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Marks & Weinberg, P.C.

newsline

NEFA HEADQUARTERS
P.O. Box 69
Northbrook, IL 60065-0069
847-380-5050 main
847-380-5055 fax
www.nefassociation.org
info@nefassociation.org

EXECUTIVE DIRECTOR
Gerry Egan
847-380-5050
gegan@nefassociation.org

SENIOR ASSOCIATION COORDINATOR
Kim King
847-380-5050
kking@nefassociation.org

NEWSLINE EDITORS
Lisa Rafter
lisarafter@rw-assoc.com
Abigail Sutton
abigailsutton@rw-assoc.com

DESIGN & PRODUCTION
R&W Publishing Associates
315 Poplar Ave, Suite P564
Devon, PA 19333
215-765-2646
www.rw-assoc.com
lisarafter@rw-assoc.com

ADVERTISING SALES
Lisa Rafter
215-765-2646
www.rw-assoc.com
lisarafter@rw-assoc.com

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LETTER

From NEFA'S President



Chris Enbom, CEO
Allegiant Partners Incorporated

It seems too early for reflections but we are at this point in the year again.

I am pleased to report this year has been very positive for the NEFA. Attendance at conferences was up nearly 50% over 2010 so we are definitely on the right track. Our membership has been engaged, and the content of our conferences has been better

than ever. Deals are getting done between members and my company, Allegiant, has been right there in the mix closing transactions with NEFA members.

In addition, Gerry Egan has been on the job for nearly one year now. What a difference having great leadership makes! Gerry is great to work with. Energetic, forward thinking, tech savvy and engaging. We are very lucky to have Gerry, Jamie and Kim King on our team! I know they have exciting things in store for 2012.

Although the environment still feels somewhat depressed to me due to high unemployment, deficits and political turmoil, there are many indications things are getting better. Banks are lending more aggressively now than we have seen in many years and certain niche lessors are having very good years.

Smart people will continue to do well in the long run, and this period in history is no exception. At Allegiant we continue to invest fairly heavily in new technology. We are taking advantage of "cloud" offerings from CRM providers and from our front and back-end provider. We are continuing to work closely with origination sources, both internal and external, in blending technology with our credit boxes.

We believe the future for brokers is very positive if they are very heavily invested in technology and with knowledge of niche markets. Without these two skills, more sophisticated banks and lessors will continue to take business share from them. Creative brokers will find ways to forge alliances that include technology with funders. Being involved with NEFA allows you to stay abreast of what is happening not just with funding but with technology and process advancement.

I am pleased to be handing the leadership reigns of the organization to an excellent Board of Directors and an experienced Executive Committee. The Executive Committee will be headed by Hugh Swandel of the Alta Group. Hugh has been on the board of both UAEL and NEFA for many years and understands the issues facing associations in the equipment financing space. He will provide good leadership along with John Rosendlund of PFSC, John Donohue of Direct Capital and Frank Peretore of Peretore & Peretore.

I am looking forward to 2012 and I will see you in San Diego at the NEFA Spring Conference!

Chris Enbom
NEFA President

From NEFA'S Executive Director



Gerry Egan
Executive Director

What a year, what a ride!

I started this year taking the helm of NEFA without, quite frankly, much of an idea of what the job entailed and it's been a whirlwind learn-as-you-go adventure. The good news is, I signed on as things in our industry were leveling off and ever so slowly starting to move again in the right direction.

Earlier this week, at our Expo Super Regional event in New Jersey, we saw statistics provided by ELFA which verify much of what we've seen this year. Things are starting to pick up. We're all a long way from where we'd like to be, but at least we are, in fact, moving in the right direction.

NEFA is, too. That New Jersey event reached a new high in attendance, drawing 35% more people than last year. In a very exciting, positive sign, that growth was almost evenly divided between first time attendees and long time members who hadn't been able to participate in much over the last few years. I loved seeing that.

It was no fluke, either. We also had dramatically improved attendance at our Funding Symposium in September and at our Equipment Finance Summit back in March. While we've still seen a few people leave the business this year, we also drew way more new members than we'd expected. Again, in a hugely positive sign, they also are pretty well distributed between Broker/Lessor, Funding and Service Provider members.

All those things excite me as we begin planning for 2012, planning for even better conferences and networking events and expanded educational offerings. But I still need each and every one of you to make it all happen. We're solid and operating in the black but as a small not-for-profit organization, we need each of you to get your membership renewal dues in on a timely manner.

You should have already received a renewal notice and invoice by email at least once. To keep costs down in your association, we're not sending them out via postal mail but only by email —NEFA Mail. Please act quickly to get your renewals in before your membership year ends on December 31. Your invoice email has details about an exciting opportunity for those of you who do!

Thanks for inviting me along for the ride this year. I'm really looking forward to next year's journey!

Gerry Egan

Gerry Egan
Executive Director
Direct Phone: 847-380-5052
Email: GEgan@NEFAAssociation.org



COON JOINS TAB BANK AS VP, NEWLY CREATED EQUIPMENT LEASING DIVISION

TAB Bank launches its Commercial Equipment Leasing Division to provide capital equipment financing solutions to companies throughout the U.S. and announces that Mike Coon has joined as vice president of the newly created division. He will be based out of Grand Rapids, MI.

DIVERSIFIED CAPITAL HIRES VP BUSINESS DEVELOPMENT

Diversified Capital Credit hired Samantha Camerlengo as vice president of business development. Previously, she was with NY Life Investment Management and a senior sales team member of GE Commercial Finance.

TAB BANK PROVIDES EQUIPMENT LOANS IN OCTOBER

TAB Bank provided 56 equipment loans for \$14.2 million and one capital lease purchase from a lease originator for \$300 thousand in October. These loans were provided for companies across a broad spectrum of industries.

BOSTON FINANCIAL CLOSES TWO FINANCINGS

Boston Financial & Equity closed two transactions for two early stage companies. The most recent closing was a four-year old company based in IL. BFEC provided them with a \$250,000 equipment lease line for additional test and manufacturing equipment. Prior to that BFEC closed a \$100,000 equipment lease for an angel backed startup company in FL.

PAWNEE LEASING POSTS GROWTH IN Q3

Pawnee Leasing posted another successive quarter of growth in its portfolio, which now exceeds \$125 million for the first time. Net charge-offs during the quarter were also modest at \$1.1 million, contributing to the strong results.

ENVISION CAPITAL LAUNCHES EQUIPMENT VENDOR FINANCING PROGRAM

Envision Capital announced the launch of a vendor financing program to offer equipment vendors an opportunity to increase sales and grow their businesses.

LEAN ADDS NEW FIRMS IN PHILADELPHIA, MONTREAL, ATLANTA

The Lease Enforcement Attorney Network (LEAN), a nonprofit association of law firms with a practice concentration in the enforcement of equipment leasing and finance obligations, has added three new members located Philadelphia, Montreal and Atlanta.

Philadelphia: Deeb Blum Murphy Frishberg & Markovich; Montreal: Lavery, De Billy; Atlanta: Sicay-Perrow, Knighten & Bohan.

AMERICAN EQUIPMENT FINANCE & ASCENTIUM CAPITAL ANNOUNCE MERGER

Ascentium Capital announced the merger of American Equipment Finance and the appointment of Richard A. Baccaro as executive vice president of sales and marketing. As senior vice president of sales, Len Baccaro will be responsible for direct originations in the petroleum, convenience store, car wash and franchise industries.

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www.amaweb.com

OUTLOOK 2012:

An Independent Lessor's View



Independents that have survived to this point have undoubtedly been able to lean on strong relationships and/or strong balance sheets. A few were well situated to pick up market share in certain niche markets when others were forced to exit quickly. These players will undoubtedly continue to carve out a business in the future and some may likely become acquisition targets.

BY BRUCE J. WINTER

Most small, independent equipment lessors would agree that the past few years have been a very challenging period in our existence. After working for nearly thirty years in this industry, a period that included three national recessions, I believe the 2008/2009 timeframe was by far the most difficult. A housing bubble leading to the most significant economic downturn in this nation since the Great Depression, coupled with a serious banking crisis, coincided to create an environment that was very problematic to those without exceptionally strong portfolios and their own secure, low cost funds. Many small independent lessors, especially those without a healthy balance sheet, were driven out of business.

