

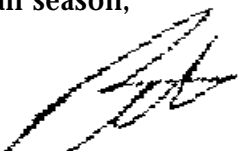
## Dear Friends:

During the past six months, we at Szabo have witnessed much volatility among advertising agencies throughout the country. We also have noticed a corresponding increase in the number of calls from clients asking us how they might better implement their joint and several liability positions when an agency goes out of business and/or fails to pay. This month's feature focuses on the proper procedures to give your joint and several liability position the "teeth" it needs should you ever need to enforce it.

July 31st marked the end of our fiscal year—our 29th! It's been a great year and an interesting one, in view of the many consolidations that have taken place in our industry.

On our Calendar of Events, we look forward to the Advertising Media Credit Executives Association convention, October 15th through 18th in White Plains, New York. Then in December, we will celebrate the holiday season with our Szabo Employee Christmas Party.

Best wishes for a wonderful fall season,



Pete Szabo, President  
Szabo Associates, Inc.

## Put Muscle into Joint and Several Liability Positions!

Your station runs advertising for a well-known advertiser, whose agency you have done business with for many years. The agency goes belly-up without paying your station for the advertiser's spots. You invoke your "joint and several liability" position in your requests that the advertiser pay your station for the spots. The advertiser, having already paid the agency, refuses.

Unfortunately, we at Szabo have encountered cases such as this one, involving enforcement of joint and several liability clauses, many times in recent months. Our industry has wrangled with the gnarly issue of who is liable for payment of media invoices for many years, resulting in the BCFM/BCCA's adoption in 1991 of its joint and several liability clause. Since that time, media have wisely and widely adopted the joint and several liability (also known as dual liability) position, which holds both the agency and advertiser responsible until the media property receives payment. So why do we continue to get so many calls from credit managers who have problems enforcing their position?

We believe that of all liability positions used by media, the joint and several liability position still provides the best protection if either party fails to pay; however, the effectiveness of any policy position depends on the quality of its implementa-

tion. Often, when we get these calls, our further investigation uncovers flaws in the processes used to implement the dual liability clause. Additionally, with so many mergers and acquisitions having taken place in the past decade, we have found that management sometimes wrongly assumes that consistencies in policy implementation exist across all its media properties.

As we approach the 10-year anniversary of the BCFM's landmark position statement, now is the time to review your processes to ensure that your joint and several position is enforceable. Here are Szabo's suggestions for giving your liability position the "teeth" it needs to serve you well:

- 1. Get both agency and advertiser to agree in writing to your position.** Proper implementation of any position involves agreement by all parties involved to abide by its terms. You can write your company's joint and several liability clause on a 12-foot-high banner and hang it outside your office building, but unless you properly notify both your advertisers and their agents and they agree to its terms, you might as well hang it in the broom closet for all the good it will do for you.

We realize that a signed con-

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## Liability Positions —

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tract (either from the agency or the advertiser) is an unrealistic expectation in many cases. The key here is to get a signed credit application, which includes a clear and apparent statement of your liability position, from both the agency and the advertiser. Such credit applications, completed and received by you prior to running any advertising, should provide a “blanket agreement” of your terms for subsequent buys, removing the necessity of having all parties sign off on all buys.

An alternative to having the advertiser complete a credit application is to require an “agency recognition form,” written confirmation from the advertiser that the agency is authorized to negotiate and enter into a binding contract on the advertiser’s behalf. It should include a statement that, if the advertiser entrusts the agent with money to pay you, the advertiser will remain liable if the agency fails to pay. This statement supports, in writing, the advertiser’s understanding and agreement of your joint and several liability position. The downside of the agency recognition form is that it does not provide you with credit information on the advertiser as does the credit application. In the case of a solid, well-known advertiser, however, the agency recognition form may be a suitable choice.

Be sure that the parties who sign the applications and/or agency recognition form have the authority to enter into the contract on behalf of the advertiser and agency. The legal capacity should be clearly indicated beside the signature. If the authority is not evident by the person’s position, get

written confirmation regarding the person’s authority to bind the legal entity.

