

### In This Issue

Antitrust—Part III Industry Credit Groups .....	1
Chair's Message .....	2
President's Message .....	2
Legal Corner .....	3
Collection Agency Fraud .....	5
Upcoming Events .....	6
2009 BCLC Webinars .....	7
2009 Education Calendar .....	8
Credit Tune-up Seminar .....	9
International Corner .....	12
CFDD Chapter Meetings .....	13
Industry Group of the Month .....	14
Contacts .....	17



## Antitrust Part III—Industry Credit Groups

By George J. "Jack" Cooper

As noted in an earlier article, the antitrust laws generally prohibit agreements to exchange price information, for fear that it may lead to unlawful price fixing. However, courts have uniformly held that the exchange of past factual credit experience information is legal and permissible. Indeed, the best and most reliable source for such information has historically been industry credit groups.

It can be further argued that the activities of industry credit groups should be encouraged and favored by the antitrust laws. As a result of the lawful information received at group meetings, members are able to make more informed credit decisions. This, in turn, should make member companies more competitive, have fewer bad debts, and be able to pass through resulting savings by way of lower prices for goods and services. As also discussed earlier, increased competition and lower prices are among the ultimate goals of the antitrust laws.

In spite of the inherent legality of the activities of industry credit groups, whenever a group of competitors meet there exists the opportunity and potential for antitrust concerns. As a result, several precautions must be observed to ensure antitrust compliance.

The underlying antitrust premise permitting exchanges of credit information, whether it be in an industry group meeting or more informal discussions between credit executives, is that at the conclusion of any such meeting or discussion each participant remains free to make totally independent and unilateral credit decisions, free from any understandings, express or implied, with competitors.

Of paramount importance for industry credit groups is the avoidance of any inference that the group has engaged in group boycott activities, such as agreeing not to extend credit to particular accounts. Such an agreement could be challenged as a restraint of trade, in violation of the Sherman Act.

...continue on page 15



# NACM Oregon Business Credit Journal

January  
2009



## Chairman of the Board Barbara Davis, CCE

### *Happy New Year!*

At the November NACM Oregon/Portland CFDD membership breakfast, there was a very timely and informative presentation from John Mitchell appropriately titled, "An Exciting Fall...and It's Not Over Yet." John spoke of the current crises facing our country such as the volatile market, the employment decline, and the housing contractions. There are many challenges ahead of us, and it will take some time to recover from our current state. However, John also pointed out other recessions we have been through and how long they had lasted, which points to our nation's resiliency to work together and pull through these difficult times.

Now more than ever companies will be looking to credit managers to help them through this rollercoaster ride. NACM Oregon is here as an effective partner to assist you in your credit and collection needs with top-notch services in credit reporting, collections, and industry groups. I encourage you to take advantage of these resources as they can only help your business meet these challenges and succeed.

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

## President & CEO Rod Wheeland, CCE/CAE



Be sure to mark your calendar for the Thursday, February 5, "Credit Tune-up." This all-day education program begins with breakfast and an overview of what to expect from State government in the coming year, has morning education sessions, then a luncheon with Deborah Thorne, a nationally recognized insolvency attorney visiting us from Chicago, who will discuss the state of Chapter 11, followed by afternoon education sessions. The topics of the day are practical and timely. I hope you'll plan to join us.

We also are publishing in this edition the 2009 education and webinar calendars. The latter includes those online courses sponsored by NACM Oregon and which are provided through the Business Credit Learning Center network.

Also, we are now able to provide education packages for those companies who may participate in multiple offerings during the year. More information is provided in this edition, or you may want to contact Claudia Sarinana, 971.230.1184.

The Board of Directors and Staff thank you for your support of NACM products and services in 2008 and wish you a joyful and prosperous 2009!

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



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## Legal Corner

by William G. Fig

### New Year's Check Up

As we are continually reminded by the news media, these are challenging economic times. Times such as these test even the most stable businesses. For businesses already struggling to survive, an economic downturn can be the final nail in the proverbial coffin. With the start of a new year, now is a good time to reassess your business practices and how you can change those practices to increase your chances of getting paid by your customers.

Unfortunately, there are no tricks or "quick fixes." The same sound business practices that apply in "good times" remain the best "guaranty" of payment in a challenging economic climate. However, it becomes even more important to adhere to sound business practices during challenging times. One of the most important practices that can increase your chances of collecting your accounts receivable is to have a written agreement containing terms and conditions governing the relationship between you and the customer.