Although small independents suffered the most, the large independent lessors were not exempt from troubles. While some have survived, and even thrived, there is a long list of large non-bank institutions that have been forced to either close, sell to a stronger competitor or seek a bank charter to continue in business. Even the largest non-bank commercial finance company in the world is a mere shadow of its former self.

Our industry, which was built on entrepreneurial creativity and effort, has been eclipsed by large banks with one very significant advantage...a substantially lower cost of funds courtesy of inexpensive government insured deposits. Over the last two decades, many banks have hired professionals with equipment leasing experience to set up and run bank-owned leasing subsidiaries.

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And while many of these banks initially embraced a third party origination model, a large majority of these institutions have abandoned this model over the last few years. When forced to downsize, it was simply easier to cut non-employee originators without regard to the profitability of each independent lessor relationship. Even lessors with excellent portfolio performance were jettisoned simply because they were in the wrong industry or the bank was cash constrained and chose to book only new business generated by its employees.

The problems of the recent past have been further exacerbated by the unabashed strategic moves of larger banks to squeeze out independent financing companies. I was told recently, by a national funding source, that “slowly but surely our bank is working to ease out third party originators.” Many of these same institutions were propped up by our taxpayer financed bailouts and clearly would have failed without substantial government support. The bailouts even extended to major non-bank commercial finance companies that could not meet their short term credit obligations without the direct support of the U.S. Treasury. Bankruptcy is normally defined as the inability of a debtor to meet its financial obligations when due. The end of 2008 redefined this term as many “technically bankrupt” entities were saved by the unprecedented actions of our government.

We are now faced with an extremely competitive environment controlled by the surviving big banks that are using their massive financial girth to achieve growth at our expense. The recent ELFA conference in San Antonio highlighted this reality. While this conference enjoyed a growing audience from the prior year (but nowhere near the peak from just a few years ago) nearly half of all attendees were representing the fifty largest industry participants. Many of these same organizations have chosen to limit their buy desk activities with only select partners and exclude all others. These actions have forced more independent lessors out of our industry and limited the effectiveness of others to compete. Certain national funders that previously served the third party marketplace are now pursuing a strategy that capitalizes on the past efforts of independents by directly calling on the independent lessor’s customers and vendors.

While it is easy to blame the big banks, independents are not without some responsibility for the present environment.

Substantial losses incurred by funding sources, including several large and publicized fraudulent transactions, served to sour many historical funders to our market. Furthermore, the pursuit of lower quality transactions simply to achieve ambitious volume goals is normally a strategy that gets flushed out in times of economic distress. This latest economic cycle has proven extremely effective in bringing down such risky economic models. And most importantly, independent lessors with no “skin in the game” (equity) were unable to support their contractual obligations during the depth of the

financial crisis.

The New Reality

Following significant drops in new business origination by many in our industry in 2008 and 2009, the second half of 2010 and calendar year 2011 have demonstrated a slight rebound in new business, limited by the reality that many businesses continue to delay or defer equipment acquisitions. While volumes are trending up year over year, very few in our industry can claim business volumes approaching those of the peak years of 2006 or 2007.

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In my experience, much of the recent new business is being driven by replacement equipment acquisitions, instead of projects fueled by business expansion. Refinancing solely motivated by the lowest interest rates of our generation has also provided some much needed volume for lenders. The good news for the next few years is that the replacement cycle will continue to accelerate as businesses are eventually forced to upgrade to remain competitive.

Credit risk tolerance appears to be easing somewhat as many lenders have seen their portfolio performance improve with write-offs down significantly. Some are even beginning to enjoy the collection of recoveries which bolster the bottom line. All remaining participants are now keenly aware of the need for new business to offset the runoff from existing portfolios. In 2009, lenders could afford to sit on the sidelines and simply collect from their existing portfolios while enjoying a dramatically decreasing cost of funds. Those days are now over and we are back in a mode where aggressive marketing and lending is required to move forward.

The more difficult reality is that only a sustained confidence in strong national economic growth and job creation will encourage aggressive expansion and, for

now, too many signs point to continued weakness in this area. How can we start turning the tide on huge government deficits without further damaging the economy? How can we pull trillions of dollars out of our economy over the next ten years (either through spending cuts and/or tax increases) without stifling economic growth?

Independents that have survived to this point have undoubtedly been able to lean on strong relationships (vendor, customer and funder) and/or strong balance sheets. The best positioned have likely relied on both. A few were well situated to pick up market share in certain niche markets when others were forced to exit quickly. These players will undoubtedly continue to carve out a business in the future and some may likely become acquisition targets.

What to Expect in 2012

Demand for equipment will be steady but will not approach the volumes seen at the peak of the last cycle. Competition will remain fierce and the interest rate wars will continue for stronger credits. Rate wars have started and will accelerate in the "less than A" credit marketplace, as

surviving lenders that cannot compete against the big banks on pricing will open their credit windows wider to win business. Rate driven refinancing will continue in the short term but will start to taper off later in the year. Creative marketing, structuring skills and an entrepreneurial mindset (the trademark of the pioneers of our industry) will allow some small independents to thrive.

Funding for independent financing companies from the largest banks will remain tight and only those with strong balance sheets and relationships will have access to these lower cost funds. The existing big banks will otherwise continue to shut out third party originators.

But three decades in this industry have engrained in me one undeniable fact. Good originators are a special breed, and it will not be long before a whole new crop of lenders "discover" the third party origination model to grow their portfolios. They will be wowed by the ease of quick growth and further impressed with the incredible low cost for originating significant volumes of new business. Some will fail as they learn difficult lessons regarding the nuances of buying third party paper. Others will take market share from those that abandoned the indirect model during this last cycle and will become a stable funding source for independents. Strong independent lessors will cultivate these new funding sources and forge mutually beneficial relationships with a new set of players.

And one thing is certain. The independent model will survive and the seasoned veterans of this latest economic cycle will once again thrive. ■



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ABOUT THE AUTHOR



Bruce J. Winter, CLP is President and Founder of FSG Leasing, Inc., a middle market independent lessor incorporated in 1991 and headquartered in Maryland. He served

on the EAEL Board since 1997 and was the recipient of EAEL's "Most Admired Lessor" award in 2008. He co-chaired the EAEL-UAEL Joint Task Force, which culminated into the formation of the NEFA and served on NEFA's first Executive Committee. Bruce is also a past Director of The CLP Foundation and is an editor of "The Leasing Professionals' Handbook." He graduated from the University of Maryland, College Park with a B.S. in Finance. He can be reached at bjw@fsgleasing.com.

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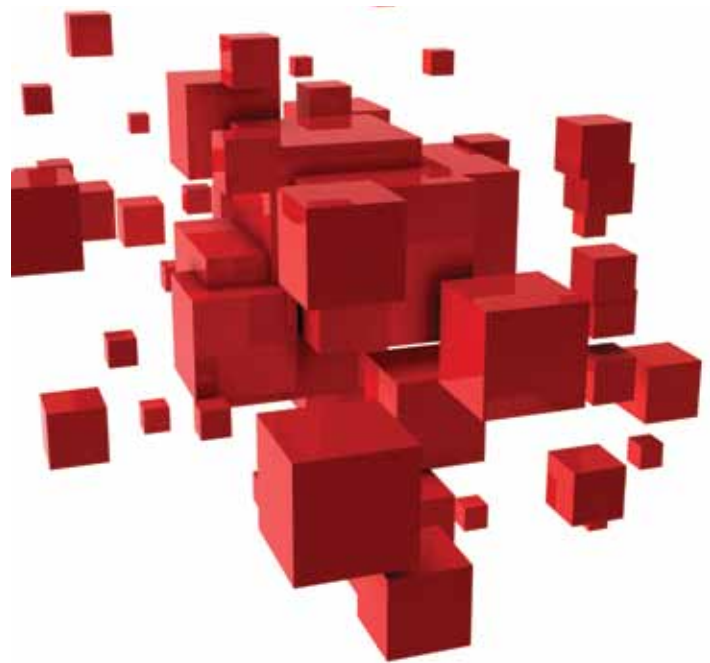
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Asset Management Today

One way to harness the speed and power of today's availability of information is to outsource your asset management to experts who are knowledgeable about the various equipment markets and specialize in the many services required for today's portfolio from repossessions, to remarketing to site and collateral inspections.

