

HERE COMES THE JUDGE

With



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Overview of Presentation

Today we will discussing the following two subjects from the perspective of the credit professional:

Antitrust Issues

Collections Strategies

After all the lawyer jokes ...
It's your turn.



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**“Sometimes I wear this in court.
It’s my frivolous law suit.”**

Hear Ye, Hear Ye, the Court is now
in Session. Judge Joe Presiding.



Docket Calendar for the Honorable (sometimes) Judge Joe

We have two matters on today's Docket Call.

September 14, 2017 at 11:00 AM

*The Chapter 7 Trustee for
Deadbeat Dynamics, Inc.*

vs.

Antitrust Case

*The Companies of
Madoff, Stanford, and Ponzi*

September 14, 2017 at 12:00 PM

Spiffy Steering, Inc.

vs.

Collections Case

*Honest Abe's Car Supplies Co.
and Abe Smith*

Local, Local, Local Rules of Judge Joe

- For each short topic presentation, you will be provided with two fact patterns.
- The fact patterns will present circumstances surrounding cases in which you are a lawyer.
- Each person, or lawyer, will be assigned to either Group #1 or Group #2 to determine which side they represent.
 - a) Left Side - #1
 - b) Right Side - #2
- For each fact pattern, the Group will have twenty minutes to collectively brainstorm an argument in favor of their client's position.
- Each Group must nominate people within their Group to argue for or against an issue outlined in the fact pattern.
- Each Group will have 7.5 minutes to present their case before the Honorable Judge Joe.

ANTITRUST ISSUES FOR CREDIT PROFESSIONALS

The Chapter 7 Trustee for Deadbeat Dynamics, Inc.
vs.
The Companies of Madoff, Stanford, and Ponzi

But first, an **antitrust primer** from our friends at MEMA . . .

MEMA's Antitrust Guidelines



- **Application of Antitrust Laws to Association Activities**

Trade associations and members are subject to federal and state antitrust laws. Associations are particularly vulnerable to antitrust enforcement because an association is a group of competitors joined together for a common business purpose. Therefore, associations must proceed with caution in certain areas of activity to ensure against violation of antitrust laws.

MEMA's Antitrust Guidelines



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MEMA's Antitrust Guidelines



- **MEMA focuses on **four** principal antitrust areas:**

1. Price-Fixing

- Association members are most likely to violate these price-fixing prohibitions of the Sherman Act.
- A price-fixing violation may be inferred from similar price behavior by members, even in the absence of a written or oral agreement.
- If price fixing is established, the association and members may not raise the defense that the prices set are reasonable or that the ends sought are worthy.

2. Agreement to Divide Customers

- Even an informal agreement whereby one member agrees to stay out of another's territory will constitute a violation of antitrust laws.

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MEMA's Antitrust Guidelines



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- 3. Membership Restrictions

- Applicants for membership in a trade association maybe rejected because they do not meet membership requirements, or for poor credit or misrepresentations.
 - However, denying membership to an applicant may constitute a restraint of trade if undertaken for competitive reasons, or to hinder the applicant's ability to compete in the marketplace.

- 4. Standardization and Certification

- If an industry standard favors some competitors and discriminates against others without adequate technical justification, the association may face antitrust issues.
 - Association certification activities, which further the interests of certain group members to the exclusion of others, may result in antitrust problems.

MEMA's Antitrust Guidelines



Topics of Discussion to Avoid at Meetings:

- Current or Future Prices
- What Constitutes “Fair Profit”
- Possible Increases or Decreases in Profit
- Standardization of Prices
- Stabilization of Prices
- Pricing Procedures
- Cash Discounts
- Refusal to Deal with Corporation due to Pricing or Distribution Practices
- Credit Terms
- Selection System or Termination of Purchasers, Customers, or Suppliers
- Allocation of Markets
- Complaints to Competitor about Unfair Trade Practices
- Pricing Practices of Industry Member are Unethical or Constitute Unfair Trade Practices
- Matters Inconsistent with Exercising Independent Business Judgment

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- **Matters Inconsistent with Exercising Independent Business Judgment**

ANTITRUST ISSUES FOR CREDIT PROFESSIONALS

The Chapter 7 Trustee for Deadbeat Dynamics, Inc.

vs.