**2. Enlist the cooperation and assistance of sales personnel.** The joint and several liability position can give salespeople heartburn because it requires them to get signed agreements from both the agency and the advertiser. Salespeople may feel they are showing a lack of trust in the agency and are thereby compromising their relationship by insisting on a signed agreement with the advertiser.

Meet with your sales department to communicate the importance of the liability position to sales and how critical the signed agreements will be in the event either party fails to pay. Tell a few horror stories if you must (there are plenty out

there), and advise them that there can be no exceptions to company policy and procedures. Offer to lend your support in the event they meet with resistance from their customers. Convey your sincere appreciation for the extra time and effort required, and reward sales’ efforts with quick processing of the credit applications.

**3. Perform thorough checks on all parties responsible for payment.**

Just because an agency—or an advertiser—has been doing business successfully for many years, there are no guarantees that it will always be in a position to pay its bills. Is the agency capable of paying even if the advertiser fails to pay the agency? Is the advertiser capa-

## collector’s corner

“Collector’s Corner” is our readers’ forum for suggestions, comments, and idea swapping. If you have information to share or input on how our newsletter can better serve you, please write or call. We want to hear from you!

**Question:** After reviewing our credit and collections processes, my station discovered that we do not have on file the proper written agreements to our joint and several liability position with several agencies and advertisers we have been doing business with for some time. We already have their signed credit applications on file, but they do not include the liability clause. What is the best way to fix the problem and maintain good will?

**S.W., Augusta, ME**

**Answer:** Craft a diplomatic letter to your customers stating that your station is in the process of updating its files. State that you are enclosing a new credit application form and that you would appreciate their completing it with more current information. Also suggest that they review the “terms and conditions for credit sales” on the application since they have also been updated by your station. This written suggestion should protect you in the event that the applicant later claims that all you asked for was an information update and failed to indicate there was a change in terms. This is a situation where you might enlist help from the account’s sales rep, since that person has an established (and hopefully friendly) relationship with the account.

ble of paying the agency? Is the advertiser capable of paying even though it paid its agency already and the agency defaulted? Remember that joint and several liability requires that an advertiser essentially "double-pay" if its agency defaults.

#### 4. Restate your joint and several liability clause on all relevant correspondence.

Agencies often include clauses on their insertion orders that excuse them from liability if the advertiser fails to pay them. Restatement of your clause on invoices will help to supersede their position. Attach a letter stating your liability position to all contracts, and instruct rep firms to include your joint and several liability clause on national sales contracts that are sent to agencies and buying services. Publish your liability clause on your rate card.

The Szabo recommended clause for the joint and several liability clause is as follows: Notwithstanding to whom bills are rendered Applicant and Third Parties shall remain joint-

ly and severally obligated to pay to Media Provider the amount of any bills rendered by Media Provider within the time specified and until payment in full is received by Media Provider. Payment by Applicant to Third Parties or by Third Parties to Applicant shall not constitute payment to Media Provider.

Applicant understands that should Applicant place advertising through an advertising agency (or other Third Parties) that Applicant will continue to be responsible to Media Provider for payment of such advertising. In the event Applicant is an agency requesting advertising on behalf of a client, Applicant acknowledges its joint and several liability for the payment of such advertising under the terms set forth herein above.

If Applicant is an advertiser, all agencies which place advertising buy orders with Media Provider shall be conclusively deemed to be authorized agents for Applicant.