BY BRODY PACK AND JIM MERRILEES

How does asset management differ from the past? What areas do you have control over? Are you even exercising that control? In a global marketplace where the actions of a country half way around the world have an immediate impact on our business today, are you exercising your full control? We should on a regular basis review the aforementioned questions with our management teams. The answers may be surprising and will continue to evolve as our industry itself changes.

For those who have been in the business for a while it can be easy to initially think that the fundamental policies and procedures remain relatively the same - that the game hasn't changed. However, if we thoroughly consider the questions we would all have agree that the evolution of how our business is transacted has changed significantly, especially in the past three years. Through the rest of this article we would like to explore one of those changes and how that has allowed for greater control over the portfolio.

The biggest change to the industry has been the speed and access to information. Business is now transacted at the speed of light with a plethora of information available at ones fingertips. Failure on our part to not properly utilize this information will

ultimately cost us, if not leave us behind. One way to harness the speed and power of that information is to outsource your asset management to experts who are knowledgeable about the various equipment markets and specialize in the many services required for today's portfolio from repossessions, to remarketing to site and collateral inspections.

We are all painfully aware of the need and benefits of good, reputable repossession/remarketing firms. Over the past few years you have probably familiarized yourself with your remarketing firm more than you anticipated. Fortunately, it now appears that the wave of defaults is in the rear view mirror and new deals are once again going on the books. So, with the change in portfolio condition, what part of our asset management plan should we turn our attention to? May we suggest inspections? One of the benefits of modern technology is that inspections can be assigned, completed and the reports in your hands within 24-48 hours and for a very reasonable cost. Imagine how much stronger your portfolio could be if you had an avenue of determining early on when a lessee/debtor has moved locations or when your equipment is not receiving even basic maintenance. Consider the ability to determine if a new deal is "as advertised," or if the vendor is reputable. Think of the money and headaches you will save by not funding that deal rather than dealing with it 12 to 18 months later.

Now is the time to review your asset management plan, especially your company's use of site and collateral inspections. Unfortunately, even after the economic typhoon we have just survived we continue to witness the "same old, same old" approach to portfolio management rather than proactively looking at what tools exist for stronger control. Let us propose two areas of inspections that would be a worthwhile review in your asset management plan.

First, let's look at the current paper on the books, both the notes that are troubled as well as those that are performing as expected. Take a moment and ask yourself, what current triggers within your collection or customer service departments exist for inspections. Does a closed bank account with no contact on an EFT indicate a potential problem? Does chronic lateness on payments suggest a deeper issue? Would conducting a yearly inspection of a percentage of your accounts strengthen your portfolio? Obviously only you know your portfolio mix and what

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internal pressure points exist for your company, but don't underestimate the power and attention-grabbing results with your customer that a site/collateral inspection lends. We often see the surprise in the borrower's faces when they see an inspector at the door and realize, maybe for the first time, that you can and are intimately involved in their account. It can be a huge tool for strengthening the control over your current portfolio.

Second, let's review the role of inspections in the writing of new deals. Believe it or not even today too many small ticket transactions, \$250,000 and under, go without proper inspections. We often hear that it's a hassle to complete pre-fund inspections or that inspections delay fundings to vendors and/or brokers. In our opinion these are weak excuses. Depending upon the location and the equipment, almost all inspection companies can deliver a concise report to your desktop within 24-48 hours. That inspection not only protects you as the lender but it also delivers a message to your customer that you are their partner and that you are just as concerned as they are that the equipment be as advertised. Unfortunately, we find too many times the prevailing attitude from brokers or the credit departments that, "I am only doing the inspection because it's a policy."

What a loss when these inspections can be a tool for gaining further knowledge into the equipment on your books and the reasons why your lessee/debtor uses it. This will help you identify emerging marketplace trends and be on the forefront for recognizing where the next hot market will be.

Overall inspections do not take much time or expense with a typical range from \$100 to \$300 for traditional services. When you consider the prevention of only one mistake will cover the cost of hundreds or even thousands of inspections, it's absolutely worth the expense. Partnering with a reputable inspection company especially one with backend equipment management experience will pay for itself a hundredfold if you actively employ the use of inspections within your portfolio.

In conclusion, you only have so much control over the portfolio, so don't short-change yourself. Learn about the tools that exist to help you actively manage your accounts and minimize your liability. We can't stop the next bankrupt European country nor can we calm the next Asian tidal wave but we can help control and stop the next fraudulent deal or identify the next account to go bad through effective asset management. ■

ABOUT THE AUTHORS



James K. Merrilees, CLP is Vice President of RTR Services Inc., a nationwide company servicing the banking and equipment finance industries for over 20 years. Mr. Merrilees has thirty-eight years of

professional experience in commercial leasing and related industries. He has held senior management positions for both equipment leasing and service providers to the industry. He is a past board member of ELFA, NEFA and the CLP Foundation. Jim can be reached at jimmerrilees@is-rtr.com.



Brody Pack is AVP of Operations of RTR Services, Inc. and has been working in the leasing industry for 9 years. He began his career with FINOVA Capital and has worked for RTR Services for the past 5

years. He can be reached at 800-238-3294 or brodypack@rtrservices.com.

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Appraising Your Appraisal: What's It Really Worth?

Times have changed, and so has the appraisal industry. USPAP defines a number of issues that clearly benefit the appraisal user in understanding the details and scope of an appraisal and its overall validity. After many decades, the appraisal industry is making gigantic steps improving not only its image, but the quality of the products it provides clients.

BY CARL C. CHRAPPA



Appraising is most often viewed as part art and part science. In its purest form, it encompasses the rendering of an expert's opinion as to the value of a tangible or intangible piece of property. Appraisal experts exist in many fields, such as gems, jewelry, art, antiques, rugs, pottery, real property, and last, but not least - machinery and equipment. Equipment appraisals are used by lessors for numerous reasons, including:

- Internal & External Audits
- FASB 13 Requirements (and soon IASB Requirements?)
- Credit Committee Reporting as to Residual Value Assumptions
- Vendor Program, Product Line Studies and Residual Analyses
- Asset Securitization
- Portfolio Acquisitions
- End-of-Lease Purchase Option Appraisal Procedures
- FASB 144 Requirements
- etc.

In my position, I have a unique insight into the appraisal industry, since I am both a provider and user of appraisal services. As a portfolio manager, I have used third-party appraisals. Also, while employed by a residual guarantor, I reviewed many lessors' appraisals which sought to provide some level of comfort

the lessor was seeking. If I had to rate the appraisals I have read, the rating would be a collective D+, and in many instances, a flat-out F. In past years, an appraisal user – whether he or she knew it or not – received perhaps a 25-page appraisal that contained 24 pages of boilerplate and 1 page related to the actual appraisal. Usually, a statement would be made somewhere in the report, and without substantiation “....it is the appraiser's opinion that...” Other appraisals would simply state “FMV equals..., OLV equals...” etc. Nowhere in the appraisal could the user even find the definition of FMV or OLV. Even if the reader did, he or she would be unable to determine how the value was calculated since no explanation is given. To make matters worse, inadequate and poorly written appraisals are in the lessor's lease schedule file to support the residual assumptions used by the lessor. This could spell big trouble.

