Joe Clar & Sons, Inc.
Machinery and Equipment Appraisers

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THE APPRAISER

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CONFLICT OF INTEREST AND APPRAISING

What's next? After the mess with Arthur Anderson and the accounting of ENRON there's a new intensity of making sure that companies are not committing "conflicts of interests". This is becoming very evident especially in the banking and leasing industry. The down turn of the economy and the many business failures that ended up in liquidations or auctions are now being examined to see if there have been a conflict of interest .

Clyde D. Batavia

The conflict of interest that is surfacing is being brought by the company whose assets went on the auction block. The argument that is arising is about the appraiser who was recommended by the bank or leasing company, the appraiser who is also the auctioneer that conducted the auction. Therefore establishing a possible interest in the assets when the appraisal was performed.

The argument by the company in default is that they used an appraiser recommended by the "lender". The same appraiser whose values were used in making the loan. For whatever reason, the company defaulted, an auction pursued by the individual or company that performed the appraisal. The outcome of the auction were prices far below the appraised value. In many cases the proceeds didn't even cover the loan, resulting in a deficit .

The best way to protect yourself is to make sure that the appraiser you choose has no interest in the assets they are appraising. Ask the appraiser is if he's independent or works for a company that might have interest in liquidation or auctioning.

DOCUMENTING FINANCIAL TRANSACTIONS

Whether the transaction is a lease, loan, asset-based financing , business credit transaction, or another type of commercial finance, the most basic and important part of the credit documentation is a clear identification of the property of the debtor that is intended to constitute the lessor's or lender's collateral. The correct and accurate description of the collateral taken lies at the heart of all asset-based transactions.

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Court decisions in law show that the issue of the proper description of collateral in the lease or security documents is an issue which provides a source of dispute in litigation.

One of the biggest oversights in documentation at a leasing company or bank is the lack of description on the UCC-1. Paper is inexpensive and though the space for description is limited you can always add an addendum to the UCC-1.

In most cases, customers who purchase equipment will add accessories to the basic equipment such as software packages, tooling, and accessories. If these extras are purchased, then they must be listed in the UCC-1 description with model and serial numbers of each accessory. Many times the accessories can be worth as much as the initial piece of equipment.

If you are forced to repossess the equipment through the courts, and the accessories are missing from the equipment and they have not been included on the UCC-1 with the proper description including model and serial number, your chances of recovering the accessories is highly unlikely.

THE KEY TO A STRONG PORTFOLIO

What was a strong company twelve months ago today might be fighting for it's financial life. We have seen strong companies disappear. A strong portfolio is one that can be turned into cash quickly under the worst circumstances. Liquidity is the "Key" to strong portfolios.

Mark Clar

Asset base lending in today's changing market place is calling for ensuring proper perfection and priority of interest granted in collateral. Identifying the secured collateral properly, and more important, that the lender be knowledgeable of the liquidity in their loan portfolios.

Everyone up the corporate ladder today is looking for who is responsible when things go "south". In order to know where the liquidity lies in capital assets, the tool needed is the "up-to-date appraisal". By using appraisals conducted by accredited appraisers, you have the "back up" needed to know the value of the assets.

In the past, many lenders have looked at the cash flow of companies to make loan decisions. Recently we have all seen what were thought to be strong companies; how quickly their cash disappeared, and now only the capital assets remain as collateral.