When opening a new account, it is essential that you have the customer execute a well-drafted agreement. If existing customers have not executed such an agreement, they should be

required to do so in consideration for you agreeing to continue to extend credit to them. A well-drafted agreement is important because, among other things, it will provide for the recovery for attorney fees, service charges, and collection agency fees in the event you are required to file a lawsuit against the customer to collect amounts owed to you by the customer. The agreement should also establish the venue (*i.e.* location) for any such suit. Filing suit in the county where you are located is usually much more cost effective than filing suit in the county where the debtor is located, which is the default rule in Oregon.

Further, when opening a new account, the owner or principal of a corporate customer (corporation or limited liability company) should be required to execute a personal guaranty guarantying the corporate customer's obligations to you. A personal guaranty significantly increases your chances of getting paid because it puts the personal assets of the guarantor at risk if the corporate customer defaults on the obligations it owes to you. Absent a personal guaranty, the officers, shareholders, principals, and/or members of a corporation or limited liability company are generally not responsible for the debts of their business entity.

When a small business fails, there are usually very little to no business assets available to satisfy the obligations owed

to the business' creditors. However, even if no business assets exist, a guarantor may have personal assets that can be reached to satisfy a judgment obtained against the business.

Moreover, the guarantor typically remains liable to you for the business' obligation even if the business files bankruptcy or dissolves. Thus, in many cases, a guaranty will provide you with significant leverage to persuade the guarantor to satisfy the obligation the business owes you.

In the many commercial collection matters I have handled, my experience is that your chances of getting paid increase significantly if there is a written agreement providing for the recovery of attorney fees and requiring the debtor to litigate in the county where the creditor is located. Even in more dire situations, your chances of receiving at least a partial payment increase exponentially if a personal guaranty is involved.



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*William G. Fig, attorney, Sussman Shank, LLP, focuses his practice on business litigation, construction law, environmental litigation, and consumer debtor/creditor matters. Bill represents creditors, general contractors, subcontractors, and small to mid-sized businesses. Mr. Fig has been active as a speaker and presenter at various NACM Oregon seminars. His email is [billf@sussmanshank.com](mailto:billf@sussmanshank.com).*



## Are you ready to say goodbye to 2008?

We're all looking forward to making a fresh start in 2009. But before we can fully embrace the New Year, there's still a lot of work to be done! The year-end means accruals, reversals, reconciliations, and rock solid deadlines. Do you have the help you need to close out the old year and move successfully into the new?

Given current economic challenges, maybe you're not able to bring on the direct personnel that you need or perhaps you are short-staffed due to workforce reductions? You may be surprised to learn that this is the best time to bring on temporary personnel.

Hiring temporary personnel is a smart way to keep your business dynamic without incurring long-term, fixed costs. Consider the benefits . . .

**Flexibility:** Temporary personnel allow you to supplement your workforce on an as-needed basis. Rather than overwhelm your existing staff with increased project loads or make a direct hire, it's much more cost-effective to bring in a contingent employee who will work only as long as you need them.

**Access to Specialized Skills:** Certain projects may call for specific skill sets. Because staffing firms specialize in developing recruiting networks, there is often access to a more extensive network of qualified candidates such as Tax Specialists, Financial Analysts, Collections Specialists, etc. By hiring these specialists on a temporary basis, you benefit from their expertise without adding fixed personnel costs to your bottom line.

**No Risk/No Worry:** The staffing firm assumes all risk and management responsibilities including taxes, workers' compensation, liability insurance, coaching and counseling, and termination. In addition, if a temporary employee doesn't work out, some firms offer a no-charge or free replacement guarantee.

Of course, cost is always a consideration when hiring temporary personnel. Staffing firm fees vary in amount and structure so be sure to ask questions about all associated fees (e.g. background checks, drug screens, conversion fees, etc.).

In the end, no matter what the economy is (or isn't) doing, there is still work to be done. Utilizing temporary personnel will not only give your business more flexibility to adapt to changing market conditions but will also allow you to finally close the book on 2008.

*Source Employment Trends*

## SAY HELLO TO 2009!



We have the accounting and finance professionals you need to successfully close out 2008 and get a fresh start on 2009.

