ABL OUTLOOK ISSUE | NOV/DEC 2018

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For the Commercial Finance Professional

WHERE ARE WE IN THE CREDIT CYCLE?

Time to Tap the Brakes?

ABL LENDERS EXPECT STRONG ECONOMY TO KEEP THEM AFLOAT

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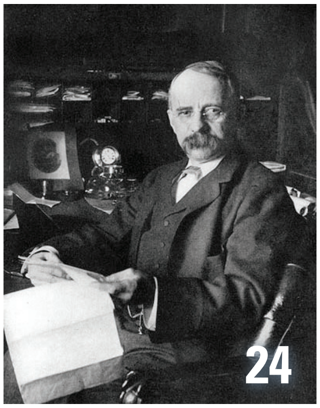

FROM ALL FACETS

RITA E. GARWOOD, MANAGING EDITOR

I have some exciting news to share! Lisa Rafter and Kate Majewski, owners of LK Consulting Partners LLC, have acquired *ABF Journal* from our founder and long-time publisher, Jerry Parrotto.

LISA RAFTER

KATE MAJEWSKI

Many of you may know Lisa, who served as the first Editor in Chief of this magazine after playing an instrumental role in its 2001 launch. She has been in the commercial finance industry for more than 25 years and has successfully launched numerous publications throughout her career.

Kate has worked as a technology service provider for more than 18 years in roles with Odessa, a financial software provider, and Northrop Grumman, a leading global security company. We are excited to begin the next chapter of *ABF Journal* under the leadership of these dynamic women!

As our readers know, an M&A scenario is not complete without a transition plan. On that note, Susie Angelucci has rejoined our team as Director of Advertising and I will be taking a more active role as Managing Editor. This transition is bittersweet for me as we say goodbye to Nadine Bonner, who has been a fantastic editor and an absolute pleasure to manage for the last three years. We wish her all the best in her next act.

But even in times of change, the show must go on! For this ABL Outlook issue, Lisa Miller sat down with five top ABL executives for our year-end roundtable. They expect the strength of the economy to keep business afloat in 2019. Meanwhile, Hugh Larratt-Smith questions this perspective. He examines the prolonged economic expansion and asks, is it time to for lenders to hit the brakes?

ABF Journal isn't the only company involved in an acquisition. Charlie Perer says community banks are snatching up specialty lending platforms and pairing them with deep hometown relationships, which sets them up as rivals for the big banks.

In ***Turnaround Corner***, Deloitte Risk and Financial Advisory's John Little, a former U.S. Army Ranger, applies his military training to the corporate crisis battle zone otherwise known as a turnaround. In ***Specialty Lending***, Bruce Loren explains how careful due diligence can help factors enter the lucrative construction market. In ***Legal Lines***, Jeffrey Wurst takes a look at Merchant Cash Advances (MCAs) and the pitfalls that can undermine ABL lenders. And in ***Final Cut***, Jerry Gonzalez shares his take on Andrea Petro rising from the ashes of retirement to lead Waterfall Asset Management's Specialty Commercial Finance Group.

We'll be back in January for our annual Bankruptcy issue. Until then, please drop me a line at *rita.garwood@abfjournal.com* to share your thoughts about our content or just to say hello. I'd love to hear from you!

Rita

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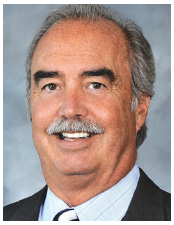
PERSONNEL NEWS

SHARKEY TO LEAD COMBINED FIFTH THIRD, MB FINANCIAL ABL BUSINESS



ACCORDING TO AN SEC FILING, Mike Sharkey was selected to head the combined national asset-based lending business following the merger of **Fifth Third Bank** and **MB Financial**.

Jill York, who currently manages leasing and indirect lending at MB, will head equipment finance and leasing in the combined organization.

Tom Partridge, who currently heads commercial specialty products, will lead leveraged finance, asset securitization and dealer floor plan.

"Jill and Mike will report to **Greg Schroeck**. Both have a strong record of success and broad experience in banking and in leadership. Together with Tom and our other national business heads, they will help extend the trust and value clients place in us for smart, sustainable and customized solutions," said **Lars Anderson**, executive vice president and chief operating officer of Fifth Third Bancorp. ■

BANKRUPTCY

GUMP'S FILES CHAPTER 11; HILCO, GORDON BROS TO LIQUIDATE

GUMP'S, the San Francisco-based, 157-year-old department store and retailer, filed voluntary petitions for relief under Chapter 11 in the U.S. Bankruptcy Court for the District of Nevada.

Hilco and **Gordon Brothers** will act as joint liquidators for Gump's merchandise. **Sterling National Bank** provided $737,000 in DIP financing.

Gump's expects its cash on hand and debtor-in-possession financing to provide it with sufficient liquidity to maintain value in its assets during the marketing and sales for the benefit of its creditors.

Gump's has been navigating a difficult retail environment. It established Gump's By Mail to compete in the direct sale market and embarked on several strategic plans to raise capital and adapt its style and brand to better meet the needs and desires of the modern marketplace. More recently, Gump's was marketed by **Lincoln International**.

"The Gump's store is an institution beloved of generations of San Franciscans, and customers around the country are captivated by its distinctive, elegant products from around the world," said **Tony Lopez**, Gump's chief operating officer. "We will continue to seek a source of capital to enable this storied brand to continue to serve its devoted customers." ■

PERSONNEL NEWS

PETRO TO LEAD WATERFALL SPECIALTY COMMERCIAL FINANCE GROUP

WATERFALL ASSET MANAGEMENT launched a Specialty Commercial Finance Group led by **Andrea Petro** to provide high yield senior secured debt to specialty commercial finance companies.

Petro has 26 years of experience lending to specialty finance companies, beginning her specialty finance career at **Transamerica Business Credit** and culminating in 17 years with **Wells Fargo Capital Finance's** Lender Finance Division.

"SCFG will work with Waterfall's consumer finance and esoteric finance businesses to provide a full suite of debt offerings to specialty finance companies across a broad array of asset classes. Providing alternative senior secured lending that is supported by Waterfall's expertise and deep knowledge of both debt and equity markets will significantly enhance Waterfall's ability to serve counterparties," said Petro.

Jack Ross, Waterfall managing partner, said, "Waterfall's core competency is specialty finance, with a goal to become a leading capital provider to the industry. Andrea's decades long track record, deep relationships and credit expertise, along with the recent addition of a private equity team, underscore our commitment to this goal." ■

MAKING HEADLINES … ONLINE

TOP 10 abfjournal NEWS STORIES

OF THE 504 STORIES posted on *abfjournal.com* in August and September 2018, these were the top 10 headlines in order of reader popularity:

1. Sharkey to Lead Combined Fifth Third, MB Financial ABL Business *8/1/18*
2. CIT Names Chief Underwriting Officer for Commercial Finance *8/30/18*
3. PE Firms Competing with Traditional Lenders for Deals *8/14/18*
4. Gump's Files Chapter 11; Hilco, Gordon Bros to Liquidate *8/08/18*
5. Fortress Holding the Bag as Theranos Dissolves *9/05/18*
6. Wells Fargo Risk Exec Departs After Fed Slaps Bank Again *8/15/18*
7. Petro to Lead Waterfall Specialty Commercial Finance Group *9/20/18* *See related story in FinalCut on page 40.*
8. Encina Provides Up to $108MM DIP for National Stores *8/07/18*
9. SEC Charges Cash Advance Co With Defrauding Investors *8/30/18*
10. B. Riley Financial to Acquire GlassRatner *8/02/18*

PERSONNEL NEWS

PNC BUSINESS CREDIT EXPANDS SENIOR SECURED FINANCE TEAM

MCCOMBS

AUSTHOF

PNC BUSINESS CREDIT added **Alex McCombs** and **Todd Austhof** to its Senior Secured Finance team, expanding the Western and Southeast regions.

McCombs was appointed senior vice president and business development officer based in San Francisco. He will be responsible for business development and direct origination with middle market companies in the Greater Bay area and Central Valley markets. McCombs joined from the **Industrial Commercial Bank of China**, where he served as business manager for Commercial Banking. He previously served as a director of Commercial Banking at **Bank of America**.

An 18-year PNC veteran, Austhof was appointed business development officer with the senior secured financing team. Based in West Palm Beach, FL, he will be responsible for business development with private equity firms and middle-market companies, as well as origination of asset-based and cash flow loans in the Florida market. Austhof most recently served as a relationship manager with **PNC Business Credit**. ■

Capital One Names Elliott North Louisiana Market President

Jennifer Elliott joined **Capital One** as North Louisiana Market president and commercial relationship manager. Elliott was part of Capital One from 2006 to 2017, most recently as a senior underwriter. She returned to Capital One after spending the past year as a senior risk manager at **Ag Resource Management**.

Signature Adds Eight Financial Execs to Specialty Finance & ABL Groups

Signature Bank appointed several professionals to its ABL Group and its wholly owned subsidiary, Signature Financial. Joining the ABL Group were **Robert Abraham**, VP, New Business Development; **Melissa Anchundia**, VP, Underwriting and **Michael Grande**, New Business Development, Transportation and Logistics. Joining the specialty finance business unit as VP – executive sales officers were **Katherine Adams**, **Steve Brantley**, **Karle Armitage**, **Andrew Jones** and **Anthony Zaccari**.

Roslin Joins First Business Growth Funding

Anne Roslin joined **First Business Growth Funding** as VP of Business Development. Roslin has more than 10 years of experience in the financial industry. Her primary responsibilities have been in new business development for accounts receivable finance and asset-based lending.

Sterling National Bank Expands Specialty Finance Team

Sterling National Bank added **Sharon Bender**, **Dennis Phelps**, **Stephanie Lunn Szymanski** and **Andrew Schuster** to its Specialty Finance team. Bender and Phelps joined as SVPs and managing directors of Asset Based Lending. Bender will focus on building relationships within the Northeast market and Phelps the Southeast. Szymanski joins as VP and managing director of Warehouse Lending. Shuster will serve as managing director of Capital Markets.

U.S. Bank Launches Commercial Banking Team in NY

U.S. Bank expanded its Commercial Banking team into the greater New York metropolitan area. The new group will be led by **Daniel Greene** and **Salvatore Settineri**. Greene was previously head of commercial and industrial banking for **Northfield Bank** and held positions at **Citi Commercial Bank** and **Chase Bank**. Settineri was most recently SVP for the U.S. Bank Corporate Banking Food & Beverage division.

BMO Harris Hires Friedlander as Managing Director/ABL Group

BMO Harris Bank hired **Steve Friedlander** as managing director, portfolio and professional development, for its ABL team. A 25-year industry veteran, Friedlander has expertise in the automotive, metals, transportation and food sectors.

People's United Bolsters ABL Team with Three New Hires

People's United Bank hired three senior industry specialists for its Asset-Based Lending team. **Joe Accardi, Tony Cortese** and **Greg Russano** will be responsible for new business development and client relationships and will be based in Iselin, NJ. Accardi, SVP, Business Development, was a faculty member of the **New York Institute of Credit** for 16 years. Cortese, SVP, regional manager, previously held various senior positions at **Santander Bank** for more than 15 years. Russano, SVP, regional team leader, previously held various positions at Santander, **Bank of America** and **National Bank of Canada**.

BAML Adds Winger Vineyard to Commercial Banking Team

Bank of America Merrill Lynch appointed **Karen Winger Vineyard** market executive, Pacific Northwest and Canada Region for Global Commercial Banking. She will be based in Portland and report to **Roger Hinshaw.** A 27-year industry veteran, Winger Vineyard joins the team from **Wells Fargo**.

Accord Financial Names Hitzig President and CEO

Accord Financial appointed **Simon Hitzig** president and CEO. Former President and CEO **Tom Henderson** will remain with the company as vice chairman and director. Hitzig joined Accord in 2011 as president of its non-recourse factoring division. He previously spent 10 years with **DundeeWealth**, where he led the product development and marketing teams, driving growth from 1999 to 2009, leading up to the company's sale to **The Bank of Nova Scotia**.

Sound Royalties Taps Bizenov as President

Music industry specialty finance firm **Sound Royalties** named **Michael Bizenov** president. Bizenov previously served as a consultant for **UBS** and **Litchfield Road Consulting**. He previously spent 20 years at **Sterling National Bank**, helping grow the bank's assets from under $1 billion to $15 billion and serving as the institution's president of Consumer Banking.

First National Bank Hires Mitchell to Lead Capital Markets

First National Bank hired **D. Bryant Mitchell** as EVP of Capital Markets and Specialty Finance. **Samuel D. Kirsch**, SVP and director of digital channels and payments, has expanded his role to oversee FNB's corporate-wide Clicks-to-Bricks initiative.

Falivene Joins Webster Bank Commercial Lending Team

Philip Falivene joined **Webster Bank's** Commercial Lending team as SVP, senior relationship manager. Falivene previously spent two decades at **The Bank of New York Mellon**, where he held key roles in syndications, capital markets, relationship management and risk management. Falivene began his career at **Chase Manhattan Bank**.

Wells Fargo Promotes Khoury to Lead Portland MM Banking

Wells Fargo appointed 12-year company veteran **Megdy Khoury** to lead Middle Market Banking in greater Portland, OR as regional manager. He joined Wells Fargo in 2006 as part of its relationship management-training program and has held various roles in Business Banking, Community Lending and Investments and Middle Market Banking.

Santander Expands Commercial Banking in Midwest

Santander Bank named **Patrick Dunphy** managing director and Midwest market head based in Chicago. Dunphy joined Santander from **Bank of the West** and previously worked at **Citizens Bank**. He began his banking career at **First Chicago NBD**, where he held positions in portfolio management, business development and relationship management. He also gained global banking experience working at the U.S. subsidiaries of **ABN Amro**, **Royal Bank of Scotland** and **BNP Paribas**.

Former Aegis President Joins Pinnacle to Head Specialty Lending

Pinnacle Bank Florida hired ABL industry veteran **Michael Skat** as managing director of its Specialty Lending Group. Skat has more than 30 years of experience in lending, consulting and investment banking. He most recently served as president at **Aegis Business Credit** in Tampa, FL and previously worked in various ABL roles at **Fidelity Funding Financial Group**, **Guaranty Business Credit**, **Fremont Financial**, **Foothill Capital** and **Business Alliance Capital**. He began his career at **SunTrust Bank**.

Nygren Joins Union Bank as Regional President

Patrick Nygren joined **Union Bank** as regional president for Los Angeles and the California Central Coast. Nygren has more than 15 years of experience in consumer and small business banking. Most recently he served as regional bank president for **Wells Fargo**.

Hill to Head Banc of California Middle Market Banking

Banc of California promoted 15-year industry veteran **Thomas Hill** to SVP, head of Middle Market Banking. Hill initially joined the bank in March 2018 as the Commercial Banking market executive for Los Angeles. He previously served as senior managing director, Commercial Banking for the Los Angeles region at **Opus Bank** and held positions at **East West Bank**, **Union Bank** and **City National Bank**.

MERGERS & ACQUISITIONS

GE Capital Energy Financial to Sell Equity Portfolio to Apollo

Funds managed by affiliates of **Apollo Global Management** agreed to acquire an approximately $1 billion portfolio, including assumed obligations of predominantly equity investments in energy assets, from **GE Capital's** Energy Financial Services unit. The equity portfolio comprises approximately 20 investments in renewable energy, contracted natural gas fired generation and midstream energy infrastructure assets.

