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2005 NCBFAA CONVENTION

**RECEIVABLES, COLLECTION PROCEDURES
AND LIEN RIGHTS**

Over the last several years, I have seen a marked increase in the number of cases sent to me by international transportation specialists involving monies owed to them, in most instances, by their customers. I have every reason to believe that this trend will continue, given the unpredictable economy, the dollar and the geopolitical situation which is not about to change any time soon. What surprises me, upon receipt of these cases, is the following:

- A) The number of my clients that do not have signed credit agreements; and
- B) How often customers are allowed to exceed their designated credit limits; and
- C) The failure to closely monitor receivables, especially as they become aged; and
- D) The failure to stay abreast of significant financial developments involving their own customers; and
- E) The continued advancing of duty(s), freights and other monies; and
- F) The complete lack of understanding of your lien rights, how to enforce same and the hesitancy to act swiftly to preserve and exercise such lien rights. Your lien rights derive from your NCBFAA Terms and Conditions of Service, your customer and/or credit agreement and pursuant to applicable state law. In many instances, any lien rights you may have are inferior to the rights of those having properly recorded security interests; however, such secured parties will very often cooperate with you in getting you paid rather than allow merchandise to be detained.

Accordingly, one of your first steps is to order a nationwide search to ascertain who are the secured parties, what exactly are their security interests and what collateral (such as the customer's merchandise, inventory, etc.) may have already been pledged via a security agreement. Bear in mind that, in many instances, your best and perhaps only chance of collecting those monies owed to you is via exercise of your lien rights, as the customer needs to get the merchandise to its destination in order (in many instances) to get paid and also to avoid being in breach of its obligation to its customer(s). The exercise and perfection of lien rights is governed by state law and must be strictly followed in order to be valid and enforceable. Many of you are under the impression that should your customer file for bankruptcy protection, that you "step into the shoes" of U.S. Customs as to the issue of duty(s) advanced and become a priority creditor. Unfortunately, several bankruptcy courts have considered this very issue and concluded that this is not the case. If this occurs, then you are simply an unsecured non-priority creditor (usually one of many) and in addition to having to spend legal fees to assert your rights

in bankruptcy court, there is a high probability that you will receive little or none of what is owed to you.

In sum, there are a variety of measures that can be undertaken to protect and collect those monies owed to you.

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Hyman, Kaplan, Ganguzza, Spector & Mars, P.A. is headquartered in Miami, Florida and is affiliated with law firms through the world. Andrew D. Kaplan has been representing the international transportation community since 1982 and is a frequent speaker on the issue of loss prevention and has written numerous articles on the subject. The firm is responsible for the majority of court decisions in favor of the international transportation specialists.

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