The Companies of Madoff, Stanford, and Ponzi



Ch. 7 *Trustee for Deadbeat v. Madoff, Stanford, and Ponzi*

Background Facts:

- Credit Group Association Conference
 - Hundreds of competitors in the sports equipment industry are attending the yearly Credit Group Association Conference in Detroit, Michigan. One of the Conference sessions involves discussing the trends in credit-worthiness of certain customers.
 - The organizers of the Conference, extremely conscious of guidelines recommended by the Federal Trade Commission, make all efforts to ensure compliance with antitrust laws.
 - The organizers verify that all customer information presented is (i) historic, *i.e.* involves only past transactions, (ii) factual and accurate, and (iii) information that customers had an opportunity to dispute.
 - Moreover, each competitor that provided information was referred to in alias rather than by their actual name.
 - One of the common customers discussed is Deadbeat Dynamics, Inc. ("**Deadbeat**"), a regional retailer under the name "I Bet You Can't, Youth Sporting Goods Programs," who is known for questionable sponsoring of youth sporting events and creative reasons for stretching payments to suppliers.

Ch. 7 *Trustee for Deadbeat v. Madoff, Stanford, and Ponzi*

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Ch. 7 Trustee for Deadbeat v. Madoff, Stanford, and Ponzi

BACKGROUND FACTS

- The Bar (Madoff, Stanford, and Ponzi):
 - After a long day of going through payment histories of common customers and related informational sessions, three credit officers, Mr. Madoff, Mr. Ponzi, and Mr. Stanford, from three different competitor companies, decide to head to a bar.
 - While enjoying a few adult beverages, the three credit officers begin discussing their mutual customer, Deadbeat, and Deadbeat's owner, Mr. Moocher.
 - Specifically, the credit officers discuss Deadbeat's recent late payments and non-payments.
 - The three credit professionals from competitive companies discuss alternative treatment of Deadbeat, including cutting off credit, requiring a personal guaranty from Mr. Moocher, and demanding a purchase money security interest.
 - After Madoff finished his final karaoke ballad, the credit officers retreated to their respective hotel rooms for the night.

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Ch. 7 *Trustee for Deadbeat v. Madoff, Stanford, and Ponzi*

BACKGROUND FACTS

- Subsequent Phone Conversation (Madoff & Stanford):
 - A couple of weeks later, frustrated with the Deadbeat situation, Madoff calls Stanford and states, among other things, *“We should get everyone in the Association to stop selling to Deadbeat on credit!”*
 - In response, Stanford discloses that the only way his company will continue to sell to Deadbeat is if Mr. Moocher provides a personal guaranty.
 - Madoff sighs and mutters, *“my sales group doesn't care about anything but more sales and commissions—they want to keep selling to worthless Deadbeat! Given our President came up through sales, I've got nothing. But I will work our CFO and see if I can cut Deadbeat off!”*
 - Their conversation ends with Madoff and Stanford scheduling a game of golf at the next Credit Group Association Conference.

Ch. 7 *Trustee for Deadbeat v. Madoff, Stanford, and Ponzi*

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 - Their conversation ends with Madoff and Stanford scheduling a game of golf at the next Credit Group Association Conference.

Ch. 7 Trustee for Deadbeat v. Madoff, Stanford, and Ponzi

BACKGROUND FACTS

- Implementation of Credit Strategies:
 - One week after the above phone call, Madoff's company stops selling to Deadbeat except on CIA terms, which Deadbeat refused. Madoff could be seen strutting around his office all week long.
 - At the same time, Stanford held up sales on credit until Mr. Moocher returned his promised personal guaranty. Once received, Stanford's company continued selling to Deadbeat as it had previously.
 - Ponzi's company, in contrast, saw an opportunity to increase its market share and actually increased its credit to Deadbeat, resulting in Ponzi drafting yet another memo to the file and increasing the aspirin supply in his trusty bottom desk drawer.