AlixPartners to Acquire Zolfo Cooper

AlixPartners acquired independent financial advisory and interim management firm **Zolfo Cooper.** All of Zolfo Cooper's managing directors and staff, including Managing Partner **Joff Mitchell,** will join AlixPartners, in its Turnaround and Restructuring practice. Upon completion of the transaction, the Zolfo Cooper brand will be retired from the international restructuring marketplace.

TURNAROUND

FTI Consulting Adds Five Restructuring Experts to Healthcare Team

FTI Consulting appointed **Chad Shandler** and **Clifford Zucker** as senior

PERSONNEL NEWS

Q1/18 NOTABLE PERSONNEL MOVES

▷ New Hires
▲ Appointments/Promotions

COMPANY		NAME	POSITION/FUNCTION
Access National Bank	▷	Stephen Witt	SVP
Accord Financial	▲	Simon Hitzig	President/CEO
Alpine Capital	▷	Dan Chapa	EVP/CCO
Banc of California	▲	Jason Pendergist	EVP/Head, Commercial Banking
Bank of Southern California	▷	Helen Johnson	SVP/Loan Admin Manager
BB&T	▷	Alex Brame	President, Central PA Region
Berkshire Hills Bancorp	▲	Gary Levante	VP/Corporate Social Responsibility Officer
Brookline Bank	▷	Tricia Dandrow	SVP, Boston
California BanCorp	▷	Adrienne Enoksen	VP/Relationship Manager
Capital One Commercial Bank	▷	Jason Noll	VP, Convenience & Gas Banking
Capital One Canada	▲	Jennifer Jackson	President
CapX Partners	▷	Jeffrey Armstrong	Bank Market Director
City National Bank	▷	Mathew Griesbach	SVP/Head, Aerospace & Defense Banking
CoBank	▲	Bill Davis	EVP, Farm Credit Banking
Comerica	▲	Peter Sefzik	EVP, Business Bank
EnerBank USA	▲	Robb Kerry	EVP/CCO
Essex Capital Group	▷	Doug Arthur	Managing Director
Gerber Finance	▷	Howard Moore III	VP, Marketing
Gordon Brothers Finance Company	▷	Peter Jaffe	Managing Director, Financing, UK & Europe
Great Rock Capital	▷	Jeffrey Peckitt	Managing Director, Originations
JPMorgan	▷	Jeffrey Bloomquist	Managing Director, Corp Client Banking & West
Kabbage	▲	Scott Rosenberg	CFO
Laurentian Bank Financial Group	▲	Craig Backman	EVP, Personal Digital Banking
Madison Street Capital	▷	Lawrence Alioto	Managing Director, Capital Markets
MidCap Business Credit	▷	Lisa Lepri	VP, Operations
Midland States Bank	▲	Scott Dallman	President, St. Louis
Monroe Capital	▷	Stewart Hanlon	Managing Director/Co-Head, Tech Finance
Northfield Bank	▷	David Fasanella	EVP/Deputy CLO
Opus Bank	▷	Rod Banks	Director/Client Manager
Peapack-Gladstone Bank	▷	Kenneth Geiger	SVP, Special Assets
PeoplesBank	▷	Larry Pickett	EVP/CFO
Pinnacle Bank	▲	Doug Moffat	EVP/Regional President
Piper Jaffray	▷	Patrick Allen	Managing Dir, Healthcare Investment Banking
PNC Bank	▷	Julie Young Sudduth	President, Houston
Regions Bank	▷	Ryan Stash	Managing Dir, Energy & Natural Resources
Reliant Bank	▷	Richard Stone	SVP/Rutherford County Market President
Rise Line Business Credit	▷	Michael Molenda	Managing Director, Originations
Santander Bank	▲	James Uehlinger	President, Metro New York/Northern NJ
U.S. Bank	▷	Mahesh Kharkar	President, Northern California Market
Umpqua Bank	▷	Randy Mora	SVP/Commercial Banking Manager
Union Bank	▷	Patrick Nygren	President, LA & California Central Coast
Webster Bank	▲	Brandon Swafford	SVP/Director, Corporate Information Security
Wells Fargo	▷	Arnie Adkins	VP, Middle Market Banking, Western Mid-Atlantic
Wells Fargo Capital Finance	▷	Eric Pietras	SVP/BDO, Government Services
White Oak Healthcare Finance	▷	Peter Zone	Director

managing directors, **Kevin DeLuise** as a managing director and **Roberta Probber** and **Karl Knechtel** as senior directors in the Corporate Finance & Restructuring segment, enhancing the firm's restructuring expertise and expanding its healthcare capabilities.

TMA Hall of Fame Honoree Allison Joins Portage Point

Turnaround executive **Thomas J. Allison** joined **Portage Point Partners** as a senior advisor. Inducted into the **Turnaround Management Association** Hall of Fame in 2018, Allison was also the 2017 recipient of the TMA Legend Award. He previously served as EVP and senior managing director at **Mesirow Financial Consulting** and co-founded and served as National Restructuring Group Practice leader at **Huron Consulting**. He additionally worked as the partner-in-charge for **Arthur Andersen's** Central Region Restructuring Practice.

LEGAL

Leading M&A Partner Jacobson Joins Ropes & Gray

Global law firm **Ropes & Gray** named **Matthew Jacobson** a partner in the firm's mergers and acquisitions practice in the San Francisco and Silicon Valley offices. Jacobson has considerable cross-border experience, having served as a partner at other international law firms. He also served as corporate counsel at **Hewlett-Packard**, where he advised on Hewlett-Packard's merger with **Compaq** and the related proxy contest.

Bank Leumi USA Names Sherman General Counsel

Bank Leumi USA hired **Andrew Sherman** general counsel. Sherman will manage the Legal department, partnering with business teams to help advance the bank's strategic vision. He will also advise president and CEO **Avner Mendelson**, the board of directors and the senior management team. Sherman previously worked at **Rabobank** and **Simpson Thacher & Bartlett**.

Otterbourg Expands Banking/Finance Practices with Jones Hire

Tarnetta V. Jones joined **Otterbourg** as of counsel in both the Banking & Finance and the Corporate departments. Having started her career at **Milbank, Tweed, Hadley & McCloy**, Jones later became a partner in the Corporate department of **Kirkland & Ellis**. She then founded and served as CEO of **ACATA**, a legal and strategic services firm serving entrepreneurs and founders of early stage startup companies.

SEC Charges Cash Advance Co with Defrauding Investors

The **SEC** charged cash advance company **1 Global Capital** and its former CEO **Carl Ruderman** with allegedly defrauding at least 3,400 retail investors. The company and Ruderman allegedly fraudulently raised more than $287 million since 2014 in unregistered securities sold through a network that included barred brokers, with a large portion of the money going to Ruderman's lavish personal spending and to his consumer-loan companies, **Bright**

MERGERS & ACQUISITIONS

B. RILEY FINANCIAL TO ACQUIRE GLASSRATNER

B. RILEY FINANCIAL signed a definitive agreement making **GlassRatner** a wholly-owned subsidiary of B. Riley, effective July 31, 2018.

Under the terms of the agreement, GlassRatner will continue to be managed by **Ian Ratner**, one of the firm's founders, and operate under the same brand name. GlassRatner will serve as a new, dedicated business consulting service vertical under B. Riley Financial.

GlassRatner is a specialty financial advisory services firm which advises companies, shareholders, creditors and investors on complex business problems and critical board level agenda items, including transaction advisory and due diligence, fraud investigations, corporate litigation, business valuations, crisis management and bankruptcy.

GlassRatner is nationally recognized for its expertise in bankruptcy and restructuring services, forensic accounting and litigation support, valuation services and real estate consulting.

"As we look to grow B. Riley Financial, we are strategically looking for businesses that allow us to enhance the services we provide to our clients," said **Bryant Riley**, chairman and co-CEO of B. Riley. ■

Smile Financing and **Ganador Enterprises**.

SEC Charges Moody's With Control Failures, Ratings Deficiencies

Moody's Investors Service reached an agreement with the **SEC** to pay a total of $16.25 million in penalties to settle charges involving internal control failures and failing to clearly define and consistently apply credit rating symbols. This marks the first time the SEC has filed an enforcement action involving rating symbol deficiencies. Moody's will pay $15 million to settle charges of internal controls failures involving models it used in rating U.S. residential mortgage-backed securities, along with an additional $1.25 million.

BANKRUPTCY

Barclays Agents $250MM DIP Financing for Mattress Firm

Mattress Firm filed voluntary Chapter 11 restructuring cases in the **U.S. Bankruptcy Court in Delaware**. The company received commitments for approximately $250 million in DIP financing, with **Barclays** serving as administrative agent and co-collateral agent for the DIP and **Citizens Bank** as co-collateral agent.

BofA Agents $250MM DIP for American Tire Distributors

American Tire Distributor reached an agreement with a majority of its term loan holders to support its restructuring support agreement, which would reduce the company's debt by approximately $1.1 billion and increase its financial flexibility as it continues its ongoing transformation. **Bank of America** will serve as administrative agent for $250 million in DIP financing to support the company's emergence from Chapter 11.

Authentic, SB360 Capital Bid $22MM for HHG Brands

Heritage Home Group closed an agreement for a newly-formed entity of **Authentic Brands Group** and **SB360 Capital Partners** to acquire HHG's Broyhill and Thomasville & Co. brands and to serve as the stalking horse bidder for the rest of the company's assets in a court-supervised auction.

JOINT VENTURES

Bibby Financial & Precision Global Partner to Support Staffing Services

Bibby Financial Services North America launched an affiliate with **Precision Global Consulting** to provide a complete recruitment finance and payroll funding solution for staffing companies. PGC's offered services will include payroll, expense management, applicable federal, city and state taxes, IRS reporting, onboarding and employment verification, access to insurance and employee benefits, compliance and more.

ASSOCIATION NEWS

CFA Honors Top Commercial Finance Pros at 40 Under 40 Awards

The **Commercial Finance Association** 40 Under 40 Awards honored the achievements of rising stars in the industry. **Steven Gold**, president and CEO of Allied Financial, received the CFA Leadership Award. **Rob Frohwein**, co-founder and head of **Kabbage**, gave the keynote address.

TMA Announces Turnaround and Transaction of the Year Winners

The **Turnaround Management Association** honored 76 professionals during a special awards ceremony at the 2018 TMA Annual September. Winners came from multiple firms, including, among others, **AlixPartners**, **Kirkland & Ellis**, **Jefferies Financial Group**, **Jennings Strouss & Salmon**, **Centerview Partners**, **Alvarez & Marsal** and **RCS Real Estate Advisors**.

INDUSTRY NEWS

JPMorgan Agents New $295MM Facility for SurveyMonkey

SurveyMonkey amended its 2017 refinancing facility agreement with a $220 million term loan and a $75 million revolving loan. It also paid down over $100 million of its outstanding debt. **JPMorgan Chase Bank** served as administrative agent and joint lead arranger on the transaction. **Merrill Lynch** and **SunTrust Robinson Humphrey** also served as joint lead arrangers.

MidCap Financial Agents $15MM ABL for Williams Industrial

Construction, maintenance and modification provider **Williams Industrial Services Group** entered into a new, three-year, $15 million secured asset-based revolver at LIBOR + 6%, with a minimum LIBOR rate of 1%. **MidCap Financial Services** served as administrative agent and a lender on the transaction.

Antares Supports AE Industrial Partners Atlas Group Buy

Antares served as joint lead arranger and will act as administrative agent on a senior secured credit facility to support the acquisition

SPECIALTY LENDING

SPECIALTY FINANCE TRANSACTIONS

Factoring, PO Facilities, Working Capital Lines, etc. — Announced 8/11/18 – 10/11/18

PROVIDER	TYPE	SIZE*	DESCRIPTION	LOCATION
Alantes Corporate Finance	A/R Line of Credit	$250	Car Service	NC
Allied Affiliated Funding	A/R Term Loan Facility	$2,250	Telecommunication	TX
	A/R Facility	$780	Fire Sprinkler Installation	CA
Brookridge Funding	P/O Funding Facility	$12,000	Recreational Equipment Importer	NJ
Capital Now	Line of Credit	$100	General Contractor	N/A
Celtic Capital	A/R Line of Credit	$1,750	Metal Finishing	CA
	A/R Line of Credit	$750	IT Staffing	OR
Crestmark	ABL Line of Credit	$15,000	Steel Manufacturer	SD
	Ledgered Line of Credit	$7,500	Oil and Gas Services	LA
	Ledgered Line of Credit	$3,500	Oilfield Services	TX
	ABL Line of Credit	$3,500	Steel Manufacturer	N/A
	Ledgered Line of Credit	$3,000	Food Manufacturer	IL
	Ledgered Line of Credit	$2,500	Trucking	LA
	Ledgered Line of Credit	$2,000	Wireless Communications	CA
	A/R Purchase Facility	$750	Food Manufacturer	FL
	A/R Purchase Facility	$500	Freight Brokerage	MS
	A/R Purchase Facility	$500	Staffing	NC
Gateway Trade Funding	P/O Facility	$2,000	Toys Importer	N/A
	P/O Facility	$1,000	Ski Equipment Importer	N/A
	P/O Facility	$500	Apparel Importer	N/A
	P/O Facility	$500	Gymnastics Importer	N/A
	P/O Facility	$500	Commercial Lighting Importer	N/A
J D Factors	Factoring Facility	$7,000	Transportation	WI
	Factoring Facility	$2,500	Transportation	CA
	Factoring Facility	$1,500	Transportation	QC
	Factoring Facility	$500	Staffing Company	CA
	Factoring Facility	$400	Transportation	ON
	Factoring Facility	$350	Transportation	OH
	Factoring Facility	$350	Transportation	TX
	Factoring Facility	$350	Transportation	IL
	Factoring Facility	$350	Transportation	IN
mBank Business Capital	ABL Line of Credit	$1,400	Inspection Services	OH
Rosenthal & Rosenthal	Factoring Facility	$4,500	Houseware Distribution	TN
	P/O Finance Facility	$1,000	Apparel Manufacturer	GA
	P/O Finance Facility	$850	Men's Clothing	NY
Sallyport Comm'l Finance	Combined Credit Facility	$3,250	Apparel Company	N/A
	A/R Facility	$2,500	Health Services Provider	N/A
	A/R Facility	$750	Communications Agency	N/A
TradeCap Partners	P/O Facility	$4,700	Consumer Goods	CA
Tradewind	A/R Financing Facility	$7,500	Battery Manufacturer	N/A
	Factoring Facility	$500	Garment Manufacturer	N/A
Veritas Financial Partners	Trade Finance Facility	$19,300	Rec Equipment Importer	NJ
Versant Funding	Non-Recourse Factoring Facility	$5,000	Chemicals Supplier	N/A

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*Includes transactions ≥ $250K to $19.3MM (borrower not disclosed). ($ = thousands)

of flight-critical, complex assemblies manufacturer **The Atlas Group** by **AE Industrial Partners**, a private equity firm specializing in control investments in aerospace and defense, power generation and specialty industrial businesses.

Rosenthal Leads $13MM ABL for Reed's

Reed's, owner of the nation's leading portfolio of handcrafted, all-natural beverages, refinanced its outstanding facilities led by **Rosenthal & Rosenthal**. The $13 million asset-based loan replaced the company's existing credit agreements with **PMC** and will mature on March 30, 2021.