Whether you need short-term temporary personnel, long-term strategic staffing solutions, or great candidates for direct hire, count on us to provide quality personnel who are ready to step in and make a contribution from day one.

Our roster of great candidates includes:

- Credit & Credit Managers
- Collections
- Accounts Payable
- Accounts Receivable
- Payroll
- Staff Accountants
- Bookkeepers
- Financial Analysts
- Seasonal Tax Help

Contact us to learn more about putting one of our qualified professionals to work for you!

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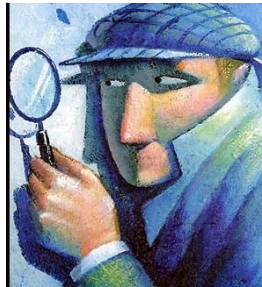
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## Collection Agency Fraud

by Michael C. Dennis, MBA, CBF



A typical collection agency fraud works this way: An agency contacts and solicits collection business from a credit manager, often at unusually low collection rates. A fee structure is agreed upon, and the credit manager places one or more accounts with the collection agency. The collection agency contacts debtors and goes about collecting the balance due—just as any other collection agency would do.

However, the collection agency does not pay the creditor based on payments received from the debtor. Instead, the collection agency pockets the money. The beauty of this scam is its simplicity. Creditors normally trust their collection agency to act in their best interest. These scams often come to light only when the debtor contacts the creditor and asks to re-establish a relationship and is told the debt must be repaid before any consideration will be given to re-establishing a business relationship. When the debtor tells the creditor the debt has been paid, things start to get interesting.

### Typically, the creditor contacts the agency and:

- The agency denies receiving payment
- The agency is out of business or has moved, or
- The agency admits receiving the money but due to a clerical error, they were unable to determine which of their clients was owed the money.

In any of these scenarios, if your collection agency does not immediately disgorge the payments it has received then the creditor must pursue payment as they would with any other delinquent debtor.

Ironically, the credit manager may never learn that the debt has been repaid, and without this information there is no reason to question the collection agency about the status of payment.

One final note: A collection agency can also defraud creditors by failing to remit collected payments promptly - this earning interest on your company's money. Your contract with the collection agency should always specify the maximum amount of time the agency may hold onto your money before issuing payment - as well as the penalties for failing to send payments on time.

*Michael Dennis, MBA, CBF, has been involved in credit and risk management for more than 25 years. He currently manages global credit risk for Seagate Technology. He has taught classes and conducted webinars for CMA California, the local NACM affiliate, since 1991. He is the author of several books including "Credit and Collection Handbook" published by Prentice Hall.*

## 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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# NACM Oregon

## Business Credit Journal

January  
2009

### 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
<b>January</b>		
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
<b>February</b>		
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
<b>March</b>		
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
<b>April</b>		
4/14	7:30 - 9 a.m.	Using Drafts in International Transactions
4/23	8 - 11 a.m.	Annual Meeting
<b>May</b>		
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
<b>June</b>		
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
<b>July</b>		
7/14	7:30 - 9 a.m.	Using a Freight Forwarder
7/23	8:30 a.m. - 12 p.m.	Improving Collection Results
<b>August</b>		
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
<b>September</b>		
9/15	7:30 - 9 a.m.	Collecting Overdue Accounts
9/22	8:30 a.m. - 4 p.m.	Credit Management Boot Camp
<b>October</b>		
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
<b>November</b>		
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
<b>December</b>		
12/8	8:30 a.m. - 12 p.m.	Measuring Performance



# NACM Oregon Business Credit Journal

January  
2009

## 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, CBE, Pendleton Woolen Mills; Rick Weisman, CCE, Gray Electric



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## Common keyboard shortcuts in Windows programs

Hold down the Windows flag logo **start** key and press **L** to lock the computer, requiring the Windows password to unlock.

Hold down **Ctrl** and press **S** to save the current document.

Hold down **Alt** and press **F4** to close the current document or program.

Select or highlight an item with the left-click of a mouse (or multiple items while holding down the **Ctrl** key) and press **Ctrl + X** to Cut, or **Ctrl + C** to Copy, then select a destination and press **Ctrl + V** to Paste.

When entering a .com URL or website in a web browser, enter the domain part such as **pricegrabber** and then press **Ctrl + Enter** to wrap www. and .com around it.

