Webinar

We all negotiate. Whether at home or at work ... for business or personal reasons ... we negotiate every day of our lives. But how much richer would our lives be if we REALLY knew how to negotiate?

Find out on December 16 when **Barry J. Elms** brings his highly acclaimed negotiations seminar to the Web for the first time ever. In this fast-paced 90-minute session, you'll learn:

- The 5 key elements that control all negotiations — and how to define and use each one
- How to defend or neutralize these elements when someone uses them on you
- What to do when you're at opposing points ... and what NEVER to do first

BONUS: Your registration includes 4 weeks' FREE access to an on-line "classroom" for further discussion. You and your peers will learn from each other by sharing real-life experiences, and receive coaching from Barry Elms!



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2009 Upcoming Events

Membership Appreciation Breakfast February 5

Join us February 5 for the Membership Appreciation Breakfast and hear from Cindy Robert, NACM Oregon Legislative Representative on the upcoming Legislative session.

NACM Oregon Annual Meeting April 23

Join us for an update on NACM Oregon and the election of Directors to the Board.

NACM Credit Congress June 14-17

Join us in Orlando, Florida.

NACM Oregon Golf Outing July 18

Come and enjoy 18 holes of golf at Camas Meadows Golf Club. More details to follow.

Pacific Northwest Credit Conference September 23-26

The Professional Credit & Financial Association of Calgary is hosting the 2009 PNWCC September 23-26, 2009, in Calgary, Alberta, Canada, at the Banff Park Lodge Resort & Conference Center.

NACM Western Regional Conference October 16-18, 2009, Monte Carlo Resort, Las Vegas

Be there for the 22nd Annual NACM Western Region Credit Conference (WRCC). The conference is designed for anyone who performs the business credit function at your company.



ANNOUNCEMENT

**NACM OREGON IS OFFERING A
NEW PROGRAM FOR EDUCATION
PASSES:**

- ◆ **Education Six-pack:**
Any six classes, on-site, or webinars, offered by NACM Oregon—\$600
- ◆ **Season Pass:**
Any combination of classes offered by NACM Oregon—\$900
- ◆ Passes do not include national seminars (Barry Elms, CRF, FCIB).
- ◆ Passes can only be used by purchasing member company and are not transferable, although they can be used by any employee of the member company.



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Business Credit Learning Center 2009 Webinars

Time: 9 - 10 a.m. (Pacific Time)

Cost: \$79 (members); \$109 (nonmembers)

January 8

Reconsidering Your Credit Policy in a Recession

Instructor: Scott Blakeley, Blakeley & Blakeley LLP

January 22

UCC Article 2 Sales Law

Instructor: Debbie Thorne, Barnes & Thornburg LLP

February 19

Chapter 11 Through the Debtor's Eyes

Instructor: Jonathan Friedland, Levenfeld Pearlstein LLC

March 5

Selling the Chapter 11 Debtor

Instructor: Bruce Nathan, Lowenstein Sandler PC

March 19

First-Day Orders: Secured Creditors' Dream?

Instructor: Robert Fishman, Shaw Gussis Fishman Glantz Wolfson and Towbin

April 2

Using Credit Enhancements to Make the Sale in a Recession

Instructor: Scott Blakeley, Blakeley & Blakeley LLP

April 16

FACTA: Red Flags for Trade Creditors

Instructor: Brenda Terreault, NACM Oregon

April 30

My Customer Just Filed Chapter 11 and Is Being Sold as a Going Concern. What Does This Mean to Me?

Instructor: Jonathan Friedland, Levenfeld Pearlstein LLC

May 14

What Do Trade Creditors Need to Know About FDCPA?

Instructor: Brenda Terreault, NACM Oregon

May 28

Letters of Credit: Resolving Discrepancies

Instructor: TBA

June 11

Dealing with the Fraudulent Customer

Instructor: Scott Blakeley, Blakeley & Blakeley LLP

June 25

Using Reclamation and 20-Day Administrative Claims to Reduce the Loss

Instructor: Bruce Nathan, Lowenstein Sandler PC

July 9

Legal Aspects of the Collections Procession

Instructor: Brenda Terreault, NACM Oregon

July 23

Adding Insult to Injury: Creditors' Preferences

Instructor: Dorman Wood, CEW CCE, Dorman Wood Associates LLC

August 6

I Have a Judgment, Now How Do I Get Paid?