Era of Change

Times have changed, and so has the appraisal industry. Beginning in 1985, the U.S. Congress began investigating real estate appraisal practices, which it felt were in some part responsible for the savings and loan collapse. An outcome of this was Title IX of the Financial Institution's Reform, Recovery, and Enforcement Act (FIRREA) of 1989. At about the same time, the Appraisal Foundation was established. This also led to the establishment of the Uniform Standards of Professional Appraisal Practice (“USPAP”). USPAP consists of ten Standards related to real, personal and business appraisal development and reporting, as well as real and personal property consulting and reporting, and mass appraisal and reporting. The standards specifically applicable to equipment appraisals are Standards 7 and 8: Personal Property Appraisal Development and Reporting. The standards are written in order to establish a minimum criteria for an acceptable appraisal. These standards were developed for users of appraisals, and to act as a reporting standard for appraisers in making appraisals complete and understandable. Perhaps the most important ramification of USPAP is that now users of appraisals should have a clear understanding about what to expect and find in an equipment appraisal. According to the Appraisal Foundation, appraisers must adhere to these standards in order to produce an acceptable appraisal.

What an Appraisal User Should Know

USPAP defines a number of issues that clearly benefit the appraisal user in understanding the details and scope of an appraisal,

and its overall validity. These standards also include ethics provisions governing appraiser conduct, management, confidentiality, and record keeping. You should be aware that confidentiality in an appraisal is assumed. Disclosing confidential factual data is prohibited under USPAP, unless the client specifically authorizes the release of information. Another interesting point relates to record keeping. USPAP states that all written records must be maintained for a minimum of five years after the preparation of an appraisal, and at least two years after the final deposition of a judicial proceeding, whichever occurs last. This could be particularly useful (in preserving work papers) in shorter-term leases. Furthermore, USPAP also states that it is unethical for an appraiser to accept or continue an assignment the he or she is unable to competently complete.

Burden of Proof & The Appraisal Process

USPAP states that ...the burden of proof is on the appraiser to decide before accepting an assignment, that the result will not confuse or mislead. The burden of disclosure is also on the appraiser to report any assumptions or limitations. Therefore, it is the appraiser's duty not to confuse the client or third-party user in the interpretation of the appraisal results. Further rights are established under Standards 7 and 8, which include such statements as, the appraiser should understand and correctly employ recognized methods and techniques to produce a credible appraisal. The appraiser should not commit substantial errors of omission or commission. Further, appraisers should not render appraisal services in a careless or reckless manner, which would lead to results that are misleading. The appraiser must also identify the property to be valued, including the method of valuation; define the purpose and intended use of the appraisal; and define the value to be considered which must be consistent with the purpose of the appraisal. In developing an equipment appraisal, the appraiser must consider the highest and best use of the property, as well as defining a measurable marketplace, which the appraiser must identify and analyze. The appraiser must also consider market conditions at the time of valuation, and consider a sufficient quantity of data of any prior sales of the same or similar equipment to reach an appropriate estimate of value. Furthermore, the appraiser must consider the Cost, Market and Income Approaches to Value, and the degree of applicability to

the equipment appraisal. Selection of the valuation approach or approaches to be used should be based on the availability of data, and the purpose of the appraisal. The appraiser must also consider the effects on value – particularly on used equipment – for such attributes as condition, style, quality, manufacturer, age, etc. This all ties in well with the FASB 144 (fmr FAS 121) method of valuing an asset.

Appraisal Certificate

USPAP Standard 8-3 states that each equipment appraisal must contain a certificate signed by the equipment appraiser (not corporation) which includes language that certifies: the statements of fact are true and correct; the report is limited only by the stated assumptions and limiting conditions; the appraiser has no present or prospective interest in the property being appraised; the appraiser has or has not provided appraisal services regarding the subject within the past three year period; the appraiser's compensation is not contingent upon the reporting of a predetermined value or direction that favors the cause of the client; the analysis, opinions and conclusions have been prepared in conformity with USPAP; the appraiser has/has not made a personal inspection of the equipment; and no one has provided significant professional assistance to the person signing the report (if there are exceptions, the name of each individual providing significant professional assistance must be stated).

Summary of Appraisal Users' Rights

In summarizing the foregoing, it is clear that users of appraisals – that is, appraisal clients – should expect to see the following in their appraisal reports:

- A listing of the date of the report was issued, and its effective date;
- A signed Appraisal Certificate;
- Limiting conditions and assumptions;
- Definitions of condition, terms, and values used;
- Purpose for which the appraisal is intended;
- Sources of information relied upon;
- Listing of Client(s) and intended User(s);
- Scope of Work to be performed;
- Consideration of the approaches to value (Cost, Market and Income) and conclusions;
- A narrative explaining the method of

collecting, confirming and reporting the data;

- A complete listing and description of the equipment appraised, including condition (or assumption of condition, where appropriate)
- Where appropriate—the appraiser's opinion of highest and best use of the equipment, and a listing or sample of comparable sales data, auction results, offers from reputable firms, sales brochures, etc. If not disclosed in the appraisal report, it must be contained in the appraiser's work file.
- A list of the appraiser's education, experience, and qualifications, etc.

Conclusions

It is hoped this article has provided you with a concise list of important elements that should be contained in every appraisal report. After all, if you're going to "bet the farm" on an appraised value, it would be helpful to understand where the value came from, how it was derived, and if a secondary market actually exists for the subject equipment.

After many decades, the appraisal industry is making gigantic steps improving not only its image, but the quality of the products it provides clients. However, as we all know, this comes at a cost. Are you willing to endure, or gamble with your company's future? ■

ABOUT THE AUTHOR



Carl C. Chrappa is President and CEO of Independent Equipment Company, the nation's oldest equipment management outsourcing firm, headquartered in

Clearwater, Florida. He is a registered auctioneer and nationally (A.S.A.) as well as internationally (M.R.I.C.S.) tested and accredited senior equipment appraiser with over 35 years of experience.

Carl is a current and founding member of The Equipment Leasing and Finance Association's Equipment Management Committee, he also serves on the Board of Directors of the Commercial Finance Association, and is a past Director of ELFA Business Services, Inc., he was elected and currently serves on the ELFA's Service Providers Steering Committee. He can be reached at cchrappa@iecvalue.com.

Damaged Goods—Can a Lender Recover More Than Just the Cost of Repair?

BY DENNIS A. DRESSLER AND DAVID A. WARGULA



Your borrower has an accident and equipment acting as collateral for the loan is damaged. The very fact that the equipment was damaged can negatively affect its value even if it is repaired correctly. This is particularly true regarding certain mobile equipment such as aircraft and vehicles where the accident would be discoverable by a reasonably diligent purchaser. A buyer of equipment, in choosing between two similar units, one with a damage history and one without, will invariably choose the unit without a history of damage - negatively affecting the price and the time the equipment is on the market. Because the diminution in value of the equipment caused by the accident can be a significant percentage of the equipment's value, particularly for aircraft, following an accident a lender should quantify the diminution in value caused by the accident and seek recovery from the insurance company for that loss whenever possible. This article focuses on strategies for compelling insurers to pay diminution in value losses sustained by equipment lenders when their collateral is involved in an accident.

What Courts Have to Say about Recovering Diminution in Value Damages

A recent Idaho federal court decision is instructive as to the techniques and

strategies that can be used to compel an insurer to pay diminution in value losses. Following a declaratory judgment action, an Idaho federal district court found that an industry-standard property-loss policy covering aircraft must be interpreted to cover losses not only for the cost for repairs to the damaged aircraft but also for losses resulting from the diminution in value of the collateral on the resale market attributed to the loss. The Idaho court's decision carefully scrutinized the language of the policy, pertinent state law governing insurance contract interpretation and a number of cases in Idaho and other jurisdictions to reach the appropriate reading of the policy. While equipment lenders will find the outcome of the Court's decision heartening, even a favorable decision is the product of uncertainty and expense. In situations where the collateral is at risk of significant diminution in value if involved in an accident, a dialog with the insurer about the extent of the policy coverage after a loss is advisable in terms of risk management, pricing and avoiding future disputes over obtuse policy language.

Is the Policy Language Ambiguous?