Lee Joins Piper Jaffray Financial Sponsor Coverage Group

Piper Jaffray hired David Lee as a managing director within its financial sponsors coverage group in the New York office. Lee joined Piper Jaffray from **Houlihan Lokey**, where he was part of the firm's financial sponsors group.

BofA Agents New $150MM ABL for Basic Energy

Basic Energy Services entered into a new $150 million ABL credit facility secured by its accounts receivable and related assets. **Bank of America** served as administrative agent, swingline lender and letter of credit issuer on the transaction. **Merrill Lynch**, **PNC Capital Markets** and **UBS Securities** served as lead arrangers and joint bookrunners.

Siena Provides $12MM Revolver for New Age Beverages

Siena Lending Group provided a $12 million revolving credit facility to **New Age Beverages**, an organic and natural beverage company.

Austin Financial Provides $2.5MM ABL Facility to Energy Drink Firm

Austin Financial Services funded a $2.5 million ABL credit facility, comprised of an accounts receivable and inventory revolver, to a manufacturer of energy drinks and supplements.

RBC Agents $750MM Facility for Northern Oil and Gas

Northern Oil and Gas closed on a new $750 million first lien revolving credit facility with **Royal Bank of Canada** as administrative agent. RBC Capital Markets, **ABN AMRO**, **Capital One**, **Citizens Bank** and **Wells Fargo Securities** acted as joint lead arrangers and joint book runners on the transaction.

SunTrust Robinson Supports Air Transport Omni Air Buy

Air Transport Services Group agreed to acquire **Omni Air International**, a passenger ACMI and charter services provider which serves the U.S. Department of Defense, for $845 million, subject to customary adjustments. ATSG plans to fund the all-cash acquisition by expanding the term loan under its existing credit facility, with committed financing arranged by **SunTrust Robinson Humphrey**.

FDIC: Community Banks Hold 42% of Small Business Loans

The **FDIC** published the findings of its Small Business Lending Survey, which collected data on how banks conduct their lending to small businesses. The report found that banks of different sizes approach small business

BANKRUPTCY

ENCINA PROVIDES UP TO $108MM DIP FOR NATIONAL STORES

NATIONAL STORES initiated a court-supervised restructuring with the support of its lenders and suppliers integral to the business. As part of the restructuring, the company will be closing 74 of its 344 stores.

According to documents filed during first day motions, **Encina Business Credit** agreed to provide up to $108 million in DIP financing.

National Stores is working with its vendors, lenders and other creditors on a consensual plan of reorganization.

"National Stores, historically a profitable company, is committed to improving its financial health and returning to profitability. Our goal is to emerge a reorganized company poised to compete in an evolving industry so that we can continue to serve the communities where we are rooted," said **Michael Fallas**, National Stores CEO.

Like many retail concerns, National Stores has suffered financial setbacks from certain under-performing stores. This has been exacerbated by severe weather in various regions, such as Hurricane Maria, resulting in the prolonged, temporary closure of damaged stores and loss of revenue. The company suffered further financial losses resulting from the acquisition of **Conway Stores**. The strain on liquidity was worsened by the aftermath of the company's data breach as access to operating funds diminished. ■

lending differently, but that, overall, relationships are important for both small and large banks. About 2,000 banks were selected at random to participate in the survey.

PNC Goes National, Expands Digital Retail Banking Across U.S.

PNC Bank launched a national expansion of its retail banking services, seeking new customers beyond its traditional market of 19 states and Washington, D.C. PNC soon will follow this digital bank expansion with a thin network of retail locations, beginning in Kansas City and Dallas. These cities were also part of PNC's expansion of Corporate & Institutional Banking in 2017.

Wells Fargo Provides $40MM Revolver to Sturm, Ruger

Arms-maker **Sturm, Ruger** closed a $40 million revolving line of credit with **Wells Fargo**. The facility included a $10 million sublimit for letters of credit, with advances made under the line of credit available for general corporate purposes.

BofA Merrill Lynch Agents $1B Term Loan for United Rentals

United Rentals launched syndication of a $1 billion senior secured term loan B credit facility, which will be guaranteed by United Rentals and secured by the same collateral as URNA's existing senior secured asset-based revolving credit facility. **Bank of America Merrill Lynch** will act as agent for the syndicated lenders and as joint lead arranger with **Wells Fargo Securities** and other arrangers.

A&M Adds Balistreri to Corporate Finance Practice

Alvarez & Marsal added **Michael V. Balistreri** as managing director to its Corporate Finance practice in New York. He was most recently a managing director in the investment banking division at **Canaccord Genuity** and previously served as a managing director at **Bacchus Capital Management**.

Great American to Provide $90MM FILO Term Loan to Murray Energy

Great American Capital Partners entered into an agreement with coal company **Murray Energy** to provide a $90 million senior secured FILO term loan. The loan was part of the company's previously announced capital restructuring and will provide additional liquidity to the business.

JPMorgan, Barclays Support Michael Kors Versace Buy

Luxury fashion group **Michael Kors** acquired the outstanding shares of Italian fashion house **Gianni Versace** for a total enterprise value of €1.83 billion ($2.12 billion). The combined company will be rebranded as **Capri Holdings**. The transaction was partially funded through committed underwritten bank term loans from **JPMorgan Chase Bank** and **Barclays**.

Crayhill Provides $500MM Supply Chain Facility for FreightRover

FreightRover closed a new financing facility of up to $500 million with **Crayhill Capital Management** and other investors. The new facility will support the supply chain and factoring operations of FreightRover's affiliate, **Rover180**, which recently launched as a trade finance company focused on facilitating quick pay financing options for suppliers.

WFCF Upsizes Gibraltar Business Capital Facility to $100MM

Gibraltar Business Capital increased its credit line with **Wells Fargo Capital Finance** from $75 million to $100 million to support continued growth. The credit facility also includes an accordion feature, which could increase the line up to $150 million in anticipation of Gibraltar's continued growth over the next year.

Wells Fargo, Gordon Bros. Finance Amend Stein Mart Credit Agreements

Off-price retailer **Stein Mart** extended and amended its existing revolving credit agreement with **Wells Fargo** and its term loan agreement with **Gordon Brothers Finance Company**. The agreements extended the terms to September 18, 2023, increased the revolver borrowing limit to $240 million and decreased the term loan from $50 million to $35 million.

MB Business Provides $29.5MM Facility to Honey-Can-Do

MB Business Capital acted as sole lender and administrative agent on the funding of a $29.5 million senior credit facility to Berkeley, IL-based **Honey-Can-Do International**, a seller of a variety of products under the Honey-Can-Do brand name as well as **Kitchen Supply, Perch, Urbio, Old Stone Oven** and **Zevro**.

Antares Agents $151MM Facilities to Support Quad-C's Acquisition of NJRetina

Antares Capital served as administrative agent and joint lead arranger, along with **Varagon Capital Partners**, on

$151 million in senior secured credit facilities to support the acquisition of diagnostic and treatment specialist **NJRetina** by **Quad-C Management**, a middle market private equity firm.

AloStar Capital Finance Commits $20MM to Fenix Parts

AloStar Capital Finance agented a $20 million committed credit facility to support the acquisition of **Fenix Parts**, a recycler and reseller of original equipment manufacturer automotive products, by **Stellex Capital Management**, a middle market private equity firm.

PNC Bank Agents $106MM Unitranche for R.G. Barry

PNC served as administrative agent on a $106.5 million senior secured facility for **R.G. Barry Brands**. A fund managed by **GSO Capital Partners** participated as an anchor investor for a portion of the facility.

JPMorgan Chase Upsizes Highpoint Facility to $500MM

Oil and natural gas developer **HighPoint Resources** entered into a new amended and restated credit agreement for its revolver, extending the maturity date by more than three years to 2023 and increasing the borrowing base and commitments by 67% to $500 million.

Rise Line Closes $7.85MM ABL Facility for Great Western

Rise Line Business Credit closed a $7.85 million ABL revolver for **Great Western Products**, a specialty manufacturer and distributor of branded and private label food and concession products to retailers and entertainment venues nationwide.

SB360 to Conduct Store Closing Sales for Thomasville, Broyhill

SB360 Capital Partners was chosen by **Heritage Home Group** to assist HHG in conducting sales of the inventory from its Thomasville and Broyhill business units. SB360 assisted HHG in commencing a Store Closing Sale in 25 HHG-owned stores in 14 states.

PNC, JPMorgan Chase Provide $285MM Facilities to Funko

Pop culture products designer and distributer **Funko** entered into a commitment letter with **PNC Bank** and **PNC Capital Markets** for new senior secured credit facilities. **JPMorgan Chase Bank** served as joint lead arranger and syndication agent for the facilities.

MUFG Agents Chesapeake Energy $3.8B Revolver

Chesapeake Energy amended its senior secured revolver, receiving initial commitments from 15 institutions totaling $3.8 billion. The credit facility was led by **MUFG Union Bank** as administrative agent, co-syndication agent, swingline lender and a letter of credit issuer.

Bridge Bank, Tree Line Capital Support Goettl Recap

Bridge Bank and **Tree Line Capital** both provided debt financing to support the recapitalization of **Goettl Air Conditioning** by **Baum Capital Partners**. Bridge Bank provided a capital equipment facility and revolving line of credit to support ongoing corporate needs, and Tree Line provided an equity co-investment.

Encina Provides Senior Secured Facility to Associated Steel

Encina Business Credit provided a senior secured credit facility to **Associated Steel Group**, a manufacturer of pre-engineered metal buildings and related components.

BofA Agents $950MM Cracker Barrel Credit Facility

Cracker Barrel Old Country Store entered into a five-year $950 million revolving line of credit. **Bank of America** served as both the administrative and collateral agent on the transaction. **Merrill Lynch**, **Wells Fargo Securities**, **Rabobank**, New York Branch and **SunTrust Robinson Humphrey** served as the joint lead arrangers and joint bookrunners, while Wells Fargo Bank, Rabobank, New York Branch and **SunTrust Bank** served as co-syndication agents.

Siena Closes $13.4MM ABL Facility for Wise Recycling I

Siena Lending Group completed a $13.4 million asset-based revolving and term loan credit facility for **Wise Recycling I**, a scrap metals recycler for both individuals and groups.

Comerica Provides $10MM JumpCloud Credit Facility

JumpCloud, a directory-as-a-service platform, entered into a $10 million credit facility with **Comerica**. The facility follows $20 million in Series C funding the company closed with

OpenView Partners and **Foundry Group**, giving JumpCloud access to even more capital to grow.

Siena Lending Closes $3.75MM Facility for MDT Holdings

Siena Lending Group completed a $3.75 million asset-based revolving credit and term loan facility for **MDT Holdings**, the owner of **Michael Dusi Logistics**, a niche, third-party logistics firm that provides a broad suite of specialized solutions to the wine and craft beer industry.

CAN Capital Closes New $287MM Facility from Varadero Capital

CAN Capital enhanced its capital capacity with a $287 million credit facility from **Varadero Capital**, a New York-based alternative asset manager. This is the second facility provided by Varadero to CAN Capital, which will use the funds to support its continued growth.

White Oak Closes $20MM Financing for Fox Rehab

White Oak Healthcare Finance acted as sole lender and administrative agent for a $20 million asset-based senior credit facility for **Fox Rehabilitation**, a provider of physical, occupational and speech therapy services to help geriatric patients regain a better quality of life.

PNC Agents $16.2MM Facility for MPD

PNC Bank served as administrative agent on a $16.2 million senior secured credit facility for electronic components provider **MPD**. MPD will use its funds to refinance existing senior bank debt, fund capital expenditures, provide for ongoing working capital needs, issue letters of credit and fund mandatory ESOP share redemptions.

Wells Fargo, Nomura Agent BJ's Wholesale Club Refi

BJ's Wholesale Club refinanced its first lien term loan credit agreement with **Nomura Corporate Funding Americas** as administrative agent and collateral agent and its ABL facility with **Wells Fargo** as administrative agent.

Wells Fargo Agents $25MM Term Loan for Stage Stores

Stage Stores amended its senior secured revolving credit facility agreement with **Wells Fargo** as administrative agent, collateral agent and term loan agent. **JPMorgan Chase**, **Regions Bank**, **Bank of America** and **SunTrust Bank** served as lenders on the transaction. The amendment provided the company with a new $25 million term loan.

Cedar Croft Secures $17MM Revolver for Walker Zanger

Cedar Croft Consulting structured and secured a $17 million revolver for **Walker Zanger**, a distributor of ceramic, granite, marble and limestone tiles and slabs to wholesalers and retail customers. The facility will be used to support the organization's financing goals for its strategic business plan.

Crystal, Citizens Agent $107.5MM Facilities for Vince

Vince Holding closed a new $27.5 million senior secured term loan facility and a new $80 million senior secured revolver. **Crystal Financial** served as both administrative and collateral agent on the term loan. **Citizens Bank** served as both administrative and collateral agent, as well as sole lead arranger and sole bookrunner, on the revolver.

Presidential Financial Provides $6MM Facilities to Selinsky Force

Presidential Financial provided $6 million in working capital facilities to **Selinsky Force**, an industrial contractor which primarily performs maintenance and repair work on capital equipment for clients in the Midwestern U.S. The funds were used to refinance the payoff to an existing lender, provide additional working capital and help facilitate further business expansion.

Citibank, Citizens Lead $75MM Facility for MiraMed

MiraMed Global Services completed a new five-year, $75 million syndicated senior secured credit facility. **Citibank** and **Citizens Bank** were lead arrangers, with Citibank as sole bookrunner and Citizens as syndication agent. **HSBC Bank** and **Fifth Third Bank** acted as co-documentation agents.

JPMorgan Agents $500MM Revolver for Twitter

Twitter closed a $500 million revolving credit facility with **JPMorgan** as administrative agent, sole lead arranger and sole bookrunner. The agreement will require certain material domestic subsidiaries of the company to guarantee the facility's obligations, with proceeds to be used for general corporate purposes. The facility will terminate on August 7, 2023, with all outstanding loans to be repaid by that date.