Instructor: Brenda Terreault, NACM Oregon

August 20

Getting Paid on Your Delinquent Account

Instructor: Scott Blakeley, Blakeley & Blakeley LLP

September 3

EOCA Requirements for Trade Creditors

Instructor: Brenda Terreault, NACM Oregon

September 17

Out-of-Court Resolution of Insolvency

Instructor: Jay Indyke, Cooley Godward Kronish LLP

October 1

Defamation: Avoiding Slander & Libel

Instructor: Jack Cooper

October 15

Selling International on Open Account

Instructor: TBA

October 29

Serving on Creditors' Committee: Current Issues

Instructor: Jonathan Friedland, Levenfeld Pearlstein LLC

November 12

What Do Trade Creditors Need to Know About Antitrust

Instructor: Jack Cooper



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2009 Education Calendar

Date	Time	Course Title
January		
1/8	11:30 a.m. - 1 p.m.	Certification Roadmap Introduction
1/13	7:30 - 9 a.m.	Credit in Canada: Checking Credit and Getting Paid
1/27	7:30 - 9 a.m.	Using Consumer Credit Reports
February		
2/5	9 a.m. - 4 p.m.	Credit Tune-up
2/10	7:30 - 9 a.m.	Inco Terms
2/17	8:30 a.m. - 12 p.m.	The Art of Conflict Resolution, presented by Lynda Bader
2/24	8:30 a.m. - 4 p.m.	Credit Management Boot Camp
March		
3/10	7:30 - 9 a.m.	Selling Open Account: International Credit Resources
3/19	7:30 - 10 a.m.	What the Credit Manager Must Know About FACTA and ECOA
3/24	8:30 a.m. - 4 p.m.	Art of Collections, presented by Barry Elms
April		
4/14	7:30 - 9 a.m.	Using Drafts in International Transactions
4/23	8 - 11 a.m.	Annual Meeting
May		
5/6 & 5/7	8:30 a.m. - 4 p.m.	Certification Roadmap Introduction
5/12	7:30 - 9 a.m.	Getting Paid with Communication Letter of Credit & Addressing Discrepancies
5/21	8:30 - 12 p.m.	Time Management, presented by Lynda Bader
5/22	11:30 a.m. - 1 p.m.	Certification Roadmap Introduction
June		
6/9	7:30 - 9 a.m.	Legal Aspects of International Credit
6/17	7:30 - 9 a.m.	Business Organization and Impact on Business Credit
July		
7/14	7:30 - 9 a.m.	Using a Freight Forwarder
7/23	8:30 a.m. - 12 p.m.	Improving Collection Results
August		
8/20	8:30 a.m. - 4 p.m.	International Business Day, presented by FCIB/NACM Oregon
8/21	11:30 a.m. - 1 p.m.	Certification Roadmap Introduction
September		
9/15	7:30 - 9 a.m.	Collecting Overdue Accounts
9/22	8:30 a.m. - 4 p.m.	Credit Management Boot Camp
October		
10/6	8:30 a.m. - 4 p.m.	Getting Exceptional Collection Results
10/13	7:30 - 9 a.m.	Collecting Overdue Accounts in Mexico
10/21 & 10/22	8:30 a.m. - 4 p.m.	Oregon/Washington Lien Law Seminar
10/27	8:30 a.m. - 4 p.m.	Basic Financial Analysis
November		
11/5	8:30 a.m. - 12 p.m.	Review of Federal Credit Laws
11/10	7:30 - 9 a.m.	Collecting Overdue Accounts in Canada
11/17	7:30 - 9 a.m.	Credit & Sales Working Together
December		
12/8	8:30 a.m. - 12 p.m.	Measuring Performance



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Credit Tune-up

Presented by CFDD Portland Chapter & NACM Oregon

February 5, 2009

Location: TBA

Cost: \$195 (entire day, including meals); \$45 per session (meal)

The current economic problems are a challenge for all of us. Join us for the CFDD Portland Chapter and NACM Oregon Mid-Winter Tune-up held in conjunction with the NACM Membership Breakfast, February 5, 2009, for information, ideas, and suggestions. Two of the six scheduled sessions will be panel forums that will provide an opportunity to present your particular challenges to a panel of experts.