The language of the policy at issue in the Idaho case regarding coverage for a loss was broad. The policy read: "INSURANCE FOR PHYSICAL DAMAGE TO YOUR

AIRCRAFT...Aircraft physical damage... we will pay for physical damage to your aircraft." The definitions section of the policy defined "physical damage" as the "direct and accidental physical loss of or damage to property (also called loss)." Circuitously, the policy defined "loss" as "physical damage." The policy explicitly excluded coverage for "depreciation" and "damages for loss of use" as well as carrying riders excluding losses due to war, terrorism, nuclear risks, exposure to asbestos, noise and pollution. The terms "depreciation" and "loss of use" were not defined in the policy; the policy did not expressly exclude - or even mention - coverage for diminution in the value of the aircraft after a loss. Unfortunately, little Idaho law was directly on point concerning the issues presented by the lender's lawsuit. Worse, there is a split of authority among other state courts concerning how to interpret insurance policy language similar to the language found in the borrower's policy (albeit mainly in the context of automobile insurance losses). Nevertheless, Idaho, like most states, recognizes the general rule that insurance contracts are adhesion contracts not subject to negotiation between the parties (i.e. "take it or leave it") and therefore any ambiguities in the contract are to be construed against the insurer.

The lender emphasized that it did not seek to recover damages for any reduction in value to the aircraft due to ordinary depreciation, the inability to use the aircraft, or the passage of time all of which were express policy exclusions. Rather, the lender emphasized that it sought recovery for damages which were the result of a single, specific incident. The lender argued that key policy provisions in the policy to pay for losses to the aircraft were reasonably subject to conflicting interpretations and therefore the policy's promise to pay for restoration of the aircraft to "like kind and quality" meant the insurer should put the insured in the position it was immediately preceding the accident and pay for

physical repairs to the aircraft as well as pay for the diminution in the value of the aircraft caused by the accident.

The lender acknowledged there was no Idaho or other state case law addressing whether language in an aircraft insurance policy required an insurer to pay for diminution in value of an aircraft after a loss. However, the lender was able to discover an opinion issued by a Kansas court which found that the word “repair” was ambiguous language in the context of an automobile policy. The Kansas court interpreted a promise to pay for repairs to property to mean “to put the insured in substantially the same condition as he was before the occurrence.” The Kansas court further noted that the burden is on an insurance company to use clear language when seeking to limit its liability. Moreover, the Kansas court relied in part on the Kansas Supreme Court’s analysis of insurance policies, generally, which concludes that whenever an insurer makes an election to repair or rebuild under a typical ‘repair, restore or replace clause’ in an insurance policy, the insurer is obligated to put the vehicle in substantially the same condition as it was prior to the collision so as to render it as valuable and as serviceable as it

was prior to the loss.

Your Kind and Quality is not my Kind and Quality

The lender also noted a number of other courts which have found ambiguity in automobile contracts using “like kind and quality” language similar to the aircraft policy in dispute in the Idaho case. A Colorado court found that an automobile insurer’s argument that the phrase “like kind and quality” obliged the insurer only to return a vehicle to the insured in substantially the same condition as it was before the accident was incorrect under Colorado law. The Colorado court cited a leading commentator to support the principle that an automobile is not restored to substantially the same condition if repairs leave the market value of the automobile substantially less than the value immediately before the collision. The Colorado court held that the phrase ‘like kind and quality’ does not unambiguously support the position that an insurer is obligated only to restore the insured property to a functioning capacity.

Another Colorado court held that public policy requires insurers to disclose fully

and fairly to insureds what insurance protection is being provided for the premium charged, so an ambiguous policy phrase ‘like kind and quality’ results in the insurer being responsible to pay diminution in value damages. Yet another Colorado court added that objectively reasonable expectations of applicants regarding the terms of insurance contracts will be honored and that ‘like kind and quality’ sets just such a reasonable expectation.

Even without a finding that the policy language is ambiguous, other state courts have found that diminution in value is recoverable under policies similar to the aircraft policy. A Louisiana court held that Louisiana law allows the insured to recover losses for diminution in value to a vehicle involved in an accident as one of the elements of damages since such damages are not in the nature of a vehicle’s ordinary depreciation, but depreciation that is a direct result of an accident. The Georgia Supreme Court reached a similar conclusion, opining that Georgia law follows the ‘long-standing’ contract interpretation rule that an insurance policy drafted by the insurer which promises to pay for the insured’s loss includes losses to both the utility and value of the insured vehicle. Notably, a number of other states



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follow this analysis, including Mississippi, South Carolina and Tennessee. Unfortunately, not all courts agree and there is distinct disagreement over the issue.

Excluding the Exclusion?

The lender in the Idaho case stressed that the insurer, who drafted the policy, failed to define “like kind and quality” while defining other matters in great detail and that this conspicuous failure underscored the ambiguity of that undefined term. For example, the policy took great pains to exclude damages caused by war, terrorism, nuclear risks, asbestos exposure, noise, pollution and “other perils.” These exclusions were spelled out in considerable detail throughout the lengthy policy, including exclusionary riders and definitions pages. In essence, the insurer took considerable efforts to carefully define numerous exclusions to coverage but failed to exclude diminution in value from the definition of a covered physical loss.

The Idaho court agreed with the lender’s argument that whenever an insurance policy’s language is ambiguous, the Court must ask whether the policy is reasonably subject to conflicting interpretation and if so, the burden is on the insurer to use clear and precise language if it wishes to restrict the scope of its coverage. Therefore, the Idaho Court found the insurance policy could have, but did not, expressly exclude diminution in value from the definition of physical damage, while it did expressly exclude other types of loss from the definition of physical damage.

The Insurer has all the Options and is Free to Choose Them All

The Idaho Court found that the policy section describing the insurer’s settlement options further bolstered the lender’s argument that the policy was ambiguous because the insurer had three purported options for payment for a loss; it could (i) “pay” its insured, or (ii) “repair or replace damage with parts of like kind and quality” or, (iii) if the insured elected to undertake its own repairs and actually did so, the insurer could apply yet another payment scheme - but the policy failed to articulate a standard under the third option. The Idaho Court found that an ambiguity existed because the insurance policy made no attempt to distinguish the differences between these three choices resulting in three potentially conflicting remedies.

The Take-Away – Points to Remember

For certain collateral whose value would be greatly impacted by a damage history – aircraft, vehicles, specialty manufacturing equipment and the like – determination of whether there is coverage for diminution in value following an accident should be part of the lender’s underwriting analysis. Insurance policies are often riddled with generic definitions and tortuously defined terms, exclusions and coverage disclaimers which may seem impenetrable. However, a careful analysis from the viewpoint of an insured can illuminate gaps in coverage. Especially with mobile equipment, accidents will happen and when they do, the value of the lender’s collateral can be seriously negatively impacted. Understanding what insurance coverage exists when the deal is initially done will allow for better risk management and pricing. Lenders would be wise to sharpen their focus on what the borrower’s property loss policy actually covers especially when the insured collateral is sensitive in nature, such as aircraft. ■

For a more complete statement of the facts, see, *Center Capital Corporation v. National Union Fire Insurance Company Of Pittsburgh, PA.*, Case No. 1:09-Cv-471-CWD, United States District Court for the District of Idaho, 2010 U.S. Dist. LEXIS 106471. Dressler | Peters, LLC represented the lender.

Dodson Aviation, Inc. v. Rollins, Burdick, Hunter of Kansas, Inc., 15 Kan.App.2d 314, 320, 807 P.2d 1319, 1323 (Kan. App. 1991).

Hyden v. Farmers Ins. Exchange, 20 P.3d 1222, 1225 (Colo. App. 2000),

State Farm Mutual Automobile Insurance Co. v. Stein, 940 P.2d 384 (Colo. 1997).

State Farm Mutual Automobile Insurance Co. v. Nissen, 851 P.2d 165, 167 (Colo. 1993).

Defraites v. State Farm Mut. Auto. Ins. Co., 864 So.2d 254, 260 (La. App. 5th Cir. 2004).

State Farm Mut. Auto. Ins. Co. v. Mabry, 274 Ga. 498, 508, 556 S.E.2d 114, 122 (Ga. 2001).