EVENTS *calendar*

DECEMBER 3-4, 2018
Financial Executives Intl
The Tactical & Strategic CFO
Dallas, TX
973-765-1029
financialexecutives.org

DECEMBER 6-8, 2018
American Bankruptcy Inst
ABI Winter Leadership Conference
Scottsdale, AZ
703-739-0800
abi.org

JANUARY 7-9, 2019
American Bankruptcy Inst
Caribbean Insolvency Symposium
Cayman Islands
703-739-0800
abi.org

JANUARY 22, 2019
NYIC/AIRA
Bankruptcy & Restructuring Event
New York NY
541-848-1665
aira.org

JANUARY 24-25, 2019
American Bankruptcy Inst
Rocky Mountain Bankruptcy Conference
Salt Lake City, UT
703-739-0800
abi.org

JANUARY 24-29, 2019
International Factoring Assoc
2019 Presidents & Sr Execs Meeting
Key West, FL
805-773-0011
factoring.org

JANUARY 27-29, 2019
Association for Corporate Growth
Mammoth Deals Ski Conference
Mammoth Lakes, CA
203-304-9496
acg.org

JANUARY 27-29, 2019
Association for Corporate Growth
Northeast Dealmaking at the Mountain
Stowe, VT
203-304-9496
acg.org

FEBRUARY 5, 2019
New York Institute of Credit
Women in Achievement Awards
New York, NY
917-338-7000
instituteofcredit.org

FEBRUARY 5-6, 2019
Commercial Finance Association
Asset-Based Capital Conference
Las Vegas, NV
212-792-9390
cfa.com

FEBRUARY 6-8, 2019
Turnaround Management Assoc
Distressed Investing Conference
Las Vegas, NV
312-578-2029
turnaround.org

FEBRUARY 27-MARCH 1, 2019
Assoc of Insolv & Restructuring Adv
VALCON 2019
Las Vegas, NV
541-848-1665
aira.org

MARCH 26, 2019
ABFJ/NYIC/CFA/TMA
Credit & Restructuring Summit
Philadelphia, PA
800.708.9373
abfjconference.com

APRIL 3-9, 2019
International Factoring Assoc
Annual Factoring Conference
San Diego, CA
805-773-0011
factoring.org

MAY 16, 2019
Turnaround Management Assoc
Europe Annual Conference
Vienna, Austria
312-578-2029
turnaround.org

MAY 19-21, 2019
Financial Executives International
2019 Financial Leadership Summit
Lake Buena Vista,FL
973-765-1000
financialexecutives.org

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Notable Transactions By Lender

Information Gathered From News Releases & Other Public Sources — *Transactions Announced From 8/16/18 through 10/11/18*

BORROWER/INDUSTRY	ROLE	SIZE (MM)	STRUCTURE/NOTES
ALOSTAR CAPITAL FINANCE			
Stellex Capital Management Private Equity Firm	Admin Agent	$20.0	Revolver *Supports Fenix Parts acquisition*
ANTARES CAPITAL			
Quad-C Management Private Equity Firm	Admin Agent	$151.0	Revolver *Supports NJRetina acquisition*
BANK OF AMERICA			
Covanta Holdings Provider/Waste & Energy Solutions	Admin Agent	$1,300.0	$900MM Revolver/$400MM Term Loan *Facility upsized by $100MM*
Cracker Barrel Operator/Restaurant Chain	Admin Agent	$950.0	Revolver *Replaces previous revolver*
BANK OF AMERICA MERRIL LYNCH			
Charah Solutions Provider/Maintenance & Environmental Services	Lead Arranger	$280.0	$230MM Term Loan/$50MM Revolver *Jt lead arranger: Regions Capital Markets*
BANK OF MONTREAL			
Aurora Cannabis Provider/Cannabis Products	Lender	$200.0	$150MM Term Loan/$50MM Revolver *Includes upsize option to $550MM after Bill C-45 implementation*
CIT GROUP			
Neutral Connect Networks Provider/Wireless Communications Networks	Lead Arranger	$25.0	Revolver *Facility includes: M/C Partners*
CIT HEALTHCARE			
Bristol Hospice Provider/Hospice Care	Admin Agent	$144.0	Credit Facility *Supports acquistion of two hospice providers*
CITIBANK			
Enterprise Products Partners Provider/Midstream Energy Services	Admin Agent	$2,000.0	Revolver *Replaces previous $1.5B revolver*
CITIBANK, CITIZENS			
MiraMed Global Services Provider/Healthcare Management Services	Lead Arrangers	$75.0	Revolver *Syndication agent: Citizens Bank*
CITIZENS BANK, CRYSTAL FINANCIAL			
Vince Holding Manufacturer/Luxury Apparel & Accessories	Admin Agents	$107.5	$80MM Revolver/$27.5MM Term Loan *Term loan agent: Crystal; Revolver agent: Citizens*
COMERICA			
JumpCloud Provider/Directory-as-a-Service Platform	Lender	$10.0	Credit Facility *Capital supports growth*
CRÉDIT AGRICOLE			
Genco Provider/Seaborne Transportation Services	Admin Agent	$108.0	Term Loan *Supports finance of three vessels*
CROWN CAPITAL			
Triple Five Intercontinental Group Producer/Petroleum & Natural Gas	Lender	$15.0	Term Loan *Supports future capital needs*
GOLDMAN SACHS			
Aligned Energy Provider/Cloud & Managed Service Solutions	Lender	$375.0	Revolver *Facility used for future capital*
JPMORGAN CHASE			
Tenneco Manufacturer/Clean Air Products	Admin Agent	$4,900.0	$3.4B Term Loan/$1.5B Revolver *Supports Federal-Mogul acquisition*
Diebold Nixdorf Provider/Consumer Services & Technology	Admin Agent	$650.0	Term Loan *Supports refi*
FS Energy and Power Fund BDC	Lead Arranger	$1,085.0	$195 Term Loan/$390MM Revolver/$500MM Notes *Jt lead arrangers: JPMorgan Chase, SG Americas, BMO Capital*
ServiceMaster Provider/Residential & Commercial Services	Admin Agent	$1,000.0	Term Loan *Supports refi*
KEYBANK			
The Timken Company Manufacturer/Automotive Products	Admin Agent	$350.0	Term Loan *Supports Rollon Group acquisition*
LBC CREDIT PARTNERS			
Tower Three Partners Private Equity Firm	Admin Agent	$35.0	Revolver *Supports Nurse Assist acquisition*
MB BUSINESS CAPITAL			
Honey-Can-Do International Retailer/Organizational Products	Admin Agent	$29.5	Credit Facility *Senior debt refi*

For a comprehensive listing of notable transactions, visit our DAILY ABL DEAL CHART @ abfjournal.com

Submit deals for consideration to *news@abfjournal.com*

BORROWER/INDUSTRY	ROLE	SIZE (MM)	STRUCTURE/NOTES
MUFG			
Chesapeake Energy Producer/Natural Gas	Admin Agent	$3,800.0	Revolver *Syndicate includes: Wells Fargo, JPMorgan Chase, MUFG*
NATIONAL BANK OF CANADA			
Medical Facilities Provider/Surgical Facilities	Lender	$150.0	Revolver *Syndicate includes: TD Bank, HSBC Canada*
NATIXIS			
Energy Efficient Equity Specialty Finance Company	Lender	$150.0	ABL Revolver *Supports national expansion*
PACIFIC MERCANTILE BANK			
Great Elm Provider/Sleep & Respiratory Medical Equipment	Lender	$10.0	Revolver *Supports Valley Healthcare Group & Northwest Medical acquisitions*
PNC BANK			
MPD Provider/Electronic Components	Admin Agent	$16.2	Revolver *Supports refi*
Funko Distributor/Pop Culture Products	Admin Agent	$285.0	$235MM Term Loan/$50MM Revolver *Syndication agent: JPMorgan Chase*
RISE LINE BUSINESS CREDIT			
Great Western Products Manufacturer/Food & Concession Products	Lender	$7.9	Revolver *Supports refi*
ROYAL BANK OF CANADA			
Pawnee Leasing Equipment Finance Company	Admin Agent	$250.0	Warehouse Facility *Funds prime portfolio*
SCOTIABANK			
Trevali Mining Producer/Base Metals	Admin Agent	$275.0	Revolver *Replaces previous facility*
SECOND AVENUE CAPITAL PARTNERS			
A'GACI Retailer/Women's Apparel	Lender	$12.0	Revolver *Facility used for exit financing*
SIENA LENDING GROUP			
Mercury Media Private Investment Fund	Lender	$15.0	ABL Revolver *Supports working capital needs*
Wise Recycling Provider/Scrap Metal Recycling	Lender	$13.4	ABL Revolver *Senior debt refi; working capital*
Bolttech Mannings Provider/Bolting & Heat Treating Services	Lender	$12.0	Revolver *Supports refi*
Facet Medical Technologies Manufacturer/Medical Equipment	Lender	$7.5	ABL Revolver *Supports future working capital*
Wm. G. Roe & Sons Provider/Citrus Fruits	Lender	$5.0	ABL Revolver *Seasonal/working capital*
SQUARE 1 BANK			
Voci Technologies Provider/Speech Analytics	Lender	$5.0	Revolver *Supports long-term growth initiatives*
STERLING NATIONAL BANK			
Pinnacle Climate Technologies Manufacturer/Climate control solutions	Lender	$20.5	Credit Facility *Sponsored by Tagline Private Equity*
UMPQUA BANK			
ShotSpotter Provider/Gunfire Detection	Lender	$10.0	Revolver *Facility supports working capital and equipment acquisition*
WELLS FARGO CAPITAL FINANCE			
Gibraltar Business Capital Provider/Finance Solutions	Lender	$100.0	Revolver *Facility upsized from $75MM*
WHITE OAK HEALTHCARE FINANCE			
LifeCare Holdings Provider/Home Healthcare	Admin Agent	$40.0	ABL Revolver *Supports refi*
Fox Rehabilitation Provider/Therapy Services	Admin Agent	$20.0	ABL Revolver *Supports refi*
WOODFOREST COMMERCIAL BANKING			
Avmont Private Investment Fund	Lead Arranger	$60.0	Revolver *Supports future acquisitions*

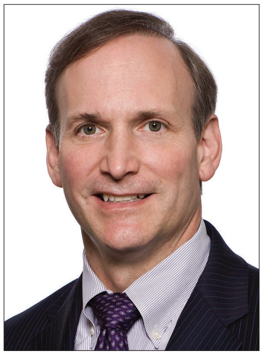
ABL Lenders Face Challenges, But Expect Strong Economy to Keep Them Afloat

BY LISA A. MILLER

Every year, ABL lenders face new challenges. Last year, people were nervous about the impact of prospective tax cuts. This year, the effect of tariffs has both borrowers and lenders shaking their heads. ABL lenders are facing increasing competition as 2019 prepares to roll in. Lisa Miller catches up with five top ABL executives who look back at 2018 and anticipate a strong year ahead.

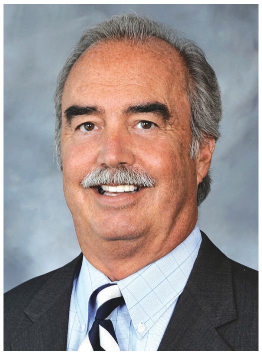
SETH BENEFIELD
Senior Vice President, Bank of America Business Capital

MICHAEL HADDAD
President, Capital Finance, Sterling National Bank



JIM HUDAK
President,
CIT Commercial Finance

JOSEPH NEMIA
Head, Asset Based Lending, TD Bank



MICHAEL SHARKEY
President,
MB Business Capital

Despite the same humdrum market conditions of slow but steady economic growth, pricing compression and intense competition, today's ABL leaders continue to thrive. As we wrap up another year, they demonstrate their determination to overcome obstacles, serve customers and expand market share.

We asked five ABL leaders about the year behind and what's ahead. Though each faced inevitable surprises and unforeseen developments, they showed the resolve and optimism that characterizes leadership and achievement in our dynamic industry.

"One of the biggest surprises of 2018 was a shift on the ABL side as the bigger banks stepped up to much larger hold positions," says Jim Hudak, president of CIT Commercial Finance. "With the current trend, the bigger banks club up and take larger holds. Instead of having one or two leads with a lot of participants, there are only four or five lenders."

"There was no shortage of bankruptcies and restructurings within the retail and grocery sectors, but none were a surprise given the pressure put on brick-and-mortar retailers," says Joseph Nemia, head of Asset Based Lending at TD Bank. "Companies with over-levered balance sheets and far too many stores found it hard to compete, > >

"One of the biggest surprises of 2018 was a shift on the ABL side as the bigger banks stepped up to much larger hold positions. With the current trend, the bigger banks club up and take larger holds. Instead of having one or two leads with a lot of participants, there are only four or five lenders."

— Jim Hudak, *President*, CIT Commercial Finance

given the shift in consumer preference. Although not great news for the future of this sector, it was a proof-point that well-structured and closely monitored borrowing relationships did not lead to credit losses for asset-based lenders."

"We started 2018 with a plan to grow our ABL business by 100% over the next three years," says Michael Haddad, president of Capital Finance at Sterling National Bank. "The plan included hiring additional talent and booking more business. We quickly found out that the availability of quality business development officers was limited. The other big surprise is that we are 51% ahead of last year in the number of deals we have looked at, but with a lower closing rate, thanks to the unending stream of new entrants into our ABL world and aggressive competitors offering dangerous loan structures."

"Maybe the biggest surprise is how little the lending environment has changed," says Seth Benefield, SVP of Bank of America Business Capital. "We expected the ABL landscape to remain competitive, and it has. Market conditions remain favorable for issuers, and there is ample liquidity. We also anticipated that economic fundamentals would remain favorable, which has proven accurate. We continue to experience good deal flow, and asset quality is strong."

"The economy continues to chug along in spite of the uncertainty, the noise and the dysfunction that bombards us every day," says Mike Sharkey, president of MB Business Capital. "Confidence remains high, and we are seeing nice organic growth within our portfolio. Our 2018 results are well ahead of projections and far above last year."

A year ago, the hot topic in the news was interest rates, but now everyone is talking about tariffs. "Tariffs are a concern to our customer base, so we monitor the conversations closely, but so far it is business as usual," Haddad says.

"M&A activity continues at record levels. However, conditions appear to favor strategic buyers over financial sponsors, which suppresses new ABL financings. Further, platform investments by private equity have abated in 2018 versus 2017. We are seeing private equity firms execute more add-on acquisitions — 'buy and build' — which helps overall loan outstandings."

— Seth Benefield, *Senior Vice President*, Bank of America Business Capital

"From what we see, tariffs on steel are having the biggest impact," Sharkey says. "In general, our customers have been able to pass those increases along, and they are realizing significant profit on their existing inventory. The real effects will be felt long term as companies do or don't locate alternative suppliers on both the customer and vendor sides. Higher prices will also negatively affect demand."

"Until the picture becomes a little clearer, it's difficult to place a dimension on the overall impact," Nemia says. "In anticipation of potential tariffs, some of our customers and prospects saw an increase in shipments to the U.S. during the first part of the year, which put pressure on prices of products subject to tariffs. It's a topic that is definitely top of mind with customers and credit committees."

"To date, we have seen commodity prices negatively affected, particularly copper, which has had its impact on our client base," Benefield says. "We are following the trade agreement negotiations between the U.S. and its trade partners. The situation remains fluid, and we expect the negotiations to play out more over the coming months."

"If a company imports material to make or sell its products, those materials may get more expensive," Hudak says. "That raises the price of inventory, and that can create a need for greater working capital. It can also create an opportunity for an ABL lender that predominantly finances accounts receivable or inventory. From the standpoint of credit quality, banks lending to companies need to be cognizant of increasing costs and, therefore, gross margin compression."

New Players, Approaches & Opportunities

The influx of new ABL players has not let up. "The competition is ridiculous!" Haddad exclaims. As chair of the CFA membership committee, he sees a shift. "Right now, we're seeing increasing numbers and more diversified players coming in. Some of them have nothing to do with ABL but want to test the value proposition for joining the CFA. One recent applicant was a national real estate financier and wanted to join as an asset-based lender. They thought they might find loan opportunities by networking with the CFA members who might also help them create a new, exciting ABL-related vertical that the mainline players like ourselves haven't thought of."

"We see a lot of sole lender transactions with the regional banks and smaller community banks," Hudak says. "It might be a regional bank that's had a relationship with the company for years. Instead of trying to syndicate the deal, they do it alone, remain the sole lender and take a larger hold position."

"Total relationship returns continue to be a key focus for lenders, and that heightens the competition to lead deals," Benefield says. "The lead left lender typically is in the best position to provide borrowers with cash management and other ancillary bank products."