This is a great way to "tune-up" your skills and help you and your company make it through these tough times. You can choose to go to one or more sessions, or better yet, join us for the entire day.



Membership Buffet Breakfast
7:30 - 9 a.m.

"What Can We Expect from the 2009 Oregon Legislative Session?"

Cindy Robert, NACM Oregon Legislative Representative

"Managing Credit in Tough Times"

9:15 - 10:45 a.m.

Panel: Ron Hill, CCE, Xerox; Cheryl Wahlberg, CCE, Food Services of America; and Raeann Smith, North Pacific Lumber



"Continuing Business With Distressed Debtors"

11 a.m. - 12:15 p.m.

Doug Jacobson, CCE, XPEDX



"Is Chapter 11 Broken?"

12:30 - 1:30 p.m.
(Luncheon)

Deborah Thorne, Esq., Barnes & Thornburg, LLP



"Trade Creditors and Bankruptcy 2009"

1:45 - 3:15 p.m.

Deborah Thorne, Esq., Barnes & Thornburg, LLP

"Keeping That Sales—Credit Relationship Warm in a Frigid Economy"

3:30 - 5 p.m.

Panel: Marsha Johnson, TEC Equipment; Betty Beeson-Bauder, CBF, Pendleton Woolen Mills; Rick Weisman, CCE, Gray Electric



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CRF Comprehensive Benchmarking Survey

CRF's survey illustrates important credit and A/R management data among companies and sets forth a method of comparing the data in a statistical benchmarking format.

Statistical Benchmarking links important credit and A/R

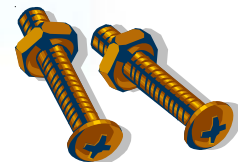
management, workload, transaction, and cost data among companies; and, portrays a comparative analysis by industry in table format for a multitude of metrics. The CRF report is recognized as the most comprehensive data of its kind. To participate go to <http://www.crfonline.org/surveys/benchmarking/benchmarking.asp> **For a limited time, any company participating in the survey will receive the full report for their data contribution FREE.**



Credit
Research
Foundation

Chapter 11 - 101 The Nuts and Bolts of Chapter 11 Practice: A Primer

Would you like a broader overview of the Chapter 11 process? For the next 13 months, NACM Oregon will provide, in an attachment, a series of essays on Chapter 11 practice.



This is the tenth article in the series, "Priorities" by authors Jonathan P. Friedland, Michael L. Bernstein, Professor George W. Kuney, and Professor John D. Ayer. These series are intended to instruct reader's in the nuts and bolts of Chapter 11 practice. Consider obtaining and reading the prior series if you have not already done so, as each installment builds on the background built in prior installments.

We thank ABI for permission to reprint the series. The installments are chapters from a CD-Rom that is available for purchase for \$20 (\$10 to ABI members) through ABI. For more information call 703.739.0800 or go to www.abiworld.org.

NOF Scholarship Offerings

The NACM Oregon Foundation grants scholarships to credit professionals for continuing education, professional designations, and conference expenses. These scholarship funds are a benefit to you as a member.

For 2008, the NOF Board has designated \$16,350 in scholarship funds.

The categories are as follows:

NACM Seminars

\$1,500 towards NACM Oregon classes.

Professional Certification Fees

To establish your file and for continuing certification or recertification for both NACM and FCIB—a total of \$3,000 will be allocated.

College Courses approved and required for accreditation and certification. Includes on-line courses offered through NACM National Education Department—proof of completion is required—\$1,500.

Certified International Credit Professional (CICP)

FCIB on-line course—\$350 is available.



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Legal Corner

by Brenda Terreault

Garnishing—It's Not Just Stuffing Turkeys

Garnishment is a procedure by which a creditor may acquire certain property of a debtor if the property is in the possession, control, or custody of another person. But the right to garnish must be acquired first and one way to obtain that right is by obtaining a judgment. Once a judgment has been entered, a writ of garnishment may be issued. If delivered to a party in possession of debtor's property, it garnishes all debtor's property in his possession with some exceptions. Most commonly garnished are wages and bank accounts.

