



2009 Factoring Conference Speaker Handout



International Factoring Association
2665 Shell Beach Road, Suite 3
Pismo Beach, CA 93449
800-563-1895 or 805-773-0011
Fax 805-773-0021
www.factoring.org
info@factoring.org

© 2009 by, The International Factoring Association®
No part of this presentation may be reproduced, stored in a retrieval system, or transmitted in any form by any means,
electronic, mechanical, photocopying, recording or otherwise without the prior written permission of the
International Factoring Association



Scenario #3

More problems with OOC:

- OOC advises Factor it is not current on 941 Withholding Taxes. IRS filed a lien last week.
- OOC needs an advance tomorrow to cover payroll.
- Factor agrees to make one last payroll advance to complete work in process and get goods delivered.
- Factor will only advance enough to cover amounts paid to employees. Client must find another source to cover withholding, FICA, etc.





Scenario #4

Continuing problems at OOC:

- In spite of all these efforts, OOC still doesn't have enough money.
- OOC sends an email to Factor requesting another payroll advance.
- President of Factor is outraged and forwards the email to his Chief Credit Officer and National Sales Director, saying, "This guy is an idiot and a crook. We will take him down at any price to us. We will never again do business with an immigrant from that country!" Instead of hitting "Forward", he hits "Reply All".





Scenario #5

The last of OOC:

- After a "discussion" with his lawyer, Factor apologizes to OOC and agrees to reinstate the original terms and continue factoring if President of OOC will give a mortgage on his home to Factor.
- Factor develops a new plan to get revenge and this time keeps it to himself.
- An agreement is signed releasing all claims and waiving any past defaults. Mortgage is given.
- Factor then invokes clause in Factoring Agreement providing that all purchases are discretionary and Factor has no obligation to purchase any accounts. Factor cherry picks the safest invoices and rejects 80% of submitted invoices. Factor increase reserve to 80%.





Scenario #6



- Financial condition of Client and of key account debtors is deteriorating but there is no default.
- Factor is nervous and wants out of the relationship or to at least cut its risk.
- Can the Factor do any of the following?
 - Terminate the Factoring Agreement immediately?
 - Immediately increase the pricing under the Factoring Agreement?
 - Substantially decrease debtor concentration limits.
 - Double the amount of the reserve?
 - Substantially reduce the number and amount of invoices purchased via the discretionary purchase provision of the Factoring Agreement?





Scenario #7



- Factor has sold a 45% participation in its factoring for Acme Equipment.
- Participant advises Factor that it is having financial problems and can no longer fund its share of future advances.
- Is Factor required to fund 100% of future advances?
- Does Factor have liability to Client if it only funds 55% of the advance?
- Does Factor have a claim against Participant?





Scenario #8



- You purchased a participation in several transactions with Novice Factoring Company as the lead.
- The client failed and you lost most of your participation.
- You later learn that Novice was purchasing accounts without verification, did not discover that inventory and sales reports had been falsified, and failed to give you required reports which would have revealed these problems months ago.
- The Participation Agreement provides that Novice will manage this transaction in which you participated with the same level of care as Novice exercises in managing transactions for its own account. It also provides that Novice will not be liable for any acts or omissions in managing the financing except gross negligence and willful misconduct.
- Do you have a claim against Novice for your losses?





Scenario #9



- Factor is financed by Senior Lender.
- The relationship with Senior Lender has been strained at times but overall is acceptable. Factor has occasionally been late in providing financial statements and errors in the Borrowing Base Certificate were found on several occasions
- In the past Senior Lender ignored these lapses. The last few months, Senior Lender has been quick to jump on any lapses and warned Factor, "Look out – your loan is no longer profitable and we are getting a lot of pressure to do something about it."
- Last week Factor was 5 days late in submitting its quarterly financial statements. Senior Lender just called and advised you are in default and the financing will be immediately terminated and your portfolio liquidated unless you agree to pay a default waiver fee of \$100,000 and increase your interest rate by 6% retroactive to January 1.
- Can Senior Lender do this?





Scenario #10



- Factor is financed by Senior Lender.
- News reports are regularly describing the precarious position of Senior Lender.
- Six months ago, Factor went to Senior Lender to discuss renewal of the line of credit. Senior Lender responded that they were in business to lend money and, although times were tight for everyone, they would still be lending money, and Factor was a good customer who fit well in Senior Lender's portfolio.
- Since that discussion, Senior Lender has received \$75 billion in T.A.R.P. funds and the government has just announced it will place \$40 billion of equity into Senior Lender.
- Based on these assurances, Factor did not pursue other financing options. The line of credit matures in two weeks and Senior Lender just announced they will not renew the line of credit.
- What are Factor's options?





Scenario #11



- Factor is financed by a Senior Lender. Senior Lender fails/or is about to fail. What now?