Ch. 7 Trustee for Deadbeat v. Madoff, Stanford, and Ponzi

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Ch. 7 *Trustee for Deadbeat v. Madoff, Stanford, and Ponzi*

BACKGROUND FACTS

- Consequences:

- These actions prevent Deadbeat from purchasing any goods from Madoff's company. Moreover, Stanford's company made no shipments during the three weeks it took Mr. Moocher to provide an executed personal guaranty.
- Ponzi's company's products were more niche items and an increase in the credit line did not cover the significant holes in Deadbeat's inventory levels.
- Fill rates dropped precipitously, Deadbeat's bank declared a default, and with no new money to improve its capitalization, Deadbeat's board became concerned that they would not be able to pay their employees and the employer 941 taxes, creating liability for Deadbeat's officers and directors.
- Accordingly, Deadbeat filed for Chapter 7 bankruptcy, resulting in a liquidation of assets and the appointment of a Chapter 7 Trustee. Based on information provided by Mr. Moocher, the bankruptcy trustee files preference actions against Deadbeat's various creditors.
- The actions against Madoff's, Stanford's, and Ponzi's companies also include a count for antitrust violations, alleging that they all conspired to "Blackball" Deadbeat by cutting off its credit, which in turn forced Deadbeat out of business and into Chapter 7 liquidation.
- The Trustee also notes the significant damage to the region's youth sports given the demise of Deadbeat's "I Bet You Can't, Youth Sports Programs."

Ch. 7 Trustee for Deadbeat v. Madoff, Stanford, and Ponzi

BACKGROUND FACTS

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- **These actions prevent Deadbeat from purchasing any goods from Madoff's company. Moreover, Stanford's company made no shipments during the three weeks it took Mr. Moocher to provide an executed personal guaranty.**
- **Ponzi's company's products were more niche items and an increase in the credit line did not cover the significant holes in Deadbeat's inventory levels.**
- **Fill rates dropped precipitously, Deadbeat's bank declared a default, and with no new money to improve its capitalization, Deadbeat's board became concerned that they would not be able to pay their employees and the employer 941 taxes, creating liability for Deadbeat's officers and directors.**
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- **The Trustee also notes the significant damage to the region's youth sports given the demise of Deadbeat's "I Bet You Can't, Youth Sports Programs."**

Ch. 7 Trustee for Deadbeat v. Madoff, Stanford, and Ponzi

BACKGROUND FACTS- Overview

- Credit Group Association Conference
- The Discussion at the Bar
- Madoff's and Stanford's Subsequent Phone Conversation
- The Parties Implement a Credit Strategy
- Consequences of those Credit Strategies



Ch. 7 *Trustee for Deadbeat v. Madoff, Stanford, and Ponzi*

ASSIGNMENT

The Chapter 7 Trustee for Deadbeat Dynamics, Inc.

vs.

The Companies of Madoff, Stanford, and Ponzi

- Assignment:

- **Group #1** is the law firm of Dewey Cheatham & Howe PC, counsel for the Trustee.
 - Group #1 must designate two lawyers from their firm to argue on behalf of the trustee.
 - Stay in this room!
- **Group #2** is the law firm of Sweet Honest & Justkidding PC, counsel for each of the three Defendant Companies, employing Madoff, Stanford, and Ponzi.
 - Group#2 must designate three lawyers from their Firm to argue on behalf of each of the Defendant Companies referred to as (1) "Madoff," (2) "Stanford," and (3) "Ponzi".
 - Go to the Breakout Room.

Ch. 7 *Trustee for Deadbeat v. Madoff, Stanford, and Ponzi* ASSIGNMENT

- Don't forget!
 - Each Group has 20 minutes to prepare for trial. The Group must come up with the best argument for their respective side.
 - Review the facts.
 - Review the helpful hints.
 - The designated speakers for each Group will have 7.5 minutes to present their argument before the Honorable (sometimes) Judge Joe. This means 7.5 minutes per Group, not per lawyer!

But first, some inspiration...

