

# What's Up

## In the World of Collections



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# Pressure Points

Sometimes we're faced with collecting from a person or entity who can pay if they want to, but has set up their structure in a way so that they are often successful in not paying when they don't want to. Under such circumstances, it can be helpful to concentrate on what I like to call **"pressure points"**: places of discomfort that can influence the debtor's willingness to pay. Those pressure points can involve creative use of the legal process. A couple of examples should help illustrate this.

In our first example, our debtor was a tavern, and the creditor had supplied foodstuffs, hard goods (crochery, glassware, silverware), and the bar's tap system for beer. There was a UCC-1 security interest filed with respect to the tap system. Such a system involves the installation of tubing runs from a cold room (usually a walk-in cooler holding the kegs) to dispensing points (the "taps") behind the bar.

Now, about the last thing the creditor really wants is a repossessed used tap system pulled out of a debtor's bar. But perhaps that is exactly the thing that should be pursued with the most vigor...or should I say, apparently pursued with the most vigor. In this type of situation, the debtor's credit is going to be compromised, particularly in the trades. The likelihood of the debtor obtaining financing for another tap system is nil (they often run more than \$20k). While the tap system is worth little to the creditor, it is, from the debtor's immediate standpoint, virtually irreplaceable. Many taverns cannot realistically survive without such a system.

**Accordingly, our inclusion of a cause of action for repossession (in New York, "replevin") and the resulting concomitant danger of losing that system was a powerful incentive for that debtor to enter into workout arrangements acceptable to the creditor.**

In our second example, the creditor was possessed of a substantial judgment against the debtor, and the debtor's former principal was personally liable. The creditor was fairly certain that debtor had substantial funds in the United Kingdom, unreachable by a New York court. There was nothing of any

real substance reachable in New York, and the debtor had most of his expenses paid by an out-of-state trust. He was indeed a 'professional debtor'...and he was good at it. The creditor knew a great deal about the individual

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## HAPPY BIRTHDAY!!

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Mr. Randy Davis  
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**Born: February 20 - March 20**  
**Quality: Intuitive & Kind**  
**Special Color: Soft Sea Green**  
**Starstone: Moonstone**

### Aries

Ms. Nina Dall'Armi  
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Ms. Sabrina Perez  
Mr. Dave Sperduto  
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Ms. Rita Barbour  
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Ms. Janet Schreurs

**Born: March 21 - April 20**  
**Quality: Energetic & Daring**  
**Special Color: Crimson Red**  
**Starstone: Diamond**

**Ask About Our... Client Birthday Club!!**

Con't on back...



Cont'd from front.

debtor in question; he was highly visible in his community as a man about town, on charitable organization boards, at political events, in the social pages, at groundbreakings, and so on. He had a favorable public image. In New York, as in many jurisdictions, there is wide-ranging latitude to conduct post-judgment depositions of not only the debtor, but of anyone else who might shed light on the debtor's assets—what they are, where they are, and so on. Some of that can be determined from a debtor's spending patterns. So in this case, as the creditor's attorney, we prepared a number of deposition notices to people who knew or did business with the debtor who would be aware of at least some aspect of his spending: the president of his country club, the United Way chairman, the debtor's adult children and wife, the maitre'd at the debtor's favorite restaurant, the owner of the gym where the debtor worked out, the neighbors on each side of and across the street from the debtor's home, the owner of the luxury car dealership patronized by the debtor, and so on.

Although we had no obligation to do so, we then sent copies of those subpoenas (there were ten or twelve of them) to the debtor's attorney, advising him they would be served in ten days. Of course, the pressure point of this approach was not in actually serving the subpoenas, but in being able to do so. Debtor's counsel called us, chuckling. And then the matter settled with the magical appearance of a six-figure lump sum from a supposedly 'assetless' debtor. **So especially in larger matters, know your debtor to the greatest extent possible, be creative, and think about pressure points!**

*Steven E. Feder, Esq.*



**Believe It or Not**

*After years of litigation and debate,  
believe it or not,*

**The Red Flag Program Clarification Act**

*was signed into law by President Obama on December 18, 2010.*

*The new law limits the circumstances in which  
creditors are covered by the Red Flags Rule.*

## Did You Know ??

*Since December of 2007, the US economy has been mired in recession, followed by slow growth. Last year the economy picked up the pace in terms of GDP, the stock market and corporate profits. However, declines still persist in the important housing sector and unemployment remains stubbornly high as job growth has remained well below the level necessary to significantly lower the jobless rate.*

*Many economists were disappointed in jobs data for 2010, as employers added only 103,000 jobs, which is less than half of the total needed to significantly reduce the unemployment rate. Although unemployment fell from 9.8% to 9.4%, this was not attributed to job growth, but to a shrinking employment base as a result of discouraged unemployed citizens giving on their job search.*

*Furthermore, the housing sector has been relatively immune to modest economic gains. Historically, the housing market was a reliable driver of economic growth after previous recessions. However, after this latest recession, the housing market has not gained much traction. Housing prices remain under pressure nationwide due to increasing inventories from foreclosures. A resurgence in housing is being held back by the lackluster gains in employment. As long as people are without jobs or fear losing their livelihoods, they are unlikely to buy homes, keeping prices stagnant.*

*Nevertheless, there have been some hopeful signs in late 2010 and early 2011, pointing to an increase in job creation that may boost the economy. Retail sales rose for a sixth month in December, 2010, primarily due to increases in sales of autos and furniture, boosting sales for the year by the largest amount in more than a decade. In its retail report, the US Commerce Department said sales rose 0.6% in December 2010 to the \$381 billion level. Retail sales were up 13.5% above the recession low in December 2008. New applications for unemployment compensation have been trending downward since several weeks before the end of 2010. Furthermore, the Conference Board reported on Jan. 20, 2011, that its index of leading economic indicators rose 1% in December 2010 after a 1.1% increase in November. Those are the biggest increases since March 2010 when the index jumped 1.4%.*

*By: Tom Diana of Credit Research Foundation*

## Brain Teaser

*Come near, o men of wisdom, and search you through  
my ditty:*

*Four buried in this rubbish cities fair are lying low,  
Search 'till on every line you see stand up a risen city.  
'Till walls and arches, terraces and turrets, upward grow.*

**Answer to last Brain Teaser: I Am Leaving  
Winners of Last Drawing**

1. Mr. Gary Paul (Valley View, OH)
2. Ms. Patrice Roe (Adrian, MI)
3. Ms. Carolyn Kaminski (W. Amherst, NY)
4. Ms. Jennifer Adams (Waldorf, MD)
5. Mr. John Land (Logansport, IN)

*All answers to be placed on enclosed Fax-O-Gram form.  
5 Fax-O-Grams will be pulled at random & sent a FREE Gift.*

**If there is a topic you would like to see appear in our newsletter, please contact Judy Mattioli at:**

**Phone: 1-800-873-5212 Fax: 1-800-873-5211**

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