"All banks are lending aggressively and doing the better deals on a cash flow, borrowing base or blanket lien basis," Sharkey says. "Finance companies, many of whom are new, are doing tougher deals aggressively without blocks or other protections. Others are doing aggressive cash flow deals with the sponsors with no regard to collateral values."

"Larger banks have appetites for outsized hold positions, the depth of the capital markets remains deep, and there isn't a plethora of new deals, so the customer is a net winner as it relates to both price and structure," Nemia says.

Each of our roundtable participants managed to increase business volume, despite the challenges. "TD ABL has added a national capability to serve larger well-rated companies," Nemia says. "We believe that this expanded market coverage will generate additional revenue as we continue to build awareness of the TD brand. We are also beginning to leverage our team's deep restructuring industry expertise, because more companies, especially in the retail sector, are experiencing challenging market conditions."

"We've been using the ABL product in industries where we have very good knowledge of the sector," Hudak says. "For example, we're using the ABL skillset to bank companies in the financial services sector like BDCs. We've used our maritime experience to develop structures based on a pool of vessels. Because of our knowledge and the impact on asset values over a cycle, we feel we can arrange the appropriate borrowing base and advance rates. Our extensive experience in the retail space helps us with transactions where we might provide additional credit for intellectual property or brand value as part of the borrowing base."

"We have some quality healthcare talent in the bank, and we're talking to others, so we may launch a healthcare vertical," Haddad says. "We recently beefed up our equipment finance capability by buying a company in Long Island. Now we have more than a billion out in equipment finance, so we will come to market in 2019 with a new look and new verticals."

"Our aim continues to provide best-in-class products and solutions that include credit, treasury, risk management and investment banking capabilities," Benefield says. "We have consistently maintained an industry-leading lead left ABL market share, and we are focused on growing our middle market lending practice for companies seeking financing solutions of $5 million or more."

> **"From what we see, tariffs on steel are having the biggest impact. In general, our customers have been able to pass those increases along, and they are realizing significant profit on their existing inventory. The real effects will be felt long term as companies do or don't locate alternative suppliers on both the customer and vendor sides. Higher prices will also negatively affect demand."**
>
> — Michael Sharkey, *President*, MB Business Capital

"We stay the course with sound lending practices, but we believe our experience allows us to see each individual deal in a unique way," Sharkey says. "That allows us to craft creative solutions for each borrower's situation. Each deal is different based on market factors, management strength, seasonality and the collateral aspects of a deal. We are just getting started in Canada. We are merging with Fifth Third, and that will allow us to compete on another level."

M&A and Regulatory Oversight

"M&A activity continues at record levels," Benefield says. "However, conditions appear to favor strategic buyers over financial sponsors, which suppresses new ABL financings. Further, platform investments by private equity have abated in 2018 versus 2017. We are seeing private equity firms execute more add-on acquisitions — 'buy and build' — which helps overall loan outstandings."

"There's a lot of money in the private equity space, but we can't chase deals and do them for the sake of doing a deal," Hudak says. "We need to make sure the companies are sold for the right valuations, which in turn will drive the capital structure. When private equity groups have to stretch to buy companies and therefore pay a higher multiple, it is imperative that we feel that the leverage and the capitalization of the company are appropriate." > >

"There are corporate-to-corporate deals going off at record-level numbers and dollar amounts," Haddad says. "Transaction multiples are at all time highs of nine, 10 and 11 times EBITDA or more. We bid on an M&A deal and thought we were fairly aggressive about it, but we weren't even close. We learned there were 14 different books put out on the street for that deal! The request was a 50/50 split between a revolving line of credit and a cash flow term loan, all from a private equity group. This deal will probably wind up going off at 10 times EBITDA and get fully financed. We drew a line in the sand and said we can't play in that deal."

Sharkey says their close relationship with SBICs across the country allows them to compete effectively with banks and cash flow lenders. "When we do lose deals to expensive cash flow or unitranche lenders, we continue to call on the sponsor for when the company is ready to refinance or recapitalize. Oftentimes a sponsor will go the cash flow route to get a deal closed quickly and, within a year or so, do a refinance to bring its costs down."

"There have been a number of transactions in the larger ABL space that have been either delayed or prohibited after being reviewed under the Hart-Scott-Rodino Act lens," Nemia says. "Given the limited overall M&A market for ABL, these regulatory decisions affect the growth of banks and lenders focused on providing M&A financing for the upper end of the ABL market segment."

There has been some loosening of Dodd-Frank regulations, but has it had any impact on our lenders or their competition? "We have a strong credit and compliance culture and will continue to work within our risk framework, which is in compliance with our applicable regulatory requirements," Benefield says. "We have seen no changes to the competitive landscape from any recent regulation changes."

"There have been a number of transactions in the larger ABL space that have been either delayed or prohibited after being reviewed under the Hart-Scott-Rodino Act lens. Given the limited overall M&A market for ABL, these regulatory decisions affect the growth of banks and lenders focused on providing M&A financing for the upper end of the ABL market segment."

— Joseph Nemia, *Head*, Asset Based Lending, TD Bank

"I would categorize it as a simplification rather than a loosening of regulations," Hudak says. "This has translated, in our business, to a very constructive dialogue with our regulators. We want to grow and seek new opportunities but make sure we are doing that in a prudent way. We were categorized as a SIFI and had additional regulatory requirements. Now we are no longer a SIFI, so that's a positive for us in terms of certain reporting."

"I am hoping that regulations on the corporate side will loosen," Haddad says. "The banking regulatory environment is costly and, in my opinion, not entirely productive. There needs to be some level of oversight, but right now we have too much oversight, especially on the corporate side. Loosening would lessen costs, drive efficiency and ultimately allow us to be more competitive."

"We see intense competition from the regional banks, and I suspect that, to some degree, it is coming from loosened regulation and low loan losses," Sharkey says. "The competition from smaller banks has certainly heated up."

Nemia has not seen any material change to their appetite to grow the ABL business and continues to focus on "business as usual".

Fintechs & Private Equity

"Fintechs are really about driving operational efficiencies," Hudak says. "Our business is high touch and requires a lot of credit adjudication and due diligence. We certainly use technology to help us be more efficient in gathering, manipulating and making assumptions about data, but I don't feel we directly compete against fintechs at our end of the market."

"Fintechs have made a big push into the payments business, and their data-driven models are clearly pointed at smaller opportunities given the relative size of the opportunity," Nemia says. "I believe that the data and analytics approach employed by fintechs can be applied to help identify new markets for ABL as well as provide portfolio management with more robust information to determine the risks inherent in a credit relationship."

"There are other slightly larger asset-based lenders that are putting together online platforms," Haddad says. "Their model is to outsource a lot of the back-office work to places like India and the Philippines to keep costs low."

"We use technology and the internet actively and extensively to build our brand and to communicate with the market," Sharkey says. "At the same time, it is a people business that requires us to win confidence and create unique, workable solutions for each situation we encounter. I don't know how you could operate in our segment of the market without that creative and personal touch."

"We certainly are aware of the substantial capital being invested in the fintech space, and our company continues to invest in new, enhanced digital capabilities to better serve our clients," Benefield says. "We expect that digitalization will continue at an accelerated pace, and we will continue to proactively meet our clients' needs as technology evolves."

The *Wall Street Journal* recently reported that private equity firms are flush with cash and starting to structure loans, including smaller loans that banks don't want to handle. "I do see this as a growing trend, but it's really not a new phenomenon," Nemia says. "Some private equity firms have used this financing approach to remove execution risk as well as improve ROE. The pricing on these transactions tends to be higher than a traditional ABL revolving line of credit, which would justify the overall risk return."

"We primarily see alternative lenders filling voids for companies that cannot access traditional debt markets," Benefield says. "Typically, these are highly leveraged situations, deep turnarounds or in asset classes that are not traditional ABL. We do partner with some of these lenders in providing solutions to our clients. An example would be a situation where we provide a revolver facility, and the alternative lender provides a first or second lien term loan."

"We see private equity groups augmenting their deals with debt," Sharkey says. "That often leaves the senior lender with an unfunded revolver or a line with very little usage. That is not something that interests us."

"It makes perfect sense for a private equity group to get into lending," Haddad says. "With sky-high multiples, some lenders may start to pull away, especially if the economy slows. As interest rates go up and credit quality suffers, the economy will start to tighten. The PEGs will put more and more of their money — with the fund approval of course — into taking these deals off the street. They can then sit on the deal for six months or longer as they wait for marketing conditions to stabilize. Then they can come back to the market, refinance and redeploy."

"The cost of funds for private equity firms is much higher than a bank, so they must earn greater returns," Hudak says. "As a result, they put their money to work in things that often involve more embedded risk or risk that would not fit the regulatory guidance of a bank. In some cases, private equity can provide solutions for more troubled or challenging credits that a bank might hold in their workout groups. To the extent that private equity can be creative in restructuring and refinancing borrowers, that is a positive for banks."

Making New Year's Plans

Nemia intends to leverage TD's enlarged sales force and expand geographic coverage to fuel growth in 2019. "Some of the risks for growth will be the shrinking of traditional retailers that continue to be disrupted by online and omnichannel business models. In addition, a strong term loan B and high yield market in a rising rate environment could result in borrowers choosing a long-term debt product with a fixed rate of interest."

> **"My apprehension stems from my ABL brethren who are aggressively over-lending. This might result in some opportunities for us, but it will also cause some turmoil and dislocation in the industry. My concern is about the repercussions throughout the industry as those lenders who were way too aggressive in 2017 and 2018 start to take some hits."**
>
> — Michael Haddad, *President*, Capital Finance, Sterling National Bank

Sharkey notes MB's merger with Fifth Third will expand its world considerably. "We will be able to do bigger deals, have more products to sell and have access to an enormous base of commercial lenders across their footprint in locations where they are not currently offering middle market ABL under $15 million."

"Absent an unexpected geopolitical event or other unexpected shock to the system, we anticipate the domestic economy to continue its growth," Benefield says. "The economic backdrop remains favorable with strong fundamentals and corporate earnings, coupled with high liquidity and a still modest interest rate environment."

While he doesn't expect the economy to cycle next year, Hudak says you always have to plan for it. "We need to remember that when we underwrite our credits, we can't count on just the good times and need to ensure that there is financial flexibility for our borrowers if they do cycle."

Sterling is also poised for growth but with some caveats. "My apprehension stems from my ABL brethren who are aggressively over-lending," Haddad says. "This might result in some opportunities for us, but it will also cause some turmoil and dislocation in the industry. My concern is about the repercussions throughout the industry as those lenders who were way too aggressive in 2017 and 2018 start to take some hits." abfj

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LISA A. MILLER is a regular *ABF Journal* contributor who has worked in the finance industry for nearly two decades.

Where Are We in the Credit Cycle?

Is It Time to Tap the Brakes?

BY HUGH C. LARRATT-SMITH

The U.S. economy is booming and while commercial banks are still restrained by regulations, nonbank lenders are in high gear. Hugh Larratt-Smith takes an in-depth look at the current economic situation as 2019 looms ahead and says it may be time for lenders to slow down.

HUGH C. LARRATT-SMITH
Managing Director,
Trimingham

Arden was one of America's largest homes when E.H. Harriman completed his 100,000 square foot mansion in Tuxedo Park at the turn of the last century. Forty miles north of New York City, Arden had nearly 100 rooms on 40,000 acres of land. Harriman had purchased the property from the Parrott brothers, who supplied the Union Army with cannons and the well-known Parrott Rifle during the Civil War.

Never one to enjoy school, Harriman left at 14 to pursue a career on Wall Street, fortuitously just as the Civil War was unleashing a new speculative fervor in America's financial institutions. He proved to be so adept at combing through financial statements of railroads and picking winners from losers in the turbo-charged stock market, at the age of 21, he owned a seat on the New York Stock Exchange. Harriman's early railroad investments led to a profitable association with Stuyvesant Fish, a Wall Street railroad stock speculator (Fish and Harriman became estranged some years later when Fish's wife, Mamie, snubbed Harriman's wife, Mary, at a tea party at Crossroad, their Colonial Revival home in Newport, RI, where Mrs. Fish's Harvest Festival Ball in August signaled the end of the Newport social season).

The Harriman myth revolved around his seemingly magical ability to transform rusting, decrepit railroads into modern moneymakers. His most ambitious project was rescuing the failing Union Pacific railroad system in 1897. A key part of his recovery plan was changing the management culture at the railroad by decentralizing the organization. Adroitly using his Wall Street relationships, he restructured its heavy debt and rebalanced the capital structure. He personally examined every mile of the huge railway system, meticulously noting where critical capital expenditures were needed on every railway crossing, dispatch station and signal light. One reason for Harriman's success as a railroad manager was his innovative directive to streamline operations and standardize the company's fleet of railroad cars.

He recognized that America's railroad system was rapidly becoming over-built, due to the abundant liquidity provided to the railroad industry by Wall Street and London financiers. Success would depend on attention to detail and prudent financial plans. Ultimately, Harriman succeeded not so much because he was an original thinker, but because he implemented his financial strategy on a grand scale, which other railroaders shied away from. As a financier who witnessed the boom and bust of America's economy after the Civil War, he knew when to open the money spigot — and when to close the valve.

Fast forward 100 years. Once more, the markets are turbo-charged and flush with liquidity. Equity markets are near record highs. Property prices in key global cities are at record multiples of inhabitants' earnings. Private equity groups have never had it so good, raising record amounts of liquidity at the fastest pace in a decade. The recent uptick in highly leveraged mega deals comes as global M&A for the first nine months of 2018 eclipsed the high-water mark of 2007. > >

All photos: Wikipedia.org

In 1885, Harriman acquired "Arden", the 7,863-acre Parrott family estate in the Ramapo Highlands near Tuxedo, New York, for $52,500. Over the next several years he purchased almost 40 different nearby parcels of land, adding 20,000 acres, and connected all of them with 40 miles of bridle paths. Harriman built a 100,000 sq. ft. home, on the property which was begun in 1905. Harriman lived in it with his wife Mary Williamson Averell for only seven months before his death in 1909.

Edward Henry Harriman (pictured above right) bought the bankrupt Union Pacific railroad in 1897, and in 1901, he assumed control of the Central Pacific and Southern Pacific railways as well. The rebuilding of the three railways tracks followed, with improvements to hundreds of miles of track and signals to reduce grades, curvature and distance. The *Overland Limited* passenger train is pictured here leaving 16th Street Station in Oakland, CA, circa 1906.

A Shift to the Shadow Banks

Ultra-loose monetary policy and quantitative easing have repaired bank balance sheets. Since the financial crisis, many bank ABL and leveraged finance groups moved into high gear. But tightened bank oversight has shifted risk, notably to the shadow banking sector. This trend should accelerate in 2019.

Asset managers, hedge funds and insurance companies, hungry for yield, now carry the kinds of risk that used to be the preserve of banks.

New credit funds, BDCs and asset-based lending companies are announced almost weekly. PE funds are setting up their own credit arms, partly to reduce costs on their own transactions and partly to do third-party deals. KKR, Bain and Carlyle — to name a few — have massive amounts of capital to deploy. This feeds the competitive environment.

But such a large volume of funds brings its own pressures. Many new credit funds only get paid when they deploy funds, so the challenges to book deals are intense. Some non-bank lenders are responding to this pressure by overlooking the elastic and creative mathematics behind many investment bankers' EBITDA calculations. This, in turn, has led to a string of deals with some nose-bleed valuations and debt levels that were seen just before the financial crisis.