Ch. 7 Trustee for Deadbeat v. Madoff, Stanford, and Ponzi
JUDGE JOE PRESIDING



Ch. 7 Trustee for Deadbeat v. Madoff, Stanford, and Ponzi JUDGE JOE'S RULING

- After reviewing the evidence, the Court enters a judgment in favor of the Defendants.
 1. There was no **secret agreement** between the Defendants to stop selling or extending credit to Deadbeat.
 2. There were no **common acts** between the Defendants—each competitor acted independently as evidenced by their different actions.
 - Madoff completely cut off and stopped extending credit to Deadbeat.
 - Stanford only cut Deadbeat off until it received Mr. Moocher's guarantee. His company then continued selling to Deadbeat.
 - Ponzi's company actually increased Deadbeat's credit limit.

Ch. 7 Trustee for Deadbeat v. Madoff, Stanford, and Ponzi ADMONITION FROM JUDGE JOE

- Anytime competitors discuss a common customer, be very careful and be conservative.
- Competitors should never discuss future actions to take for or against customers/competitors.
- *Michelman v. Clark-Schwebel and Burlington Indus.*
- Credit Terms = Price
 - This is for purposes of liability for price-fixing.
 - *Catalano, Inc. v. Target Sales*, 446 U.S. 643 (1980).

Any of these could lead you into . . .

Halloween Party

What
are you?



Bankruptcy
lawyer.



STU

Docket Calendar for the Honorable (sometimes) Judge Joe

We have two matters on today's Docket Call.

September 14, 2017 at 11:00 AM

*The Chapter 7 Trustee for
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vs.

Antitrust Case

*The Companies of
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September 14, 2017 at 12:00 PM

Spiffy Steering, Inc.

vs.

Collections Case

*Honest Abe's Car Supplies Co.
and Abe Smith*

COLLECTIONS STRATEGIES FOR CREDIT PROFESSIONALS

Spiffy Steering, Inc.

vs.

Honest Abe's Car Supplies Co. & Abe Smith



Spiffy Steering v. Honest Abe's and Abe Smith

BACKGROUND FACTS

- Honest Abe's Car Supplies Co. ("Honest Abe's") owes Spiffy Steering, Inc. ("Spiffy") \$250,000 for bedazzled steering wheels it purchased on credit. This debt is over 120 days past due.
- Tired of Honest Abe's constant excuses, Spiffy files suit against Honest Abe's to collect amounts due and owing and to foreclose its purchase money security interest in the Spiffy inventory Honest Abe's currently possesses. Spiffy also sued the alleged guarantor of Honest Abe's indebtedness, Abe Smith.

Spiffy Steering v. Honest Abe's and Abe Smith

BACKGROUND FACTS

- Through discovery, the parties have developed the following information:
 - Honest Abe's has been a customer of Spiffy for nearly 20 years. Over the last five years, Honest Abe's purchases average about \$2 million a year.
 - Spiffy has a Credit Application on file from Honest Abe's that is 15 years old. In those 15 years, Honest Abe's has been sold twice.
 - The first sale was from the original owner of Honest Abe's, Abe Smith, to investors.
 - The second sale was from those investors to Reliable Car Supplies, a competitor of Honest Abe's.
 - Abe Smith has not remained involved with Honest Abe's through either of those sales.
 - Honest Abe's has also kept its name through both sales.
 - Honest Abe's has a \$250,000 credit limit with Spiffy.

Spiffy Steering v. Honest Abe's and Abe Smith

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 - Honest Abe's has also kept its name through both sales.
 - Honest Abe's has a \$250,000 credit limit with Spiffy.

Spiffy Steering v. Honest Abe's and Abe Smith

BACKGROUND FACTS

- While Abe Smith never provided a personal guaranty in support of Honest Abe's, the 15 year old Credit Application signed by Abe Smith—in his corporate capacity as president and owner of Honest Abe's—contains the following clause:

“If the Customer is a corporation or other entity, the person executing this Agreement agrees to personally guarantee the payment of all amounts due from the Customer to Spiffy. This guaranty remains valid until it is revoked in writing by the person signing this Credit Application.”