Potomac Ins. Co. v. Wilkinson, 213 Miss. 520, 528-529, 57 So.2d 158, 160 (Miss. 1952) “The measure of the loss to an automobile damaged, but not destroyed, by a collision is the difference between its reasonable market value immediately prior to the collision and its reasonable market value after all reasonable and feasible repairs have been made.”; *Campbell v. Calvert Fire Ins. Co.*, 109 S.E.2d 572, 576-577 (S.C. 1959) “[W]here there is a partial loss and the automobile can be repaired and restored to its former condition and value, the cost of repairs is the measure of liability, less any deductible sum specified in the policy. But if, despite such repairs, there yet remains a loss in actual value, estimated as of the collision date, the insured is entitled to compensation for such deficiency”; *Senter v. Tennessee Farmers Mut. Ins. Co.*, 702 S.W.2d 175, 178 (Tenn. App. 1985) (“Each of the three factors-function, appearance, and value-must be substantially restored. If the repairs restore function and appearance but not fair market value, then the insured is entitled to recovery. We believe that the measure of recovery should be the difference in the fair market value of the property immediately before the accident and immediately after the accident assuming all repairs had been completed.”).

Arreguin v. Farmers. Ins. Co. of Idaho, 180 P.3d 498, 500 (Idaho 2008).

The court cited another Kansas case involving similar choice of payment options as the aircraft policy resulted in a finding of ambiguity, and provides persuasive authority for the Court’s interpretation of the Policy in this matter. In *Dodson Aviation, Inc. v. Rollins, Burdick, Hunter of Kansas*, 15 Kan. App. 2d 314, 807 P.2d 1319, 1323-24 (Kan. Ct. App. 1991), *Dodson* sustained damages to its aircraft after a hail storm. It obtained two damage estimates for the repairs to the damaged aircraft hull, one in the amount of \$89,000, and the other in the amount of \$151,000. Before receiving a settlement offer from the insurer, *Dodson* obtained a “bottom-of-the-line repair” for \$10,000. The jury, acting upon instructions from the court limiting the damages to the actual cost of repair, found that the insured was entitled to damages of \$10,000. On appeal, the Kansas court held that the proper measure of damages in a case when repairs failed to restore the property to its former condition and value was the value of the property immediately before the damage less the value immediately after repairs were made, plus the reasonable cost of the repairs and less any deductible.

ABOUT THE AUTHORS



Dennis Dressler, Esq. is with Dressler Peters LLC in Chicago. He is an experienced attorney who thinks like your business partner. Mr. Dressler specializes in working with lenders in matters involving aviation litigation, bankruptcy, workouts and aviation insurance issues. He can be reached at 312-602-7361 or ddressler@dresslerpeters.com



David Wargula has been helping financial services companies and other business solve problems for over 15 years - focusing his practice on restructures, workouts, bankruptcy and collections. He has represented numerous organizations at many levels, from national banks and lenders to local companies involved business disputes. He has assisted clients in numerous other capacities apart from business disputes - including the creation, review and negotiation of loan and leasing transactions, counseling clients participating in loan syndications, creating and implementing vendor financing programs, guiding the creation of new business ventures and many other matters of general business concern. Before joining Dressler | Peters, David was unit general counsel for a leading healthcare equipment lender. He can be reached at 312-602-7366.

Record Attendance and Many New Members at Funding Symposium in Minneapolis



The energetic and well-attended Ambassador's Reception for first-time attendees and new members was an indication of the lively participation at this year's Funding Symposium in Minneapolis from September 15-17. Attendance was up 50% from 2010 to over 150 brokers, lessors, funding sources and other service providers. There were about 13 new member companies this year and 32 first-time attendees. The meeting location and hotel could not have been more convenient to one another; the beautiful Marquette Hotel was a quick walk across the promenade from the IDS Center. For all attendees, this year's Funding Symposium included important industry updates, education and thought-provoking breakout sessions as well as an opportunity to re-connect with business associates and make new valuable contacts.

On Friday, after a continental breakfast and mingling with the exhibitors and other attendees, Peter Bailey from the Prouty Project gave the opening session, "Exploring Blue Oceans: A Guided Futuring Process." Bailey exudes the power of positive thinking and possibility-thinking, he specializes in engaging business leaders and teams in transformational experiences which enhance their skills, systems, and processes for working better together. He invited participants to

envision their business and service through different creative lenses.

Presenting on funding in this challenging business climate during "Funding From Thin Air" was Mike Coon, TAB Bank and Hugh Swandel, The Alta Group, which was split into two sessions. "Niche & Nest" presenter Amy McChurch, Wheaten Financial gave a lively talk on Friday as well.

On Saturday, in "Tracking Success" Chris Enbom, Allegiant Partners and Nancy Geary, ECS Financial Services, discussed the ups and downs of establishing a funding source, growing the company and surviving a major recession. Enbom, founder of Allegiant Partners, had insightful and at times humorous examples of what it takes to attract equity and debt to a private finance company. Geary discussed working with Allegiant Partners as an auditor and tax advisor through good times and bad.

Gabe Jarnot, Northland Capital; Sarah Rule, M2 Lease Funds; and Brian Bjella, Great America Leasing presented "Identifying, Winning and Maintaining Strategic Vendor Relationships," the session focused on identifying, winning and maintaining strategic vendor relationships. They discussed targeted ways to go about qualifying the most beneficial potential opportunities.

"The Law on Your Side" focused on ways NEFA members can use legal issues to gain a competitive advantage. John Roselund, Portfolio Financial Servicing Co., moderated as Frank Peretore, Peretore & Peretore P.C. and Barry Marks, Marks & Weinberg P.C. discussed common lessee concerns regarding, among other things, clean, fair lease commencement and interim rent, prefunding, late fees and defaults. They discussed the current furor over automatic renewals and how to address lessee questions regarding defective equipment.

Tara Aasand, conference chair, had this to say about this year's successful event, "Planning the 2011 NEFA Funding Symposium was a very exciting and rewarding experience for me. I really enjoyed collaborating with the many great minds in our industry. We created a meeting agenda that was relevant and engaging, and that provided our Association members with useful tools to improve (or at least challenge) the way we do business... I am confident the momentum from Minneapolis will carry forward to future NEFA conferences and provide our members with even better experiences!"

Opportunities for networking included the Ambassador's reception, where new members received a warm welcome by Gerry and Jamie Egan. The Welcome Reception and dinner on Thursday and





President's Reception on Friday night offered beautiful unobstructed views of The Twins Cities from a top floor of the grand IDS Center. Finally, a fun crowd of members enjoyed the crisp fall night at the Minnesota Twins vs. Cleveland Indians game at the modern Target Field.

The Funding Symposium also serves as the annual business meeting for NEFA and the association's directors and officers for 2012 were elected. The newly elected Executive Committee includes Hugh Swandel, of The Alta Group, as President; John Rosenlund, CLP, of Portfolio Financial Servicing Co., as Vice President; John Donohue, of Direct Capital Corporation, as Treasurer; Frank Peretore, Esq., of Peretore & Peretore, P.C., as Secretary; and Chris Enbom, CLP, of Allegiant Partners, Inc., as Immediate Past-President.

Newly elected directors are Kyle Gilliam, CLP, of Arvest Equipment Finance; Brad Harmon, CLP, of First Star Capital; Jesse Johnson, of LeaseTeam, Inc.; Jim Merrilees, CLP, of RTR Inspection Services; and Bruce Smith, CLP, of

Diversified Capital Credit and Health Care Equipment Funding.

They join re-elected Directors Tara Aasand, of Great American Insurance Group; William Ford, Jr., of Ford Financial Services, Inc.; Terey Jennings, CLP, of Financial Pacific, LLC; Tim Mathison, of P&L Capital Corp.; David Normandin, CLP, of Normandin Consulting; and Gary Souverein, of Pawnee Leasing Corporation.