Three of the four biggest U.S. private equity firms now manage more money in credit funds than in their private equity arms, a marked turnaround from a decade ago, when private credit funds accounted for about 20% of assets. All told, private credit funds have amassed $160 billion in dry powder, twice what they had a decade ago and enough to support up to $400 billion in business lending once leverage is added.

As an example of the shift from bank lenders to non-bank lenders, HSS Hire in the UK recently closed on a new term loan facility of £220 million ($290.17 million) provided by HPS Investment Partners and a revolving credit facility of £25 million ($32.97 million) provided by HSBC and Natwest. Historically, HSS had mostly used bank borrowings to finance its operations. HSS had a pre-tax loss of £85.2 million ($112.4 million) in 2017 and a £17.4 million ($23 million) loss in 2016. In the past decade, HPS has emerged as a major force in asset-based lending.

> **"No one can fully predict what the market appetite will be for 2019, but as a non-bank ABL lender, we recognize that viable businesses can experience stress during any phase of an economic cycle."**
>
> — Lori Potter, *Managing Director*, Great Rock Capital

The explosive growth of credit funds is reflected in rising leverage ratios, sometimes north of seven times EBITDA. A blockbuster deal with a Blackstone-led investor group to finance its 55% stake in Refinitiv, the Thomson Reuters data business, underscores market competitiveness. Leverage in the deal may exceed eight times EBITDA after EBITDA adjustments. High leverage isn't the only ground-breaking aspect of this deal. According to Covenant Review, under the proposed terms of its bonds, the company can pay dividends to its owners even if it drastically underperforms — even to the point of financial distress. This deal is the fourth-largest since the financial crisis, according to S&P Global Market Intelligence.

The street views Refinitiv's deal as a test for how much leverage companies with poor credit ratings can issue in the current market and how aggressively they can set the covenants in the face of aggressive assumptions about operating synergies. Robust or real-time covenants were attached to fewer than 30% of the leveraged loans written in the U.S. last year, according to the IMF. McKinsey estimates more than 6% of U.S. corporate bonds have been issued by companies which need to spend two-thirds of EBITDA.

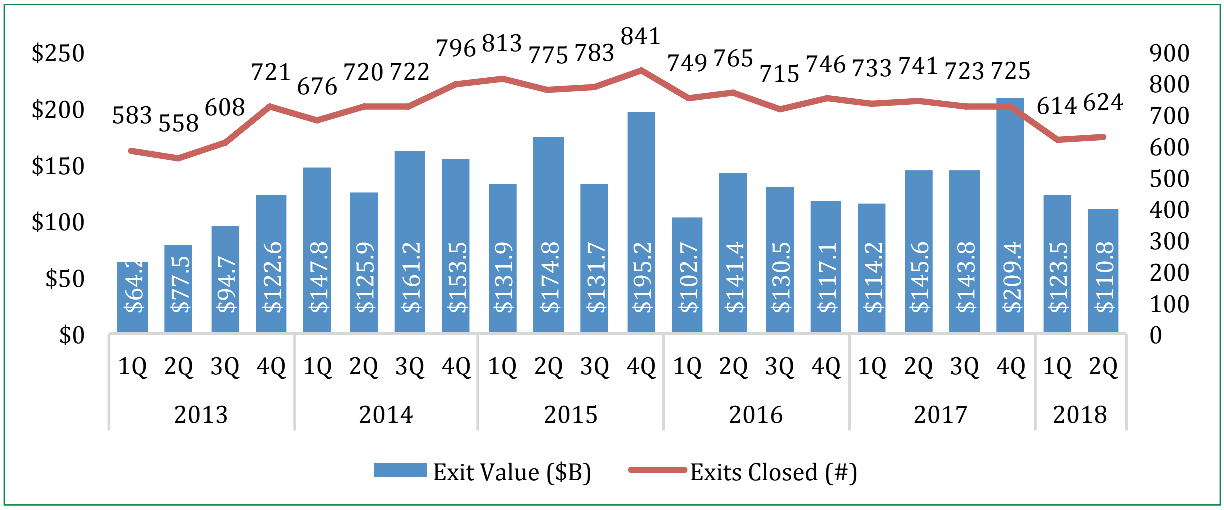
Today, almost two-thirds of leveraged loan issuers are rated B2 or lower by Moody's — less than half of the 2006 rate. Some of these transactions, many of which are heavily weighted in the borrower's favor, will come back to haunt the credit funds. And banks are lending to BDCs and credit funds, which increases the leverage in the system. As an example of the liquidity offered to the marketplace by asset managers, Waterfall Asset Management recently launched its Specialty Commercial Finance Group to provide high-yield senior secured debt to specialty commercial finance companies.

PE players are increasingly looking at acquisitions of public companies as the buyout deal competition intensifies. According to Bain, the number of public-to-private deals doubled from 2016 to 2017. Looking ahead, 2019 will see a surge in mega-deals of $5 billion or more, according to *The Financial Times*. However, some of these deals will be challengingly expensive as PE funds compete against strategic buyers who are flush with liquidity from the tax change. With sky-high valuations, some PE players will need to find a diamond in the rough or break the company into pieces to justify the price.

Many of the ABL and cashflow deals will be done to support secondary deals where the company is sold by one PE player to another. The industry has done a record 576 secondary deals in 2018, according to Preqin. That compares with 394 similar transactions in the peak of the deal boom in 2007.

Pitchbook's chart (next page) shows the increase in deal size (and valuations) from Q1/13 to Q2/18.

The issue with secondary deals is with dividend recaps, leverage, operating synergies and aggressive organic growth assumptions, which often end up



disappointing. As an example, Simmons Bedding, which was bought and sold by private equity owners seven times over two decades, filed for Chapter 11 bankruptcy protection in 2009.

A Street Knife Fight While Wearing Tuxedos

The prominence of non-bank lenders is also coloring the bankruptcy process.

The street was caught by surprise recently by the decision of Toys "R" Us' lenders to cancel the company's brand name and intellectual property auction in bankruptcy court and instead revive the brand. The lenders plan to open a new company, including retail stores, under the Toys "R" Us and Babies "R" Us brand names using existing global licenses. Control of the fulcrum securities has pitted the lender group, including Solus Alternative Asset Management and other hedge funds, against Toys "R" Us' foreign-subsidiary bondholders. Another knife fight may be brewing in the courts. This underscores the activist lenders who play today in the leveraged lending marketplace.

A similar scenario is playing out in The Gibson Guitar bankruptcy in Delaware. The legendary company made instruments for Led Zeppelin, Jimi Hendrix and The Who, but with a changing demographic and the huge growth in computer-based electronic music and video games, Gibson increasingly has found itself out of tune with the marketplace.

Echoing Jimi Hendrix setting fire to his guitar and The Who smashing their guitars at the Monterey Pop Festival in 1967, Chapter 11 has created some serious damage to Gibson's plan to reinvent itself by selling self-tuning guitars. Like a battle of the bands, the Delaware courtroom is a loud, pitched battle between Blackstone and KKR, two of the biggest secured lenders in the capital structure. Many asset-based lenders will be interested in the Gibson brand's value in the Chapter 11 exit plan given the Toys "R" Us plan of reorganization. Gibson may be the first of many PE deals to pay a visit to The First State in 2019 and 2020.

Where is the Market Headed?

This intense competitive marketplace is reflected in the sluggish growth in commercial and industrial loans for the big U.S. regional banks. According to *The Wall Street Journal*, weak loan growth for these banks has been one of the mysteries of the economic recovery in the past two years. Through Q2/18, loan growth topped out at just over 5%, well below the double-digit increases seen a few years ago. Some regional banks are facing intense competition from community banks. The jaws of some workout bankers

> **"Looking at the better-quality deals, the lines between ABL, cash flow and traditional bank lending have blurred completely. On the tougher deals, new non-bank owned finance companies have captured the market with fully margined ABL deals that are so aggressive that pricing isn't even a factor that the borrowers are considering."**
>
> — Michael Sharkey, *President & CEO*, MB Business Capital

at regional banks are dropping as community banks rush to take them out of deals that barely have a pulse ***(see related Community Banks article on page 30)***.

As a result of this liquidity, the boundaries of adjusted EBITDA are being pushed farther. Lenders are taking more liberal views of this with sponsors on deals with weaker core EBITDA. Some borrowers are straining to meet the EBITDA targets now. What happens when the economy weakens? One important macro risk credit committees are evaluating is the impact of the brewing trade war.

David Fiegel, president of Blackbird Asset Services in Buffalo, says, "The impact of current U.S. trade > >

posturing is making a lot of our clients nervous. We have clients that have had orders grind to a halt as various players in their respective supply chain(s) await the next moves on the international chess board. The stakes can be huge, and it seems that everyone's crystal ball is cloudy." Fiegel notes current policy uncertainty can place some tariff/trade-sensitive borrowers at a higher risk of default. "Until the crystal ball clears, it's a little like the Wild West in some markets," he says. The trade issue has weighed particularly hard on share prices of industrials and materials companies, which account for the more than 20% of the 80 stocks in the S&P 500 that have tumbled at least 20% from their 52-week highs, the common definition of a bear market.

Darren Latimer, co-founder and CEO of Stonegate Capital in Chicago, says, "The health of our portfolio is stable as of now, and we haven't seen material revenue or margin deterioration in our portfolio companies, but the system seems very vulnerable to shock waves and those are too random to predict."

Michael Sharkey, president, MB Business Capital, adds, "The silver lining in this market and the reason that we continue to set records within our group financially is that for now, our borrowers are enjoying an unprecedented growth market, resulting in the need to increase usage under their lines of credit and grow capacity through capital spending and by making add-on acquisitions. That organic growth is resulting in increased utilization and requests for additional credit."

"Stonegate continues to build our portfolio focused on 1) high-growth consumer products/food and beverage brands, 2) software companies and 3) traditional asset-based borrowers," says Latimer. "Because we cannot completely handicap the economy, government interference or other global events, we are being more cautious on companies who rely on tariff-based inputs (steel/auto), commodities (oil) and distressed situations."

Looking ahead to 2019, Lori Potter, managing director of Originations, from Great Rock Capital, says, "No one can fully predict what the market appetite will be for 2019, but as a non-bank ABL lender, we recognize that viable businesses can experience stress during any phase of an economic cycle. Great Rock will continuously lend throughout the cycle, but, particularly in a period of economic stress, our ability to structure creative financial solutions will provide companies with liquidity options they are not likely to find from traditional lenders."

"The impact of current U.S. trade posturing is making a lot of our clients nervous. We have clients that have orders grinding to a halt as various players in their respective supply chains await the next moves on the international chess board. The stakes can be huge, and it seems that everyone's crystal ball is cloudy."

— David Fiegel, *President*, Blackbird Asset Services

What Inning Are We In?

An important question lenders are continually asking one another in plotting the course for the next year is "what point are we at in the business cycle? Are we in the eighth inning of a nine-inning game? Or a 15-inning game?"

"Financially, we are having our best year ever," Sharkey says. "Having said that, competition within the ABL world is at an all-time high. In my 40 years of lending, I have never seen a market so flush with liquidity. Looking at the better-quality deals, the lines between ABL, cash flow and traditional bank lending have blurred completely. On the tougher deals, new non-bank owned finance companies have captured the market with fully margined ABL deals that are so aggressive that pricing isn't even a factor that the borrowers are considering. In short, loose and aggressive structures with minimal reporting are ruling the day on the better deals while we can no longer win the tougher deals with a conservative structure and reasonable pricing."

Fiegel remains more cautious. "Take the scrap metal market as a proxy for the economic and credit impact of the trade war. The scrap markets are suffering steep declines as businesses inside countries impacted by the first round of tariffs have hit the scrap metal market negatively. Some speculate this negative price pressure is, in effect, an attempt to recoup money lost to tariff increases levied by the U.S."

Industry veterans will all agree that deals done in the 12- to 18-month period before a recession are often the most difficult to collect. Many seasoned ABL players are proceeding cautiously when it comes to deal structure. While they have been rare in recent years, the supersized buyouts inevitably stir bad memories of the years immediately preceding the financial crisis, when there was a flurry of covenant-lite deals quickly followed by Chapter 11 bankruptcy.

The 2019 ABL Outlook in Europe

Across the pond, "CFA Europe is going from strength to strength," reports Jeremy Harrison, group regional head and senior vice president, Bank of America Business Capital EMEA. "The chapter continues to attract new credit funds and other important non-bank lenders such as Chiron Financial. We have Apollo and TPG on our Steering Committee, which reflects the increasing profile of the association. We are broadening our reach further into Europe with successful events in Brussels and Paris in 2018 and plans for Amsterdam and Munich in the coming year."

However, "uncertainty prevails. Brexit is dampening market enthusiasm," he adds. "Many of the members of our CFA Chapter in Europe say it is difficult to predict how 2019 will look. There is a general expectation that 2019 will see a greater degree of market caution. Up to Q2/18, borrowers could get great terms. Now, credit committees are getting pickier about EBITDA adjustments."

According to Kon Asimacopoulos, partner, European Restructuring, Kirkland & Ellis in London: "The UK government has issued guidance on the prospect of a 'no deal' Brexit, including the possible future of the cross-border European restructuring and insolvency landscape. A 'no deal' Brexit would negatively impact the UK's restructuring and insolvency framework, the force of which depends, in part, on its pan-European reach. The ability to deal with insolvencies via a single process, with automatic recognition across the E.U., would make it more complex, lengthy and expensive to resolve cross-border mandates, with the prospect of parallel proceedings." Partha Kar, partner at Kirkland & Ellis in London, adds a sobering thought: "This would jeopardize the prospect of rescue, and reduce returns for stakeholders — and undermine the UK's status as a leading global restructuring hub."

Leverage & Recoveries Play Out in the Next Recession

As a result of the competition posed by nonbank lenders, recoveries in the $1.4 trillion market for non-investment grade loans will be lower because companies have fewer covenant restrictions on excessive dividends and stripping corporate assets. Indeed, one mid-Atlantic banker commented that banks have no business doing dividend recap loans for sponsor companies at this stage of the credit cycle. Moody's Investor Service is predicting that the typical recovery on leveraged loans will be 61% of face value in the next recession, compared with the 77% historical average. Recoveries on second lien loans is predicted to be 14% from about 43% in the previous recession. This means unsecured creditors will also face worse recoveries, with Moody's predicting 32% recoveries in the next default cycle compared with the historical average of 40%.

In an April 2018 report warning about lower recoveries on both junk bonds and loans, Guggenheim Partners told clients that, unlike the last recession, which was triggered by unsustainable levels of household debt, the next recession will be traced back to the corporate debt market. And Moody's says the next default cycle will include a wider swath of industries because the market has exploded from $800 billion in 2008 to $1.4 trillion in 2018. In the event of a liquidity contraction in the economy, the sheer size of this leverage in the economy will amplify the lowering of the tides.

What's a Prudent Lender to Do in 2019?

With these conflicting signals from the lending marketplace, what's a prudent ABL lender to do in 2019? Dan Karas, executive vice president, chief lending officer, TBK Bank in Dallas sums up the sentiment of many asset-based lenders: "With respect to 2019, I'm reminded of the line from Frank Sinatra's song, *New York, New York*, where he sings, 'if you can make it there, you can make it anywhere.' The corollary is that with strong economic fundamentals in 2018 that appear to be sustainable in 2019, ABL clients should be able to generate strong performance. However, if they can't make it in the current environment, then they aren't likely to survive. Overall, I'm optimistic about 2019."