- Day sales outstanding (DSO) for Honest Abe's has recently increased from 35 days to 65 days.
- The Financing Statement (UCC-1) Spiffy filed to obtain a PMSI in goods sold was filed exactly four years ago. Spiffy listed the debtor's name as “Honest Abe's Vehicle Salon Co.” Spiffy sent the required notifications to pre-existing lienholders, including Badass Bank.

Spiffy Steering v. Honest Abe's and Abe Smith

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Spiffy Steering v. Honest Abe's and Abe Smith

BACKGROUND FACTS

- Honest Abe's is currently holding about \$75,000 in Spiffy goods in inventory.
- In April 2017, Honest Abe's ordered \$35,000 worth of pink Swarovski crystal steering wheels that it needed by May 10, 2017—just in time for Mother's Day.
 - Spiffy delivered the steering wheels the day after Mother's Day.
 - Furious, Honest Abe's called Spiffy and exclaimed, "How dare you send me these steering wheels after Mother's Day—you've ruined Mother's Day for all of the glamorous mothers everywhere! We don't need these anymore!"
 - It has been more than 90 days since Spiffy delivered the steering wheels and Honest Abe's has failed to return them.
 - Honest Abe's P.O. for the pink Swarovski steering wheels expressly provided "to be delivered by no later than May 7, 2017."
- Recently, one of Spiffy's vendors provided Spiffy with faulty bedazzled steering wheels that spontaneously combusted when exposed to the sun for too long. Because of this, Spiffy had to recall \$20,000 in bedazzled steering wheels sold to Honest Abe's.

Spiffy Steering v. Honest Abe's and Abe Smith

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Spiffy Steering v. Honest Abe's and Abe Smith

BACKGROUND FACTS

- The following issues have been identified:
 1. **Guaranty:** Abe Smith contends he is not personally liable for Honest Abe's indebtedness to Spiffy because Honest Abe's has been sold twice and Abe Smith did not sign the guaranty in his individual capacity.
 2. **Purchase Money:** Spiffy wants to enforce its PMSI and obtain a judgment for judicial foreclosure of the Spiffy inventory currently held by Honest Abe's.
 3. **Late Delivery:** Spiffy contends that Honest Abe's is also indebted to Spiffy for the late-delivered pink Swarovski crystal steering wheels because they were never returned and Honest Abe's has retained them for more than 90 days.
 4. **Defective Goods:** \$20,000 of defective steering wheels have been recalled.

Spiffy Steering v. Honest Abe's and Abe Smith

ASSIGNMENT

Spiffy Steering, Inc.

vs.

Honest Abe's Car Supplies Co. and Abe Smith

- Assignment:

- **Group #1** is the law firm of Dewey Cheatham & Howe PC, counsel for the Spiffy Steering, Inc.
 - Group #1 must designate two lawyers from their firm to argue on behalf of the Spiffy.
 - This room.
- **Group #2** is the law firm of Sweet Honest & Justkidding PC, counsel for each of the two Defendants—Honest Abe's Car Supplies Co. and Abe Smith.
 - Group#2 must designate three lawyers from their Firm. Two will argue on behalf of Honest Abe's and one will argue on behalf of Abe Smith.
 - Breakout Room.

Spiffy Steering v. Honest Abe's and Abe Smith

ASSIGNMENT

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Spiffy Steering v. Honest Abe's and Abe Smith
JUDGE JOE PRESIDING



Spiffy Steering v. Honest Abe's and Abe Smith

JUDGE JOE'S RULING

- After reviewing the evidence, the Court enters judgment as follows:
 1. Abe Smith is not personally liable under the guaranty he signed because Spiffy was aware that Abe Smith no longer owned Honest Abe's but never attempted to update its credit file.
 2. Spiffy did not have a perfected PMSI because it failed to properly name the debtor.
 3. Honest Abe's must return the pink crystal steering wheels within seven (7) days of entering this judgment.
 4. Honest Abe's must pay \$195,000 for amounts outstanding to Spiffy {\$250,000 -\$35,000 [late delivered] - \$20,000 [defective]}.

Court is Now Adjourned!

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**"Can we, just for a moment, Your Honor,
ignore the facts?"**