**Alt + PrtScrn** copies the contents of current screen window to the Clipboard for pasting into another window such as Word.

## Netbook

Netbooks are like notebooks but have a 9 or 10" diagonal screen, no CD/DVD drive, weigh about 2 pounds and cost under \$500. I recommend the Acer Aspire One with Windows XP Home, 1GB RAM, 160GB HD and 6-cell battery for about \$400 shipped from Amazon.com, NewEgg.com or TheNerds.net.

## Computer Guy



## MP3 Player (Audio)

Creative MuVo T100: no screen to consume battery life (if needed, the same-sized T200 has a small screen). Think of a 4GB USB thumb drive but with buttons to Play, Pause, Skip and change volume. No proprietary cables; plug it in to transfer songs or files and charge the battery. Its white headphones look like iPod's and sound great.

## MP4 Player (Audio/Video)

Go to iRiverInc.com and checkout the iRiver LPlayer (2<sup>nd</sup> gen. "clix") or the latest SPINN with its amazing OLED screen; they support lossless and open source codecs (A/V decoders).

## Pocket Video Cam Recorder

Creative Vado: very easy to use; USB connector built-in. About \$100. Reviews better than the Flip Mino. A \$200 Vado HD now available for pre-order.

## Camera (under \$400; non-SLR)

Generally I recommend Canon (ditto for inkjet printers with exception of Epson's Stylus Photo printers with Piezo technology), but if you want half-inch thin yet 3x optical zoom, checkout the Casio Exilim EX-S10 circa \$200. If you want image stabilization, 10x zoom, HD video, hi-res screen, checkout the Panasonic Lumix DMC-TZ5 for about \$300.

## Price Comparing

PriceGrabber.com and Froogle.com (Google's Shopping link).

## Reviews

Enter the model number into the search field along with the word **review** at Google.com or YouTube.com.



## 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.

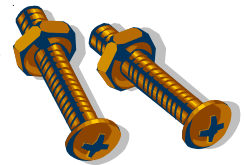


**Credit  
Research  
Foundation**

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.*

## 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 12 months, NACM Oregon will provide, in an attachment, a series of essays on Chapter 11 practice.



This is the eleventh article in the series, "Obtaining DIP Financing and Using Cash Collateral" 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](http://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.



**NACM Oregon**

## International Corner

by Alice Knight

2009—a new year. We are almost a decade into the new century and how things have changed—or have they? Some economists are saying that the last decade was the “irrational” one and that we slowly and painfully getting back to normal.

A recent speaker I heard said that we all (including credit professionals) have to share the blame for our current situation. He scolded that we all forgot the basics and credit became way too easy. Harsh words, maybe. True words, probably. It's oh so easy to point fingers at everyone else but hard to accurately judge our own actions. Why is this even relevant? What's done is done and we need to move on. That is very true but it is vital that we learn from our mistakes. Credit has been relatively easy for the last decade but now we must get back to basics.

The first reaction to the current economy is to clamp down tight on credit to eliminate all possibility of slow pay or bad debt and to only sell to the most creditworthy customers. This will certainly help keep bad debt low but it will also eliminate a lot of current and future sales.

Credit needs to be proactive in working with executive

management to achieve both short term and long term goals. If management determines that this is an opportunity to gain market share, enter new markets, cultivate long-term relationships with key customers or help new customers grow then credit needs to facilitate this policy.

If management determines that current earnings and cashflow are of paramount importance then the credit policy will be very different. In either case, the appropriate credit policy can only be implemented effectively if credit analysis is current and detailed. More than ever we need to understand our customer and their environment.

As discussed many times international credit carries all the demands of domestic credit **PLUS** the additional layer of country risk analysis. Foreign countries are sovereign and can make or change laws whenever they determine it is in their best interest to do so.

In times of economic crisis governments can, and do, intervene in business activity. They can, and do, restrict the flow of hard currency out of the country. They can, and do, restrict the importation or exportation of certain goods. They can, and do, set the buy or sell price on some items. They can, and do, change tax structures, tax rebates, duties, and fees. They can, and do, limit access to financing or credit. They can, and do, protect

their own domestic markets and economies. They can, and do, default on government obligations.