Gerry Egan, Executive Director of NEFA had this to add about the conference, "I was both impressed and pleased by the number of new people entering our business and the number of 'old-timers' who are returning to it. I think that confirms that while this isn't necessarily an easy time in our business, it's a good time to be getting in it. Businesses that, by virtue of being new, aren't locked into old ways of doing things have a pretty good opportunity today to mold their businesses to today's realities. Older businesses that are willing to re-think and re-tool themselves have the same opportunity." ■



Volunteer of the Month

RANDY HAUG

Senior Vice President & Co-founder, LeaseTeam, Inc.



Randy Haug, has 27 years of experience in the leasing and equipment finance industry. He started his career in

1984 with Lease Solutions, Inc. as a division sales manager. In January of 1989, Randy co-founded LeaseTeam, Inc. where he remains involved overseeing the market direction and strategies of the company. Randy also advises LeaseTeam clients on business issues and strategies.

In 1989 Randy became involved with EAEL and two years later with UAEL, where he served on various committees, executive level boards and chaired a number of industry events for EAEL, UAEL and NEFA. Eventually Randy focused his efforts on working with other industry leaders to form NEFA and is one of the founding members. In 2010, Randy served as NEFA president, and is currently serving as NEFA past president.

Randy is also involved in industry panels/roundtables, association boards and sub-committees, and authoring articles for industry publications. He worked formerly with UAEL and EAEL and now with NEFA staff and committees to assist in producing informative sessions, workshops and industry networking events.

As Randy transitions off the NEFA board, he plans to stay actively involved in NEFA committees. Randy has a deep respect for the NEFA association and all of its members, and he wants to continue to give back to the people and the industry that he is so passionate about.

CALENDAR OF EVENTS

Chicago Annual Holiday Party December 8, 2011
Greek Islands, Chicago, IL

SoCal Annual Holiday Party December 8, 2011
Bluewater Grill, Tustin, CA

National Equipment Finance Summit March 22-24, 2012
San Diego, CA

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2011 and Ahead: Too Much Chicken Little?

It's interesting to note that in today's 24/7/365, constantly-wired-up access to non-stop information it's very easy to fall victim to the fear mongering and Chicken Little syndrome. Too many media outlets leverage the sensationalistic aspects of the Dow yo-yo and related macro-economic roller coaster which clearly impacts spending and sentiment with Main Street business.

BY JOHN DONOHUE

Well it's that time of year again. Budgeting and planning for 2012 is well under way for many firms and that leads to giving some thought to predictions and expectations. In preparation for this article, I started by taking a look back at some articles from this time last year to see how well people did in looking into 2011. I can say I only hope to do as well as Chris Enbom (outgoing NEFA President, well informed leasing colleague & spare time guitar hero) did in these pages last year. I also sought feedback and input from a small, select group of contacts/friends in the industry. That group included colleagues of mine at Direct Capital as well as bank and funding source partners, other broker/lessors, service providers and industry insiders. My interest there was not in specific quotes, although some were kind enough to allow me to do so, but more focused on the general consensus and common trends we see for the upcoming year.

Clearly a high level of uncertainty exists in a wide variety of areas and sectors, both domestically and internationally. As I write this article, calls are mounting for Greek Prime Minister Georg Papandreou to resign since his call for a referendum endangered the massive European bailout plan that's been in the works. And while most people agree that the chances of a true double-dip recession are minimal, this type of setback and ambiguity adds to the overall concerns about the global credit markets resiliency. I also think it highlights how incredibly

interconnected the world is as we head into 2012. The fallout from expected losses on Greek bonds is already taking a toll on many European banks. That impact on European banks will no doubt ripple into those US based organizations that rely on same for capital and funding for their operations. Others are concerned about the situation in Europe too. Richard Henderson, President of EquipmentEngine, LCC states, "As conditions in Europe continue to deteriorate, we can likely expect a temporary faltering in the U.S. economy that may have a negative impact on portfolio performance and growth. Longer term, likely post 2012-election cycle, we'll see much of the uncertainty in the markets dissipate and perhaps we'll begin to move forward again with a very slow, but steady recovery. In fact, until the housing sector fully recovers, the industry's prospects for large-scale accelerated growth are minimal. In order to survive until then and thrive in the future, we are going to need to embrace the spirit of innovation and bring our 'A-Game'."

Domestically we've got a full, complex plate of issues too. High unemployment remains and most people believe there will continue to be fallout from the residential mortgage sector. Yes, interest rates remain low but there remains little to no growth overall. Certainly some sectors (healthcare and technology come to mind; transportation rebounding as well) have shown better signs of growth and are expected to continue to do so into and through 2012. If that's not interesting enough, throw in the election year wildcard and we've got a lot of factors contributing to widespread expectation that modest growth is the upside people are striving towards. "It is difficult to understand how we can expect to see anything beyond modest growth, at best, given the high unemployment, huge overhang of unresolved housing woes and a paralyzed and highly partisan Congress. We are hopeful that post-election, there will be less uncertainty and therefore an improved economic environment that helps restore some meaningful confidence to the business community.", says Barry Shafran, President and CEO of Chesswood Group Limited; the Canadian based parent of Pawnee Leasing Corporation.

Yet with all of these concerns and factors, there are clearly areas of opportunity and positive signs as well. We've already seen some liquidity come back into the sector with some seasoned leasing professionals raising capital and launching/re-launching platforms. Captive finance companies are back at in a big way in certain verticals and it will be interesting to see how the IASB/FASB accounting standard changes impact their world in particular in the next few years. A service provider colleague shared that they are seeing existing clients increase users and also add additional products and services. There is clearly increased competition for the better credit transactions which is leading to tighter margins and some yield compression. That's OK though; it's continued signs of recovery and activity. That said, most

people would agree that the vast majority of the investments by small and mid-sized companies are to achieve efficiency and/or to replace aged collateral which is very different than investing for growth and expansion. That aspect still appears to be a ways off on broad scale basis although there is a strong consensus among those I heard from that there will be an on-going investment in technology across a diverse span of verticals. There is also widespread sentiment that with that consistent focus on technology there is also the on-going need of leasing and finance organizations to fully embrace and leverage social media as a key component of their strategic marketing plan. Another very positive note is that everyone across the board continues to report stability in their portfolio. Likewise, most people are also reporting credit being less restrictive. Not a wide scale opening, not a general loosening but simply coming off of the extreme (but very necessary at the time) restrictions that most organizations put in place as the impact of the credit crunch and capital markets lead into the recession and continued for the last few years. Based on recent reports and releases from the likes of ELFA, PayNet and others, they too are seeing increases in borrowing activity as well.

It's interesting to note that in today's 24/7/365, constantly wired up access to non-stop information it's very easy to fall victim to the fear mongering and Chicken Little syndrome. Too many media outlets leverage the sensationalistic aspects of the Dow yo-yo and related macro-economic roller coaster which clearly impacts spending and sentiment with Main Street business. While not possible, wouldn't it be interesting to see what people's mentality on their business outlook would be if the non-stop news feed was curtailed to some degree. Unrealistic but I do believe we

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ABOUT THE AUTHOR



John Donohue is Senior Vice President at Direct Capital and is responsible for the implementation and management of the Company's Syndicate. He also is responsible for the Company's Vendor partnership programs. His broad experience covers credit, funding, and documentation functions as well as on boarding new syndication & vendor partners. He is a current

member of the Board of Directors of the National Equipment Finance Association (NEFA). Prior to joining the company in 1996, he was Operations Manager for Bankers Trust, Global Investment Management Division. John can be reached at jdonohue@directcapital.com.

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Representational Systems: A Neuro-linguistic Programming Model

BY STEVE GELLER, CLP

Going a little far afield in this issue I have found an interesting strategy in dealing with others which I would like to share. Wikipedia defines Representational Systems as model of Neuro-linguistic programming (NLP). It refers to NLP as a model of interpersonal communications dealing with the relationship between neurological processes and behavioral patterns learned through experience which gained favor in the 1970's but lately has been discredited as a pseudoscience. Notwithstanding this Representational Systems, also known as sensory modalities or VAKOG is worthy of thought and a strategy to consider in trying to win business and build better relationships.