Wage Garnishment

A writ of garnishment received by an employer garnishes all wages the employer owes to the debtor for any work performed before the writ was received, but paid at a later date. The writ remains in effect for 90 days or until the garnishment is either released or the debt satisfied in full. Wages include all amounts paid by the employer and include commission payments and bonuses. If the writ expires part way between pay periods, the employer is required to garnish that portion of pay that would still fall within the 90-day period.

When wages are garnished, only a portion of the debtor's paycheck will be paid to the garnishing creditor. To calculate wages subject to garnishment, the employer must first determine the debtor's disposable income. That would be the debtor's gross wages and subtract state and federal withholding, social security, and similar deductions. Health care, 401k, and other non-mandatory deductions are not considered when calculating disposable income.

The disposable income is then multiplied by 75% to determine the normal wage exemption from garnishment. However, the normal wage exemption may be trumped by the minimum exemption, which was designed to ensure that an employee receives at least a certain minimum amount in any one-week period. Federal law provides an alternative minimum exemption equal to 30 times the federal minimum hourly wage.

The state of Washington, in the Revised Code of Washington, Section 6.27.150, follows the federal exemption of 75% or 30 times the federal minimum wage. In Oregon, the Oregon Revised Statute Section 18.385 states that 75% of disposable earnings of an individual is exempt, but, if a payment under a garnishment would result in net disposable earnings for an individual of less than \$183 for a one-week period, the disposable earnings are exempt from writ execution. For each additional week, that amount increases by another \$183. On January 1, 2009, the Oregon statutory one-week amount will increase to \$196.50 per week.

Sometimes wages owed to a debtor for a specific pay period may not be garnishable property for other reasons. For instance, if the writ is delivered within two business days before the debtor's normal payday for the pay period, the wages for that pay period are not subject to garnishment. By way of another example, when the debtor's wages are paid by direct deposit to a financial institution, or the garnishee uses the Oregon Department of Administrative Services, or an independent contractor as payroll administrator for the garnishee's payroll, the debtor's wages are not subject to garnishment. And the ultimate example of when wages are not subject to garnishment is if a bankruptcy petition has been filed by or on behalf of the debtor after a writ of garnishment could be

issued, the garnishment of any property of the debtor in the garnishee's possession, control or custody is stayed under Bankruptcy Code.

If a debtor wishes to file a challenge against a wage garnishment for the reasons above or any other allowable reason, the debtor has 120 days from the date the notice was delivered to file his challenge.



Bank Garnishment

When a bank receives a writ of garnishment, there is no limitation to the amount to be garnished for the creditor. However, when a bank account is garnished, the writ is only good for a onetime garnishment at the time of delivery. Whatever property is in the debtor's account(s) on the date of delivery is what is garnished. If the debtor's paycheck is deposited on the day following delivery, it is not subject to the writ.

Some bank funds are exempt from garnishment, but the debtor must claim that exemption. The most common exemptions are for Social Security benefits, Supplemental Security Income, public assistance, unemployment benefits, other disability benefits, worker compensation benefits, and spousal and child support payment. Debtors who wish to challenge the garnishment of a bank account to claim an exemption must file the challenge within 30 days of receiving the garnishment notice from the creditor.



Brenda Terreault is the Collection Services Manager for NACM Oregon and an Oregon attorney. You can contact her at 971.230.1196 or

bterreault@nacmoregon.org.



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CFDD Chapters

Salem/Albany

Holiday Gathering Friday, December 12, 2008

Location: J James Restaurant
325 High St., Pringle Park Plaza
Salem

Cost: \$30 per person (CFDD
members); \$40 per person (non-
CFDD members)

Dinner: Buffet dinner to include
Cabernet-braised beef and grilled
chicken.

The holiday dinner gathering of
members and friends. Bring a
guest and join your friends for an
enjoyable evening of friendship
and good food.