Sharkey adds, "I wouldn't say that we are reefing down our sails — however, the winds are not cooperating right now. We are sticking to tried and true logic and pricing, and doing deals that our long-term relationships and key partners entrust us with. There will be busted plays on both ends of the risk spectrum in the not-so-distant future, and, at that point, we should be relatively trouble-free with the appetite and ability to restructure transactions and pick up the pieces."

Most recessions are short and shallow, 12 months on average. Economist Martin Feldstein, advisor to President Reagan and a member of the *Wall Street Journal's* board of contributors, sees the next recession differently. He thinks the Fed will not have the headroom to cut rates, since the fed-funds rate is expected to rise to only 3% over the next two years. There also won't be much room for major fiscal intervention. The $1 trillion annual deficit in the coming years won't allow recession-fighting spending, since federal debt is predicted to rise from 75% of GDP to nearly 100% by the decade's end. Consequently, he thinks the next recession may last two to three years.

"A no deal Brexit in 2019 will negatively impact the UK's restructuring and insolvency framework, the force of which depends, in part, on its pan-European reach."

— Kon Asimacopoulos, *Partner*, Kirkland & Ellis

All this to say that some sectors of the economy, which are highly leveraged and vulnerable to an extended trade war, now are flashing yellow, and many lenders are taking heed. As the U.S. enters its 10th year of economic expansion, some ABL players are testing their brakes … just to make sure. While some credit funds and PE players will continue to widen the guardrails on the road ahead, prudent lenders are taking stock of the situation. No one wants to go over the edge of the cliff with the accelerator to the floor, leaving no tire skid marks.

At the turn of the 20th century, Harriman was as well-known as J.P. Morgan, John D. Rockefeller, Andrew Carnegie and other captains of American industry during its most prosperous, gilded age. Banking, railroads, the stock market, oil and steel were the major paths to great wealth from the end of the Civil War until the Great Depression. Morgan stood for banking, Rockefeller for oil, Carnegie for iron and steel and Harriman for railroads. One skill that all of these industry giants possessed was a clear idea of the path ahead, with its risks and opportunities. Harriman's legacy continued through the 20th century with his son, Averell, who became Secretary of Commerce under President Truman and later, Governor of New York State. abfj

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Community Banks:
Darkhorse Competitors to Super-Regional and National Banks

BY CHARLIE PERER

A virus of acquisitions has enabled national and super-regional banks to bulk up over the last decade. Their smaller cousins — community banks — are often dismissed as warehouses for customer deposits and little more. Charlie Perer points out that when community banks acquire some some specialty lending platforms and pair them with deep hometown relationships, they can rival the big boys.

CHARLIE PERER
Head of Originations,
Super G Capital

Community banks are getting lost in the national conversation, and that is just fine with them. The spotlight falls on the national banks vying for market share and the expanding super-regional banks. Both constituencies are overlooking what is becoming fierce competition from burgeoning community banks, which are strong, have deep roots in their respective markets and are growing.

Super-regional banks have garnered much attention over the past 10 years given their ambitious plans to grow, consolidate acquisitions and provide national platforms rivaling the nation's leading banks. Leading regionals include BB&T and M&T on the East Coast; Fifth Third, U.S. Bank, Key Bank and BMO in the Midwest; Regions, SunTrust, Texas Capital Bank and First Tennessee in the South and Comerica, Banc of California, East West and Union Bank in the West. These banks share strong products, platforms and scale that can rival the leading national banks in their respective regions. To that end, many of these banks have succeeded wildly and, in doing so, have set a good example for the up-and-coming community banks that strive for the community experience and decision-making process but also deliver a compelling platform.

The ambitious community bank strategy has changed to retain localized relationships and decision-making, which, make no mistake, is a massive competitive advantage. The next goal is to provide a real platform — ABL, factoring, cash flow, C&I loans or other products.

Not Just for Deposits

Community banks have long been thought of as just depositary havens with limited infrastructure and lending capabilities. They would amass enough assets (mostly real estate-related) to be an attractive acquisition candidate but, in the general view, that was about it. This is still the case for truly small, localized banks, but over the past decade, the bigger banks took note of what super regionals were doing in terms of products and infrastructure and began embarking on a new strategy.

The ambitious community bank strategy has changed to retain localized relationships and decision-making, which, make no mistake, is a massive competitive advantage. The next goal is to provide a real platform — ABL, factoring, cash flow, C&I loans or other products. What big banks provide in platform, product breadth, capital and global capabilities, they lack when it comes to serving lower middle market business or businesses that have strong community roots.

Business owners and CFOs often refer to the big bank methodology as the "Wizard of Oz" phenomenon — they don't know who makes the decisions that control their fate. After applying for financing, they only receive an eponymous message that the credit committee made a decision, and there is no changing anyone's mind. The client could be in one city and a credit committee could be comprised of national executives in another. Community banks typically pride themselves on transparency and strong relationships with their borrowers.

Community Ties

Community banks are truly tied to their respective communities. Outside the top 10 or so metropolitan areas, national banks will go through stages of being aggressive and then pulling back in any given market. Community banks, on the other hand, have a track record of supporting their clients in the long run. They fully understand the market cycle of big banks and focus on the benefit of personally knowing their customers, enabling them to have lasting relationships. Senior community executives constantly reinforce the symbiotic ties to their communities.

National and super-regional banks find it difficult to compete with a business owner's psychological desire to have a relationship with the key decision makers who live in the same city. Community banks have figured out they need to invest in products and platforms to compete with the super-regional and national banks. Most sizeable community banks have closely studied the super regionals' strategy of acquiring or building ABL and factoring groups, investing in capital markets and embracing partnerships with private equity groups. This ultimately makes sense. Why lose a customer because a financial buyer might be in the mix? After all, the clients will often remain with the private equity investor with an equity stake after the transaction closes, so the continued relationship is paramount.

Several community banks are either dominant market leaders or starting to morph into super regionals via expansion and acquisitions. This is not meant to be a definitive list, but rather illustrative of a select few.

Community Bank Standouts

Wintrust Bank in Chicago is a sterling example of a $30 billion community banking powerhouse that invested in products and infrastructure to compete in one the most competitive banking markets in the country. Unlike most national U.S. banks, Wintrust's business strategy is to retain the identities of the community banks it acquires rather than rebranding them. It currently owns 15 charters comprised of approximately 70 local brands, which maintain local account officers and distinct local branding. Behind these empowered front-line executives lies an experienced ABL platform that currently has several billion in commitments. This unique structure enables the end-client to maintain the community experience while obtaining the product breadth of a national platform.

Western Alliance Bank, headquartered in Arizona, employs a very different tactic. It acquired market-leading banks — Alliance Bank of Arizona, Bank of Nevada, Bridge Bank and Torrey Pines Bank — in the contiguous states of Arizona, Nevada and California. These banks operate autonomously in their respective regions, but Western Alliance has strongly invested in products and professionals. Alliance Bank provides full-service banking but also is expanding its private equity sponsor-backed business as a way to diversify from real estate and entrepreneur-owned businesses. Bridge Bank has a technology and capital finance group to ensure it can service all constituencies in California. The teams from both Alliance and Bridge Bank are first-rate, with many Bridge Bank folks joining from Silicon Valley Bank and many Alliance Bank folks joining from BMO.

Pacific Western Bank is similar to Western Alliance in that a community banking powerhouse acquired a seminal technology bank, Square 1, for its high level of deposits and exposure to tech companies. Pacific Western also acquired Capital Source to provide traditional asset-based lending. Historically speaking, community banks would not have the appetite to expand geographic reach or products and services outside of a core local market. These acquisitions have been truly seminal as they transformed community banks into nationally recognized platforms with two enviable assets in Square 1 and CapitalSource. The human capital that came with these acquisitions is second-to-none.

Columbia Bank in Washington is approaching $15 billion in assets and is the largest community bank in Washington state. Columbia has unique industry breadth given its range of industries, such as technology, agriculture and aerospace, among others. Columbia provides strong levels of service by understanding the industries that comprise its customers. It also has its own SBIC fund to provide deserving clients with mezzanine capital and a high-quality capital markets desk to provide financing for large scale projects in cable/media and aerospace.

UMB Bank in Kansas City is a $20 billion community banking powerhouse that continues to expand. UMB provides a great example of a community bank starting to build regional capabilities. UMB acquired Marquette to obtain a national ABL and factoring platform. This acquisition provided UMB with a full suite of client solutions, including the ability to transfer clients to ABL and factoring rather than lose them. In addition to acquiring Marquette, UMB has a traditional SBIC fund and capital markets capabilities. The clear goal is to be able to serve a wide array of customer needs from small business banking to middle market corporate in the communities in which it competes.

National and super-regional banks find it difficult to compete with a business owner's psychological desire to have a relationship with the key decision makers who live in the same city. Community banks have figured out they need to invest in products and platforms to compete with the super-regional and national banks.

First Financial in Cincinnati is one of the most unique community banks in the country. The backbone of this almost $14 billion-dollar community bank is its corporate banking that maintains approximately 160 banking centers in Ohio, Kentucky and Indiana. First Financial leveraged its platform and distribution to build a growing specialty finance platform. The platform's foundation is a traditional C&I group, which includes an ABL team comprised of key executives who joined from Fifth Third Bank. This C&I group has a number of specialties including, but not limited to, financing restaurant concepts with low closure rates and strong brand awareness. First Financial, via its acquisition of Oak Street, is also one of leading financiers of insurance agents in the country. It's rare for a community bank to offer the customized products and sophistication, but the board has assembled a talented team via acquisitions and smart hires.

Texas-based Cadence Bank, TBK Bank and Frost Bank have strong franchise recognition. Cadence has grown to more than $9 billion in assets with a presence across the Southern states, offering a wide product suite, including commercial finance and ABL. Frost Bank, with more than $30 billion in assets, has been in Texas for well over 100 years and has developed specialty lending products, such as equipment finance, designed to support local and regional businesses. TBK, or Triumph, is much smaller, with $3.5 billion in assets, but has been expanding with acquisitions in Iowa and Colorado. TBK also is a powerhouse business bank with its factoring, equipment finance and ABL divisions. Synovus Financial, with approximately $27 billion in assets, has enjoyed a strong reputation across the Southeast with a very broad suite of business banking products.

There isn't room in this short article for all banks that deserved to be mentioned, but First Midwest Bank, Byline Bank, Banner Bank, Berkshire Bank, Academy Bank and Enterprise Bank are also notable community banks. These banks are transforming the national landscape and growing into forces to be reckoned with. abfj

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U.S. Army Ranger Training for The Corporate Crisis Battle Zone

BY JOHN LITTLE

The *Ranger Handbook* provides a clear strategy for U.S. Rangers to follow when called into a crisis situation. Retired U.S. Army Major John Little now engages in a different type of crisis as a turnaround management specialist. But he still uses the *Ranger Handbook* to devise a successful strategy and points out that these methods are just as pertinent to the civilian business world as they are in the military.

JOHN LITTLE
Principal, Deloitte Risk and Financial Advisory

By the time the U.S. Army Rangers are called in, the situation is already, or about to get, hot. The same is true for turnaround management specialists. By the time we are called in, the company is often in crisis. Chaos reigns, and the fog of war has set in.

How does a turnaround manager quickly make sense out of confusion, assess the problems and begin to get the team organized and moving in the right direction? As a graduate of the U.S. Army Ranger School — or a Ranger Tab holder — now working in turnaround management, I have effectively used my military training in numerous business situations. Ranger School is arguably the premier small unit tactics and leadership training course in the world. Stressed, sleep-deprived and underfed Ranger students do whatever it takes in any condition to accomplish their missions. Though I have never been underfed since I left the Army, I have been stressed and sleep-deprived and have faced complex tasks in difficult conditions. The tools and lessons learned from Ranger School have served me well, and they can do the same for you.

The *Ranger Handbook*, part of the basic kit of every Ranger candidate, contains techniques and methods for planning and leadership, which can be adapted to every situation that requires an action plan. These techniques are simple, yet powerful. Almost anyone, from the CEO to the lower level employee, can use them in a distressed situation.

The *Ranger Handbook*, part of the basic kit of every Ranger candidate, contains techniques and methods for planning and leadership, which can be adapted to every situation that requires an action plan. These techniques are simple, yet powerful. Almost anyone, from the CEO to the lower level employee, can use them in a distressed situation.

Troop Leading Procedures (TLP)

Chapter two of the *Ranger Handbook* explains the planning techniques and procedures of infantry platoons and squads. Troop leading procedures describe a process, from start to finish, which a leader uses to accomplish a mission.

The procedures follow a logical flow, starting with receiving the mission through supervising its completion. Along the way, the procedure calls for sharing the mission with the troops along with a plan to accomplish it. This helps troops become ready to assist in planning and preparation. Leaders must conduct reconnaissance of the ground upon which the mission will take place. This helps leaders adjust initial plans to match the ground truth before issuing final orders. After that, the leader must supervise the execution and adjust as necessary.

Figure 1 is a civilianized approach to troop leading procedures. In my turnaround career, this serves as a reminder to practice Rangers leadership techniques, which are tested in the crucible of combat. They help me to keep my team informed and involved, to get started as early as possible and to adjust the preliminary plan based on sound analysis and other information gained from bankers, vendors and other stakeholders.

Warning/Operations Order

The troop leading procedures (TLP) are a process. The warning/operations order is a format or outline used to provide sufficient information and guidance to complete a mission. During a turnaround, the process outlined by the TLP sometimes happens as planned — following a logical sequence.

Figure 1

Troop Leading Procedures	"Civilianized" Adaption
Receive the Mission	Receive the Assignment
Warning Order	Alert the team to the assignment and start preparing
Make a Tentative Plan	Identify analyses to be performed and/or likely solutions to explore
Initiate Movement	Begin work on above
Conduct Reconnaissance	Evaluate preliminary work to date to validate the tentative plan
Complete Plan	Adjust the Tentative Plan and fill in details
Issue Operations Order	Make sure team and / or client are fully briefed and engaged
Supervise	Supervise and collaborate with the team and client

Figure 2

Warning Order/Operations Order	"Civilianized" Adaption
Task Organization	Team Members - client, professionals
Situation	Situation — What is driving our actions?
Mission	Task and Purpose — who, what, when, where, and why
Execution	Implementation — Description of how to accomplish the Task and Purpose; tasks assigned to people or groups; areas for specific coordination
Service Support	Logistics support (may not apply in turnarounds)
Command and Signal	Communications Plan

The warning/operations order, however, serves as a touchstone of what to include in a plan. It reinforces the first rule of being a Ranger — Don't Forget Nothing. This format outlines the required plan elements for the planner and order recipient. This way, the planner won't forget important elements such as giving a communications plan or adding areas for coordination in the execution.

Figure 2 depicts an army to civilian translation of the warning/operations order, which can be adapted for practical use in day-to-day business. This is particularly useful for planning complex projects involving several parties. It provides the turnaround specialist with a simple, logical outline to articulate the elements required for their team to accomplish the turnaround. Of course, the plan elements and level of effective execution ultimately drive success, but this format helps the turnaround specialist lead by clarifying the primary tasks team members are responsible for and clarifies how those tasks tie into the overall goal.

When the complexity of a situation seems overwhelming, this outline helps the user split the plan into logical parts, which helps manage the planning process and, ultimately, provides the team with a logical framework.