In the last decade most of these interventions have been in emerging markets but even some developed markets have and will protect their national economies in times of crisis. Credit must actively analyse and monitor the countries they import from or sell to. Remember, supply change disruption can be as crippling as bad debt. The same country risk analysis used for exporting can apply to importing risk.

Times of rapid change bring many opportunities if a company is prepared to recognize them. Exporting is a very viable option but careful analysis is critical.



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*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.*



NACM Oregon

## CFDD Chapters

### Salem/Albany

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

Meeting Date: Tuesday,  
January 13, 2009

Location: Sizzler Restaurant  
1151 Lancaster Dr., NE, Salem

Networking: 5:30 p.m.  
Dinner: 6 p.m.

**Topic: "Commercial Business  
Fraud"**

Presenter: Trevin Upkeeves

Coordinator:  
Theresa Quillard  
Air BP Aviation Services  
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### Eugene/Springfield

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

Meeting Date: Wednesday,  
January 14, 2009

Location: Downtown Athletic  
Club Conference Center  
999 Willamette St., Eugene

Networking: 5:30 p.m.  
Dinner: 6 p.m.

**Topic: "Ask the Expert Credit  
Manager"**

Presenters: Tony Ceniga, Credit  
Manager, Industrial Finishes and  
Kent Clausen, Credit Manager,  
Farwest Steel Corp.

Coordinator:  
Cindy DeHollander, CBF  
M L S, Inc.  
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### Portland

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

Meeting Date: Thursday,  
January 8, 2009

Location: Red Lion Convention  
Center, 1021 NE Grand Ave., 6th  
Floor, Portland

Networking Time: 5:30 p.m.  
Dinner: 6 p.m.

**Topic: "Local Access to the  
Global Vision—Albania to Zim-  
babwe Credit Tour"**

Presenters: Alice Knight, Vice  
President of Finance & Administra-  
tion, Paper Products Marketing  
(USA) Inc.; Raeann Smith, Credit  
Manager, North Pacific Group;  
David E. Erickson, CCE, Director  
of Credit and Administration and  
International Trade Consultant,  
Allports Forwarding, Inc.; and  
Carol Johnson, Credit Manager,  
Climax Portable Machine Tools,  
Inc.

Coordinator:  
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# NACM Oregon Business Credit Journal

January  
2009

## Industry Group Highlight of the Month—Wood Fabricators

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 Wood Fabricators Industry Group?

Any company that manufactures or distributes products used in the fabrication of furniture, cabinets, or millwork.

### Who are some of the companies that participate in the Wood Fabricators Industry Group?

Aura Hardwood Lumber, Inc.

Barbo Machinery Co., Inc.

CDS Art, Inc.

Continental Hardwood Co.

Cronin Company

Disdero Lumber Co.

E B Bradley Co.

Emerson Hardwood Co.

Hardwood Industries, Inc.

Louis and Company, Inc.

Lumber Products

McCoy Stair & Millwork

National Builders Hardware

Plymart, Inc.

“When elevated to the credit department in my company, I immediately started attending the two industry groups my company is a member of. I quickly learned a lot by associating with more experienced, seasoned credit managers who also attended these meetings. I began taking advantage of some of the educational opportunities available and quickly earned my title of Credit Manager at Disdero.

I found my involvement with the groups to provide my company with valuable information, as well as other benefits. Getting to know other credit managers has allowed me to build an information network, nurture and build confidence in myself and has made me a better asset to my company.”

“The reason why we take full advantage of our membership in an NACM Oregon Industry Group is simple: *we save money, period.* How does it save our company money?

- We use the confidential credit reference information gained from our group participation to make better decisions on our new and existing customers.
- Reading daily, weekly, or monthly business publications can give you a sense of general economic conditions, but they are no substitute for participating in the monthly industry group meetings. By listening to the other group participants we gain a sense of the current credit and economic climate in *our* area of business. With better information we make better credit decisions and this equals money savings.
- At the monthly industry group meetings we also discuss general credit techniques to improve the way to operate our credit departments. The more we learn from the other members, the better we can do our jobs and save money for our respective companies.”

### DISDERO LUMBER CO.

Cheryl Johanson  
Credit Manager



Disdero Lumber Co., has been a member of NACM Oregon since 1964.

### EMERSON HARDWOOD CO.

John Hardy  
Corporate Credit Manager



Emerson Hardwood Co., has been a member of NACM Oregon since 1959.