Coordinator:
Theresa Quillard
Air BP Aviation Services
503.362.3633
tquillard@airbpaviation.com

Eugene/Springfield

This chapter of the NACM Credit
& Financial Development Division
meets the second Wednesday of
each month.

***No meeting/dinner sched-
uled for December.***

Portland

CFDD Portland/NACM Oregon Annual Holiday Breakfast Thursday, December 11, 2008

Location: DoubleTree Lloyd
Center, 1000 NE Multnomah Ave.,
Portland

Cost: Breakfast and Presentation
Fee is \$35 (members); \$50 (non-
members)

Enjoy great company, great food,
and an unforgettable presentation
by former SOLV Executive
Director, Jack McGowan!

Program Cancellation Policy

For questions or to register, please
contact Claudia Sarinana at
971.230.1184 or
csarinana@nacmoregon.org. No
cancellations or refunds after
December 4; replacement attendee
allowed.



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Industry Group Highlight of the Month—Trucking

Industry groups give you the unique opportunity to talk with other credit professionals in your industry and base your credit decisions on current and accurate information. You can share your payment experience of common customers, and exchange technical and educational information concerning your industry. You will be better informed and better protected.

Who is eligible for the Trucking Industry Group?

Companies whose primary function is the manufacture or distribution of vehicles, engines, parts or materials and labor incidental to such distribution, that provide financing services, or that provides operating supplies such as fuel, tires, or accessories.

Who are some of the companies that participate in the Trucking Industry Group?

Air Flow Systems, Inc.	Anderson Brothers, Inc.	Auto Wheel Service	Brattain International Trucks
Cummins Northwest, Inc.	DSU Peterbilt & GMC, Inc.	Industrial Finishes & Systems	JC Jones Oil Co.
Jubitz Corporation	McCoy Freightliner, Inc.	Northside Ford Truck Sales	Oregon Auto Spring Service
Ott's Friction Supply, Inc.	Performance Warehouse	Potter Webster	St. John's Truck & Equip.
Star Oilco	Tarr LLC	TEC Equipment	Vancouver Oil

ANDERSON BROTHERS, INC.

SARAH ANDERSON
VICE PRESIDENT



ANDERSON BROS., INC. HAS BEEN A
MEMBER OF NACM OREGON
SINCE 1960

"I have been in charge of accounts receivable for more than 2 years at my family business. When I started, I didn't know much about accounting or the flow of accounts receivable. Since then I have taken many classes through NACM and been attending the monthly industry group. I have learned a lot about managing my accounts and collection techniques from the classes. At the same time the industry group has provided me with contacts to ask questions and invaluable information about companies in our industry. Being from a family business it is nice to get outside input on how to deal with situations in new ways. I appreciate the overall support of NACM and their constant willing to help with any issue I have."

TEC EQUIPMENT

MARSHA JOHNSON
CREDIT MANAGER



TEC EQUIPMENT HAS BEEN A MEMBER
OF NACM OREGON SINCE 1992

"As a long-standing member of the Trucking Group, I have found the information and education that I receive at group meetings to be invaluable. Additionally, the connections that are made with others in our industry are extremely helpful. The use of alerts and the ability to email other group members is also a plus. I would encourage any company that is not currently an active member of an industry trade group, to find one that fits and join. The value far outweighs the cost."



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Credit Manager's Index—Combined Sectors

“The seasonally adjusted Credit Manager’s Index (CMI) for November painted an even uglier portrait of the economy than it did last month, dropping 2.6 to a record low of 42.2, well below the 50 level indicating economic contraction,” reported Daniel North, chief economist with credit insurer Euler Hermes ACI, who evaluates the data and prepares the report for the National Association of Credit Management. “The amount of negative data was overwhelming, as eight of the 10 components fell and seven set record lows, leaving all 10 components below 50,” he said. On a year-over-year basis, four components and the total index itself fell record amounts. Both the manufacturing and service sectors set record lows.