Execution, the most complex section, delegates specific tasks to members of the group. It's not always obvious to team members that they must coordinate with others. The plan outlines when and where they must coordinate.

The outline has endless applications, from executing a critical negotiation to a marketing plan. Application to turnaround is especially powerful if you are filling a chief restructuring officer role and coordinating multiple sets of professionals and company personnel.

A Case Study

We had just kicked off what was to be a four-week-long business plan assessment. On day two, the mission changed when we concluded that cash would run out in two days. It was clear the client needed capital and, quite likely, a new business model. The client had to survive, though, to get to that point, so I went back to the team and gave them a new warning order.

They began a crash cash flow exercise that included a triage of critical vendors and payments. We planned who and how much to pay, set forth a plan to keep vendors shipping despite cash limitations, developed a communications strategy with the bank and vendors and set out the tasks to bridge to a capital raise. We worked to get it all done while assisting our client to raise capital, restructure the business and give the company a chance to see better days.

We made it clear to the team that we did not want the debt situation to worsen. We would pay for what was being shipped but not in advance. We communicated our liquidity profile constantly as we worked with customers and vendors.

When it came to execution, we confirmed the liquidity manager knew the turnaround plan detailing how cost savings were expected to be made. Another team member worked with the CFO on vendor relations. The legal team was directed to weigh in on how to manage creditors and to be ready to address and prevent problems.

Conclusion

Ranger training provides a leadership lab for young soldiers to hone their skills under stress just short of a combat situation. Part of the esteem for this training arises from the success of its graduates. The simple, easy to remember leadership skills, planning tools and techniques hammered into my memory during the training were perhaps the most powerful takeaways. I still choose to use them today, which speaks to their effectiveness.

Turnaround managers can leverage this logical way of thinking to get things done in a stressful situation and to keep thoughts organized during a crisis. In the case study above, using the planning and execution techniques discussed here, we refinanced the company, and it lived to fight another season — Hooah! abfj

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Are You Ready to Start Factoring Construction Receivables?

BY BRUCE LOREN

The construction industry is in growth mode, which can offer great opportunities for factors. However, a certain amount of technical knowledge is required to successful navigate these projects. Bruce Loren explains how careful due diligence can help factors take advantage of this lucrative market.

BRUCE LOREN, ESQ.
Partner, Loren and Kean

The construction industry has experienced strong and consistent growth in the last few years in almost every market. Public and private projects are being bid on in greater numbers, and contractors in every trade are hiring new employees. But bank credit lines are more difficult to obtain and contractors do not have the resources to advance material and labor costs. For these contractors, factoring may be the solution.

There are many advantages to factor in this niche market, such as the additional security to factors provided by lien and bond rights and the possible reimbursement of attorneys' fees and costs from account debtors. However, factors must master technical knowledge of the construction industry, such as payment procedures, and perform additional and continuous due diligence on the client. This is a great time to factor construction receivables for those willing to take these extra steps.

A factor considering entering this market should consider the following.

The greatest burden facing the factor is committing to a greater level of due diligence before accepting the client and before each funding. The factor should also generally monitor construction projects. Because the account debtor (the GC) has many different contractual rights to withhold and offset payment, the factor must conduct a detailed evaluation of the client's business and expertise.

Additional Security for Factors

In addition to all of the typical rights under the UCC, factors of construction receivables have greater secured rights against the account debtor. If the applicable state or federal rules are followed and deadlines are met, the factor (on behalf of its client) will have a construction lien against the real property where the construction work is located or a claim against a solvent bonding company. Under most state laws, a claim under the lien or the bond also grants the factor the right to reimbursement of attorneys' fees if it prevails in a legal dispute.

Protecting Lien or Bond Rights

Most states require the client (or the factor as assignee) to provide notice to the owner, the general contractor (GC) and/or the bond company explaining the client is providing services and materials on the project and must be paid. For example, Florida requires delivery of a "Notice to Owner/Notice of Intent to Rely Upon Bond" to all relevant parties no later than 45 days after the first day of the client's work. Other states do not require a notice to owner, but require "Notice of Intent to Lien" or "Preliminary Notices" instead. If the notice is late, even by one day, you lose the lien/bond rights.

To perfect the lien, the client or the factor assignee must record a "Construction Lien" or "Mechanic's Lien" within a certain time period. In Florida, the construction lien or claim against the bond must be recorded no later than 90 days after the last day of the client's work. Again, if you miss the deadline by one day, the lien/bond rights are lost.

These deadlines are strict. Despite the fact that the client may have been in the industry for a while, many contractors are not knowledgeable about protecting their rights to payment. Many contractors have no internal system in place to ensure that deadlines are complied with and proper documentation is prepared. However, if the rules are followed, these rights give the client and the factor leverage. From a practical perspective, if the client records a lien, that lien can lead to the suspension of all funding on the project until you are paid. This leverage can be crucial.

More Due Diligence Required

The greatest burden facing the factor is committing to a greater level of due diligence before accepting the client and before each funding. The factor should also generally monitor construction projects. Because the account debtor (the GC) has many different contractual rights to withhold and offset payment, the factor must conduct a detailed evaluation of the client's business and expertise. For example, the factor must know the client's sub-subcontractors and suppliers and make sure these parties are paid and provide construction releases. If not, these sub-subcontractors and suppliers have the right to seek payment directly against the account debtor, offsetting the money owed to the factor. In essence, the factor must be confident the client has the skills to perform the construction work.

How to Conduct this Due Diligence?

The factor should determine if the client been a defendant in prior litigations. Has the client been sued for not paying its sub-subcontractors and suppliers even though the client has been paid? Has the client been sued for defective work or delayed work? This information is a good indicator of the client's ability to perform the construction contract.

Has the client been terminated for cause or had liquidated damages imposed due to its own delay on prior projects? Again, this information is a good indicator of whether the GC will withhold or offset payments that are due to the client/factor.

Does the client have all required licenses? In many states, a contractor is not entitled to any payment if the license was not active, even if all the work was performed.

Taking Action Before Funding

The factor can perform the following actions before and after the client's first funding:

- Review all documents between the client and the GC, including the client's scope of work on the project. Confirm that the client has the track record, ability and manpower to complete the job it was hired for. Truly know the customer.
- Obtain a list from of all of the client's subcontractors and suppliers on the project. To reduce the factor's risk, it can pay sub-subcontractors and suppliers from the funding to the client. Make sure that you obtain releases in exchange for the payments.
- With every application for payment, confirm with each of the client's sub-subcontractors and suppliers how much they are owed.
- If you are not the one paying the client's subcontractors, contact them and confirm that they are being paid.

The Most Common Problem

Most, if not all, construction contracts between a GC and the factor's client permit the GC to offset claims against a subcontractor, even if the claims arise after approval and payment of the invoice that was factored. Offsets may include costs incurred by the GC to correct the client's defective work, failure of the client to pay its employees or failure of the client to pay its suppliers.

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Counsel commonly become involved on behalf of a factor in the following situation:

- The factor entered into a standard factoring agreement with a subcontractor.
- The client has already entered into a standard construction contract with the GC on the project. The construction contract contained an offset provision such as: "Subcontractor's rights hereunder are subject to the right of contractor to offset any and all claims contractor has against subcontractor, whether or not arising under this subcontract."
- The factor sends the GC a Notice of Assignment instructing the GC to pay all receivables due and owing to the client directly to the factor.
- The client submits various pay applications and/or invoices approved by the GC.
- The factor is unable to obtain an "estoppel" or "no offset" letter from the GC.
- After approval by the GC and funding by the factor, but before payment is made by the GC, the GC asserts that the subcontractor (the client) has failed to perform in some manner

Even if the factor sent the GC a Notice of Assignment, the factor is subject to the offset provision in the construction contract. Even if the GC approved payment of a factored invoice, the factor may never receive payment because of the proper offset by the GC. So, what can you do?

The factor may try to obtain a typical "estoppel" or "no offset" letter which is signed by the GC. By having the GC sign this separate letter with each invoice, the factor creates a direct contract with the GC, bypassing the offset language of the underlying construction contract. Each letter should enclose a copy of each invoice and should ask the GC to confirm, by signing the letter, that the enclosed invoice is, in fact, due and owing to the client and will be paid to the factor "without defense, offset or other claims".

If a factor is willing to take a few extra measures, he or she can confidently enter this market while helping to facilitate the comeback of the construction industry. abfj

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LEGAL *lines*

Why Are MCAs Doing So Well in the Courts?

BY JEFFREY A. WURST

Merchant Cash Advances (MCAs) are a divisive issue in the lending community, with good reason. Jeffrey Wurst examines the pitfalls that can undermine an ABL lender and observes that many judges make rulings regarding MCAs without fully understanding the nuances of the issues.

JEFFREY A. WURST
Partner,
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Okay, this title has already alienated a chunk of our reading audience, so let me clarify.

Let's first separate Merchant Cash Advance (MCAs) into two groups:

First are MCAs that advance money and get repaid solely from the collection of future receivables (assuming the risk of collection) and those that advance money and get repaid by taking daily or weekly ACH payments from the *client's* bank account whether or not any receivables actually exist.

Second are MCAs that rely on the performance of receivables found in factoring, which are generally based on true sales of the future receivables and without recourse. Although certain MCAs claim to be without recourse because the *client* is not creditworthy and any claim against the merchant is uncollectable, that does not qualify as a true sale.

Let's focus on the first type of MCA — the recurring ACH repayment method which is not connected to the performance of future receivables. In other words, ACH payments made even when no receivables are created or that do not change based on a percentage of receivables collected.

Whether an MCA is a usurious loan first depends on whether the merchant sold the receivable or borrowed money with the receivable as collateral. Whether the sale of the receivable was a *true sale* under applicable law determines this.

Let's look at these transactions under New York law, which has the harshest usury penalties in the country. Under New York law, the penalty for lenders making a usurious loan is not being deprived of any interest payments, as it is in many jurisdictions, but being deprived of receiving both interest *and principal*. In other words, the borrower gets a windfall by forgiveness of debt when it has borrowed money under usurious terms. Thus, it should not come as a surprise that when confronted with a lawsuit to recover on advances made to a merchant, that merchant attempts to claim the high cost of funds they are paying is usurious.

Whether an MCA is a usurious loan first depends on whether the merchant sold the receivable or borrowed money with the receivable as collateral. Whether the sale of the receivable was a *true sale* under applicable law determines this.

The True Sale Test

So, what is a true sale? This is important because, for a purchase of receivables to avoid being deemed a loan (and often a usurious one at that), the purchase needs to first pass a *true sale* test.

To avoid a claim that the advance was made on usurious terms, a sale of receivables must be a *true sale* (and not a loan). While few courts have engaged in detailed *true sale* analysis, some have abbreviated the standard into three prongs:

1. Whether or not the maker of the MCA is absolutely entitled to repayment under all circumstances. For a true loan, it is essential to provide for repayment absolutely and at all events or to secure the principals in some way as distinguished from being put in a hazard.[1]
2. The MCA agreement must have an indefinite term, evidencing the contingent nature of the repayment plan.
3. Whether the purchaser of receivables has any recourse should the merchant declare bankruptcy.

1 *NY Capital Asset Corp. v. F & B Fuel Oil Co.*

While these indicia provide a reasonable method to determine whether the transaction is a true sale or a disguised loan, courts, while stating this standard, rarely engage in an analysis applying the facts to the standard. As a result, it appears some courts miss the point.

One of the recurring facts many courts have failed to consider is when a "purchaser of receivables" makes MCAs and requires a confession of judgment from the merchant, that the confession of judgment may indicate that the "purchaser" has recourse other than to the purchased receivables.

Of course, there is no assurance the judge hearing the case will be familiar with the UCC or similar law. Instead, many judges blindly rely on the conclusions of parallel judges, even when the facts may not be sufficiently similar. Two cases, coincidently, rely on the conclusions of other courts, using identical conclusory language:

> Many trial courts have examined similar agreements in the last several years, and have largely determined that most are not loans, but purchases of receivables.[2]

One judge ruled:

> New York Courts have held that a contract such as the within agreement are not loans and are not subject to usury laws. In *Merchants Advance*, the court found an agreement for the purchase of future receivables and sales proceeds lacked "the necessary elements of a loan transaction" and was not subject to usury laws.[3]

Judges Miss the Point

The problem is, in many cases the judge never considers the reason why New York courts consider certain agreements not to be loans — perhaps because they are *true sales* — even when the facts of the case at bar is not a true sale. This judge clearly missed the point — probably because the defendant's attorney never adequately explained the issue.

Keep in mind that these cases typically involve small amounts, and the attorneys representing the merchants are inexperienced in commercial finance and UCC matters.

Some courts have considered whether the merchant actually has collections of receivables and whether repayment of the advance is contingent upon the merchant actually generating sales and those sales actually resulting in the collection of revenue.

Sales Disguised as Loans

That said, some courts have peeled back the onion and have seen that certain MCAs are, in fact, disguised loans:

> The court comes to the inevitable conclusion that the real purpose of the agreement was for plaintiff to lend money to defendants at the usurious interest rate set forth therein, and that defendant agreed to borrow the money based on the same usurious terms dictated by plaintiff. Denominating a loan document by another name, as in this case, by calling it a "Merchant Agreement," does not shield it from the judicial determination that it contemplates a criminally usurious transaction. Accordingly, as the party seeking to exact criminally usurious interest, plaintiff is also "not entitled to equitable relief."[4]

MCAs have established themselves as viable methods of financing for small businesses, many of which are not otherwise deemed to be loan worthy, and ABLs must monitor them and take appropriate measures to protect the integrity of their loans.

Another court concluded:

> In the instant case, however, the submitted affidavits and exhibits clearly and unequivocally demonstrate that the agreement is criminally usurious on its face, obviating the need for a superfluous plenary action.[5]

So, what is the take away?

Are MCAs Bona Fide?

ABLs remain skeptical whether MCAs are *bona fide*. They remain concerned that merchants often *stack* (making a series of MCAs one on top of another) MCAs with ACH payments automatically being deducted from the merchant's accounts and leaving the ABL's borrower strapped for cash. They remain concerned that MCAs are made without regard to the ABL's security interests. The problem is, ABLs have no practical way to monitor what ACH commitments its borrowers have made unless the ABLs have access to their borrowers' bank account statements or require account debtors to make payments to a lockbox.

The fact is, where MCAs are effected as true sales, courts will uphold them, and where they are disguised as loans, some will avoid scrutiny and be able to have recourse. Some will be caught as disguised loans and surrender any recovery.

Monitoring ABL borrowers, especially those that may be vulnerable with cash needs, must become a regular practice such as monitoring for tax liens and additional UCC filings.

Of course, that adds to the cost of making and monitoring a loan, something ABLs may be reluctant to do in a competitive marketplace where additional monitoring means less profitability.

What remains, however, is that MCAs have established themselves as viable methods of financing for small businesses, many of which are not otherwise deemed to be loan worthy, and ABLs must monitor them and take appropriate measures to protect the integrity of their loans. abfj

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2 This precise quote appears in each of *LG Funding, LLC v. Branson Getaways* and *K9 Bytes v. Arch Capital Funding*.
3 *IBIS Capital Group v. Four Paws Orlando*. 2017 N.Y. Misc.
4 *Pearl Capital Rivis Ventures v. RDN Construction*. 54 Misc.3d 470. 2016.
5 *Merchant Funding Services v. Volunteer Pharmacy*.

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