### Antitrust Part III, *continued from cover*

In order to avoid such inferences, credit group members should only report on and discuss past credit experience. The past tense should be used in discussions as much as possible. Obviously there cannot be an agreement based on events that have already taken place.

For example, from an antitrust perspective it is permissible to report, “we have sold to this account on a cash-in-advance basis.” This is simply a report of past experience. On the other hand, avoid comments such as, “in the future, we plan to sell to this account only on a cash-in-advance basis.” This is not a report of past experience, but rather is an expression of how a member intends to deal with a particular account in the future. Such an indication could influence other members to make the same decision. Should that happen, it could be alleged that an implied agreement in restraint of trade has been reached.

Price fixing is another potential antitrust concern for industry credit groups. The best way to avoid any such inference is obviously not to talk about prices. While aggregate information, such as current account balances, are certainly

relevant and permissible, the component prices for goods and services within that aggregate figure should not be exchanged.

The U.S. Supreme Court has held that the extension of credit is equivalent to giving a price discount, and concluded that “credit terms must be characterized as an inseparable part of the price.” As a result, credit terms, just like prices, should not be exchanged or discussed during industry group meetings.

This admonition may be particularly true in those industries where so-called “standard terms” exist. While such terms are generally the result of decades of independent market forces, nonetheless, discussing such terms during credit group meetings could create an erroneous presumption that such terms were the result of unlawful concerted activities or agreements.

Again, most activities within industry credit groups are perfectly legal and permissible, either for purposes of the antitrust laws or otherwise. For example, credit groups routinely discuss general trends or conditions in their industry or within the economy. Credit groups often engage in

education, research, and public relations activities. And, as discussed above, it is perfectly lawful for credit groups to exchange reports of past actual experience.

It is also permissible under the antitrust laws for credit groups to engage in joint activities in support of, or in opposition to, legislation or other governmental activities. The First Amendment guarantees the right to petition for redress of grievances. As a result, it has generally been held that joint efforts by competitors to influence public officials do not violate the antitrust laws. This is true even though the ultimate objective of the effort may be anticompetitive in nature, and might otherwise be a violation of the antitrust laws.

Because of the information legitimately received during meetings, credit group members theoretically have a competitive advantage over nonmembers. As a result, the antitrust laws also prohibit “group boycott” activities designed to keep other competitors from enjoying the benefits of membership. Generally, membership eligibility criteria for industry credit groups are objective and reasonable in scope. Should a

*...continue on page 16*



### Antitrust Part III, *continued from page 15*

business entity satisfy these requirements, membership should be virtually automatic. Because of these concerns, it should be assumed that membership in most industry trade groups is a right, not a privilege. Members of industry groups should let NACM handle most membership decisions, as a further buffer against liability.

It is also important for members of industry credit groups not to share information that they learn at meetings with those outside of their respective credit departments. Attendees at these meetings should rightfully assume that the information being disclosed will be used only in the context of making credit-related decisions. It should not be shared, for example, with the sales side of the members' business. Again, the primary reason that the exchange of this type of credit information is permissible under the antitrust laws is because it can result in ultimate savings to end-users and consumers. To the extent that such information is used other than for credit purposes, there is a much greater inference that the information being exchanged will be used for potentially anticompetitive purposes. Further, the sharing of such information outside of credit departments may

act as a "chilling effect" on members attending industry group meetings, and will result in a reluctance on the part of those members to share information.

These same antitrust guidelines are equally relevant to discussions between credit executives outside of a formal industry group meeting context. Credit inquiries, reference calls and emails between representatives of competitors take place on a daily basis. Again, in order to avoid any inferences of unlawful antitrust conduct, discuss only factual and past credit experiences, do not discuss price (including credit terms), and avoid discussion of future intentions.

Industry groups offer essential and lawful opportunities to exchange valuable credit experience information. By keeping in mind the restrictions discussed above, the antitrust laws should not be cause for concern in any such meeting.

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*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.*

### Two Sides to the Balance Sheet

The true balance sheet of US Investment banks:

There are two sides of the balance sheet: the left side and the right side.

On the left side, there is nothing right...

And on the right side, there is nothing left.

*Author: Unknown*



# NACM Oregon

## Business Credit Journal

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