“The macroeconomic data continues to describe an economy which is in bad shape and which seems to be deteriorating,” said North. Unemployment is on the rise as hundreds of thousands of jobs are being lost every month, retail sales are falling dramatically, especially on an inflation-adjusted basis, third quarter GDP growth was negative and credit is still very difficult to get. “It’s little wonder that credit managers are seeing so much demand for trade credit, but at the same time they are facing a very difficult business environment where their sales are deteriorating on the front end, and their customers can’t repay them at the back end,” said North. “Unfortunately, the holiday shopping season is here, and the results are likely to be grim. It will be great news if they are only as bad as they are expected to be.”

For a complete view of the index, go to www.nacm.org and click on Credit Manager's Index.

Combined Manufacturing and Service Sectors (seasonally adjusted)

	Nov '07	Dec	Jan 08	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov '08
Sales	58.6	56.3	51.7	51.7	50.87	54.0	57.7	54.2	55.7	56.4	45.3	45.6	34.4
New credit applications	56.4	55.8	52.8	54.7	53.0	54.4	55.0	50.2	53.9	52.8	49.6	49.7	45.2
Dollar collections	61.2	57.2	56.8	60.5	55.1	54.8	61.3	56.4	60.4	57.1	54.6	50.9	49.9
Amount of credit extended	60.9	59.8	57.0	55.0	55.8	57.0	60.4	58.8	58.5	60.0	53.9	47.6	43.3
Index of favorable factors	59.2	57.3	54.5	56.8	53.7	55.0	58.6	54.9	57.1	56.6	50.8	48.4	43.2
Rejection of credit applications	49.9	50.0	50.9	48.4	49.0	48.9	48.4	49.1	48.1	48.5	47.8	44.6	45.0
Accounts placed for collections	47.4	46.2	47.1	42.5	45.2	45.8	43.0	44.5	43.4	45.6	41.6	36.4	36.1
Disputes	47.8	49.5	49.5	47.3	49.0	46.9	50.1	47.9	46.3	46.3	45.8	42.9	43.8
Dollar amount beyond terms	45.8	46.3	45.1	49.0	43.5	42.5	43.7	42.7	47.9	43.6	42.0	41.8	38.8
Dollar amount of customer deductions	49.6	50.3	50.3	47.4	49.0	47.5	49.9	48.1	47.8	48.5	46.6	45.8	45.4
Filings for bankruptcies	53.5	52.3	52.6	52.1	48.6	49.2	51.2	49.0	47.1	48.2	46.4	42.6	40.5
Index of unfavorable factors	49.0	49.1	49.3	47.8	47.4	46.8	47.6	46.9	46.8	46.8	45.0	42.4	41.6
NACM CMI	53.1	52.4	51.4	51.4	49.9	50.1	52.0	50.1	50.9	50.7	47.4	44.8	42.2
ISM Combined Sectors Index	51.2	50.8	47.7	48.8	49.1	50.3	50.7	49.2	49.8	50.3	46.9	41.7	N/A



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paid for the goods by the buyer; in other words, the invoice price, less any discounts, offsets or allowances. It should be noted that the U.S. Supreme Court has specifically held that payment or credit terms are inseparable parts of price.

Assuming that all of the requirements listed above have been satisfied, the inquiry then shifts to determine whether the pricing practices will result in competitive injury. The Act does not prohibit all price discrimination, but only those practices which have an adverse effect on competition. Just because there are price differences does not automatically mean there is unlawful price "discrimination." Under the Act, price differences become suspect whenever the effect of those differences may be substantially to lessen competition in any line of commerce, to create a monopoly, or injury, to

destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such price discrimination.

It is also important to note that, generally, the test is not whether the pricing practices have injured a particular competitor. Rather, it is whether the overall level of competition in a particular market or industry has been impacted. Thus, in a highly fragmented market characterized by many buyers and many sellers, with no true dominate players, it might arguably be difficult (at least under current economic analysis) to establish a violation of Robinson-Patman.

It should also be noted that competitive injury under the Act can take place at various levels within the overall chain of distribution. For example, competitors of a seller engaged in price discrimination may be

injured by those pricing practices. Such competitors may be consistently underpriced, and thus lose business because of the price discrimination. There may also be pricing practices that cause competitive injury between the customers of the seller. Generally, a favored customer of a seller is able to pass on a price break to its customers, thus undercutting its competitors.

Competitors of such a favored customer are thus likely to lose business as a result of discriminatory pricing.