#### 5. Develop a plan for resolution of disputes.

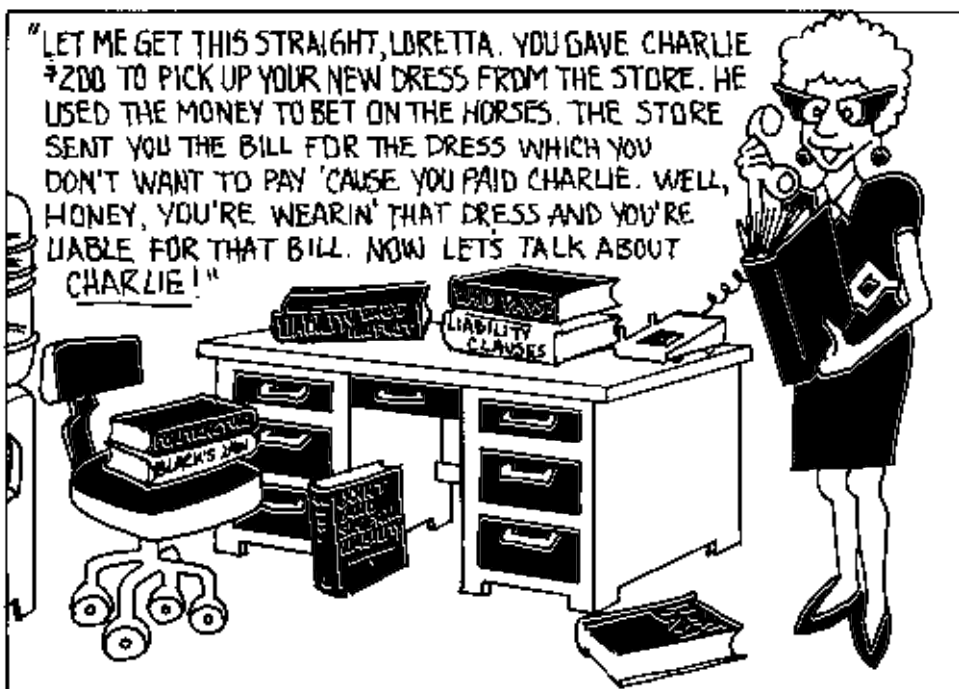
Since disputes regarding liability are bound to arise, your company should have in place

a clear and consistent policy for expeditious resolution. Know ahead of time what you will do if either the agency or advertiser fails to pay.

For example, if the agency refuses to pay after your attempts to collect fail, will you inform the agency that you intend to notify the advertiser of the non-payment? If an agency has received payment from an advertiser, the last thing the agency wants is for the advertiser to know that the agency is delinquent. In most cases, the agency will pay if it can rather than risk losing a valuable client.

If the agency claims it has not been paid by the advertiser, will you directly contact the advertiser to investigate the problem? When will you do so? Who will you begin the collection process against—the agency or the advertiser?

Media cases involving joint and several liability have yet to be tested in appellate courts. We can say with a degree of certainty, however, that chances are slim that you will convince a court to order an advertiser to double-pay when there is no compelling written evidence that the advertiser was aware of and had agreed to your liability position. With interest rates on the rise and many advertising accounts shifting among agencies, we expect more cases like these to come to our attention in the next 12 months. Now is the time to review your liability statement, check paperwork on existing accounts, and update your processes to protect your liability position and your bottom line. ♦



# The Szabo Difference: Your Information Connection

Many of our clients have learned something that can save them a lot of credit problems—it pays to keep in close touch with your Szabo Representative.

You don't have to wait until you have a past-due account that you want us to collect. Your Szabo Representative is your connection to a wealth of valuable information that can help you any time, whether it's to keep abreast of new credit practices or to find out how the courts are interpreting credit laws.

What's more, the information doesn't cost you a dime.

Sometimes, the information is the kind that can help you evaluate risks. We maintain an unmatched database of our

experiences with more than a quarter-million advertisers and agencies.

Often, the information concerns new credit laws and regulations. Your Szabo Representative has everyday access to our comprehensive legal library and keeps up with the latest changes and trends.

Our in-house paralegals keep our representatives informed of court cases that could affect the way you evaluate your credit risks, write your contracts, or manage your credit accounts.

But the most valuable information we can share with you is not something you'll find in books and reports. It's in our collective experience. When a new kind of credit complexity comes up, anywhere in the

country, one of our representatives will be among the first to hear about it. Because we specialize in media, and because we work with so many clients throughout the world, there aren't many kinds of cases we haven't run into.

So when you believe you've come across a unique credit situation, ask your Szabo Representative about it. It's likely that someone right down the hall has found a way to handle a situation just like yours.

The insight that your Szabo Representative can give you could well be one of the most valuable services we can offer you—and it's free. ♦



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