



The way I see it...

BY PAUL KINDINGER

Proceed with caution

THIS month's column is prompted by numerous dealer calls received by NAEDA and its affiliated associations over the last couple of months. For example, we have taken a number of calls from dealers who have placed prepaid orders for equipment that was scheduled for spring delivery but the equipment still hasn't arrived. Several other calls were from dealers who agreed to place equipment on their lots as a favor to a finance company and/or a manufacturer, which begs an answer to the question who is liable for the equipment and the interest payments on it. In either case, I feel the need to talk about the basic issue of these examples: **PROCEED WITH CAUTION.**

Offering specifics about these types of calls is virtually irrelevant to my message. Bottom line: I don't want to see dealers get caught in bad situations that leave them holding the proverbial bag. Therefore, I encourage dealers to take one precaution before signing on the dotted line and accepting any contract, prepaid order plan, consignment, etc: **PROCEED WITH CAUTION.**

If this reads as though a theme is developing – that's good.

It is truly unfortunate our society has moved so far away from the days when business deals were made with a verbal commitment and a handshake. However, the reality in today's business world is everything (first and foremost) needs to be in writing. I can't tell you how many times I've listened to dealers describe a situation in which a verbal agreement, often reached with a person who no longer represents a particular company, is at the core of the problem. Even dealers who take extremely good notes often find themselves without any means of verifying the agreement. Further, make sure the right people are part of the writing. If a manufacturer makes an agreement that includes a specific financing arrangement, but a third-party financing company is free to ignore that agreement, the dealer is left unprotected. Therefore, **PROCEED WITH CAUTION and GET IT IN WRITING.**

Once an agreement is in writing, dealers should consult with a trusted business advisor/attorney, someone they can rely on for sound advice. Again, many dealers who find themselves in difficult situations with financing agreements, prepaid orders or consignments have admitted they should have taken time to analyze the contract or agreement more closely. Even more frustrating for me is learning from a dealer that he or she had deep-rooted reservations about a company before entering into an agreement but did anyway. Sometimes it pays to act on your gut instincts or reservations, which could pay big dividends, especially if you have a nagging question in the back of your mind to get professional business advice. Sometimes a deal that seems too good to pass up is, in fact, too good to be true. It is far easier to incur an unknown or, worse, unwanted liability and not realize it is there. Again, **PROCEED WITH CAUTION and GET PROFESSIONAL ADVICE.**

To be clear, I am not suggesting that dealers become excessively skeptical and spend hundreds of hours or thousands of dollars to analyze every word of an agreement before it is signed. What I am saying, though, is a healthy dose of skepticism could be helpful. A dealer recently called about a manufacturer's request to become a "distribution point" for its equipment. The dealer was encouraged to take equipment and store it on his lot. In exchange, he would receive a fee if another dealer sold one of the stored models. Seems like a simple enough request. Several other dealers have been told equipment was added to their statement just so everyone would know where it is – do not believe that because the issue at hand becomes who really owns the equipment. The distributor dealer in question now receives invoices for the interest due on the equipment he agreed to store on his lot. Although we might want to believe the answer is simple because the dealer merely made a verbal agreement with the manufacturer to be a distribution point,

it would have paid big dividends to check out this arrangement ahead of time and get the financing company's written consent. Thus, **PROCEED WITH CAUTION and CHECK OUT THINGS IN ADVANCE.**

By now you're probably thinking, okay, we get the point. But like advertising, sometimes it helps to keep repeating the message. NAEDA counsel Jack Selzer receives hundreds of calls each year from dealers who find themselves in difficult situations. The situations described herein and many others led NAEDA and its affiliated associations to establish a legal assistance program through Selzer's firm, Seigfreid, Bingham, Levy, Selzer & Gee (SBLSG), in Kansas City, Mo. The program provides limited free legal assistance and is included in your combined affiliate/NAEDA dues package. To learn more about the program, visit the Advocacy Center on NAEDA's Web site (www.naeda.com) and click on the Legal Services tab.

Before I step away from this paper podium, I'm going to restate my case one last time. Make it a priority to check out agreements ahead of time. Of course, I'm not so naive to believe that even if you did all of the above, it would guarantee you wouldn't have a problem. However, I strongly suggest you get any agreements in writing and get a professional's opinion, especially if you have doubts or questions. Quite a few dealer-manufacturer, dealer-finance company or dealer-distributor disputes might be avoided if the time were taken to fully understand the deal. Maybe we should encourage dealers to install a flashing yellow light in their offices as a reminder to **PROCEED WITH CAUTION – ALWAYS...** and that's the way I see it. ■

PAUL KINDINGER is president/CEO of the North American Equipment Dealers Association. The association provides educational, legal, legislative and financial services to approximately 5,000 retail agricultural, industrial and outdoor power equipment dealers in the United States and Canada.