The VAKOG model is so-named as it refers to sensory-specific modalities: visual, auditory, kinesthetic, olfactory and gustatory. The theory goes that people respond according to the foregoing modalities which are developed over a lifetime. As a good listener you should be able to understand the type of modality which is being used. A few examples are in order.

An auditory speaker may respond by use of terms like: "I see", "let's take a closer look at the deal", "let me illustrate", and many others. According to Tonya Reiman, author of the *Yes Factor, Get What You Want, Say What You Mean—The Power of Persuasive Communication*.

Most people are visual speakers. Auditory speakers use terms like: "I hear you", "listen to the plan", "the announcement is going to be soon" or "we all need to voice our opinions." Who can forget President Bush's remark at Ground Zero in September, 2011, "The people who knocked down these buildings will hear all of us soon."

A simple evaluation is to watch an animated feature, whose actors voices you know. My wife will watch one of these and after ten seconds announce whose voice is playing a part. I, myself, am a visual communicator and I would have to see the actor to determine the voice. After being told

which actors voice is which character it only then becomes quite apparent to the visual communicator. Again this is not a hard and fast rule. There are presently playing on the radio a series of advertisements for the New York State Lottery and I clearly identified the voice immediately to be my cousin, Lewis Black. I believe that is because his voice is so distinctive but I would guess a lot of non-auditory communicators have heard that voice in the commercial and while they know it sounds familiar have had a difficult time determining whose voice it is.

The next is the kinesthetic communicator who's style deals with feeling, emotions, empathy. Typical reactions are: "this feels right", "let's be in touch", "let's stay calm", "let the customer cool off" or "the rewards are fulfilling." Kinesthetics like to touch things. It might be a high five with a co-worker, a hug or an arm on the shoulder.

The three foregoing types are the primary systems. The last two, olfactory and gustatory are secondary. Olfactory remarks might be: "This deal stinks", "this smells fishy", "get a whiff of this" or "we need a fresh idea." A gustatory speaker might say: "this deal is sweet", "it's a bitter pill to swallow" or "don't be a sourpuss."

How do we determine what type of listener we are? A simple approach is to sit down with a recorder and discuss a memorable event in your life. Playback the tape and track the VAKOG words used. Count up the words and determine what letter dominates. After determining the type of communicator you are go back and retell the story eliminating the use of the dominant style. Note how the story is more difficult to portray. A regular practice of this using the lesser styles will increase your ability to communicate. Eye and body movements are related to the type of communicator a person is and reveal themselves to the listener.

In her book, Tonya develops strategies to respond to these communicators which will help in developing a closer

relationship and a camaraderie as a good listener. In order to build rapport with a person determine the type of communicator that person is and attempt to respond in kind. If you are at lunch with a Visual you may suggest that their lunch looks good, or with an Olfactory, it smells delicious. One may think that this is patronizing to your partner. It could be if it is not delivered in the right way.

These observations are not cast in cement. A communicator may use several styles and we, as listeners should be aware and respond in kind. A change in style may be communicated by a change in eye contact. A person might say, "let me think about that". Watch their eyes go up. An auditory communicator might turn their eyes to the right when communicating. How about a group of people talking at a cocktail party and one person has his feet turned away from the group. Where do you think that person does not want to be in the worst way? An intimidating boss may speak with his hands on his hips. Hands across the chest may indicate a firm position with no compromise available. Remember President Clinton wagging his finger down from the podium scolding those who disapproved of his actions.

The purpose of the foregoing is an attempt to develop a rapport with a partner and

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ABOUT THE AUTHOR



Steve Geller, CLP, an industry veteran since 1979, leads Leasing Solutions LLC, a consulting firm founded in 2001. The company works with lease brokers and finance companies to arrange

financing for a wide variety of transactions, from "A" rated to difficult to place "C" transactions. With affiliated companies in selected areas worldwide, Leasing Solutions acts as a boutique syndicator of worldwide transactions. Reach Steve Geller at sgeller@leasingsolutionsllc.com.

A Poet in the Midst...



Hobbies, maybe I should use the classier word and say “avocations”, are essential for many of us. Life is too short to live by work alone and the right hobby can create perspective that, I think, makes the difference between a job and a profession. As most of my friends know, my hobby is writing, some short fiction and essays but mostly poetry.

I have been writing since I was very young. I started making my own comic books in first grade and I have continued for over 50 years.

In college, I wanted to be an English professor, only to learn that a lot of Vietnam veterans and kids using student deferments to escape the military had similar ideas. Realizing that there were no jobs, and eager to support a new wife, I applied to law school.

Let me be clear about this: I have never regretted that decision and I have enjoyed my career as a lending/leasing and general business lawyer for over 35 years. Through it all, however, I have continued my writing and I have never regretted the hours I spend learning to master the English language.

I have published over 100 poems in various magazines and journals. My first book, “Possible Crocodiles,” was published last

year and was named Book of the Year by the Alabama State Poetry Society. I give poetry readings all over the country and I perform spoken word poetry at hip hop clubs alongside rappers and a capella singers. (Everyone asks: I don’t get paid much, I can’t demand Perrier and jelly beans in the dressing rooms, there are no roadies and few groupies). My second book, dealing with grief and survival, will be out in January from Negative Capability Press and a third is scheduled to be out later next year. Possible Crocodiles can be found at www.brickroadpoetrypress.com. It and others are on Amazon as well.

All the serious stuff aside, hobbies should be kept in perspective. I pride myself on being told that my poems are fun for those who hate poetry because they are about everyday non-poetic stuff and (I hope) most are downright funny. “Write Your Own Damned Title I am Too Busy Getting Divorced Again”, “Teaching the Angels to Dance” and “I Think That There are Colors I Cannot See” (in which I admit my wife almost has me convinced I am autistic) don’t match up with the stuff we snored through in high school about daffodils and ancient mariners. If I ever get too serious, I’m sure someone will slap me.

In a world where so much is done to make us feel dumb, small and inadequate, seeing your words in print, performing to a strange audience, knowing that you made something others really like, is good for more than the ego.

I would say it’s good for the soul, but...well, when you write poetry as a hobby, you have to watch that sort of thing. ■

BrokerLine

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get that person comfortable enough to do business with you and to earn that person’s respect and develop camaraderie.

There are other related actions. Priming is a technique that gets a communicator prepared for a conversation or action by thinking about prior actions. Driving down the road looking for a place for lunch and passing the golden arches evokes a positive or negative response. Matching or mirroring is another technique. How often during a business lunch does a person pick up a glass to take a drink and subconsciously the lunch partners do the same. This technique includes the practice of initializing the mirroring. Aware of this technique, pick up the glass to drink or reach for some French fries and see if you can encourage your partner visually to do the same. This subconsciously confers upon you a leadership position.

There are many other techniques that can be used. With practice and observation these can be discovered and put to use in developing camaraderie, and hopefully, an enhanced relationship with a partner. ■

2011 AND AHEAD

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need to self-regulate and not get too carried away with what all the talking heads are saying will happen or can happen. No one knows your business better than you and while everyone wants to be as fully informed as possible in making key strategic decisions, part of me believes too much information can lead to analysis paralysis and curtails our innate human desire to aspire to better and bigger things. I’ll now step down from my soapbox.

For our firm I viewed 2011 as a year of continued recovery and growth. Looking into 2012, I’m dropping the R word. It’s now laser focused on growth and executing to that growth plan. Easy? Absolutely not. The last few years forced us to focus on efficiency and scale. I can say with complete confidence that each department in our organization is better than it’s ever been as it’s been forced to refine and innovate by the recent market conditions. And by no means am I saying that we feel any department has reached maximum potential and production. That’s the job. That’s the calling. And that should also be the fun part. The last few years have certainly been painful to many in our industry so isn’t it good to be in a situation where most people now feel the worst is behind us and the wind is no longer in our collective faces. Therefore let’s focus on the positive aspects, the good opportunities that exist and whether you’re thinking it’s going to be relatively flat, moderate growth or you see an opportunity for real upside in 2012, let’s start telling one another and anyone else who will listen that 2012 is going to be a good year. And then go have some fun and make it happen. ■



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