Significantly, under Robinson-Patman both the seller engaging in price discrimination and the favored buyer receiving lower prices are potentially liable for monetary damages. This can make life troublesome for a buyer which has successfully negotiated a low price, only to discover later that those ultimate prices are

suspect.

There are several broad defenses to the application of Robinson-Patman. For example, the so-called "quantity discount" defense provides that pricing practices based upon differences in the cost of manufacture, sale, or delivery resulting from quantity purchasing, may not violate the Act. This defense has been narrowly construed by the courts. In order to fall within this safe harbor, price differentials should be justified by concrete and specific evidence of cost savings resulting from high quantity orders. There should be mathematical specificity and cost accounting certainty which can justify a lower price. Such precise price justifications of economies of scale can be difficult to achieve.

It is also permissible for a seller to have different pricing structures based upon the distributive services

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performed by downstream buyers. For example, because most wholesalers undertake certain functions in the distribution chain that are otherwise generally performed by a manufacturer, certain functional discounts are appropriate. Thus, it is generally permissible to charge different (lower) prices to wholesalers than to retailers to account for these distribution services.

The Act also permits a seller to “lower” its price to meet an equally low price being offered by a competitor. In order to qualify for this “meeting competition” defense, a seller must be able to establish that it has lowered its price in good faith in order to remain competitive. It is generally recommended that a seller take reasonable steps to confirm and verify that the other lower price has been quoted, and to document such verification. Keep in

mind that the defense generally permits “meeting” competition, not “beating” a competitor’s lower price.

Sellers must be careful, however, in this verification process. For example, it is permissible for a seller to ask its buyer for evidence of a lower price quote from a competitor. However, a seller should never make such inquiry of the competitor who presumably has offered the lower price. This could be construed as a preamble to price fixing, thus a potential violation of the Sherman Act.

The Act also includes a defense for price differences resulting from so-called “changing conditions.” The primary purpose of this defense is to permit a seller to dispose of goods where economic losses are imminent because of deterioration or perishability, obsolescence, distress sales, etc. Thus, price differences in products as

a result of technological obsolescence fall within this defense, as do perishable fresh foods and seasonable goods.

In addition to price discrimination, Robinson-Patman also makes it unlawful for a seller or buyer to give or receive compensation for placing or obtaining an order for the purchase or sale of goods. The Act further prohibits payments by sellers to buyers for the performance of advertising services, unless such payments are made available to all buyers on proportionately equal terms.

This article has attempted to present a general overview of a complex statutory scheme. Compliance with the Robinson-Patman Act can be difficult. As noted above, there are several potentially broad exceptions and defenses to the Act; however, these are narrowly construed, and may not

always be available. Consulting with antitrust counsel on all these issues is strongly recommended.

The potential application of Robinson-Patman to the extension of credit will be discussed in the next article in this series.

Jack Cooper is a partner in the Portland law firm of Dunn Carney Allen Higgins & Tongue LLP, where he specializes in antitrust issues. For many years, Jack has also counseled and regularly attends meetings of national industry credit groups.



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t.ceniga@industrialfinishes.com

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kellie@nbhco.com

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jhardy@emersonhardwood.com

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mjohnson@tectrucks.com

Kimi Shelton, CCE, EKC Consulting, LLC
kimimuller@comcast.net

Raeann Smith, North Pacific Group
rsmith@northpacific.com

President

Rod Wheeland, CCE, CAE, NACM Oregon
rwheeland@nacmoregon.org

NACM Oregon

Customer Service/Credit Reporting

971.230.1220
services@nacmoregon.org

Education

Claudia Sarinana
971.230.1184
csarinana@nacmoregon.org

Industry Groups

Kathy Gibson
971.230.1176
kgibson@nacmoregon.org

Claudia Sarinana

971.230.1184
csarinana@nacmoregon.org

Collection Services

Brenda Terreault
971.230.1196
bterreault@nacmoregon.org

Billing

Marmie Carpenter
971.230.1146
mcarpenter@nacmoregon.org

Meeting Room Rental

Lisa Rogstad
971.230.1160
lrogstad@nacmoregon.org



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