WPI

Venture Forum News

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Getting started on Uncle Sam's SBIR money

Tuesday, February 12, 2002
WPI, Kinnicutt Hall *
Registration: 6:00 pm
Meeting: 6:30 pm
Cost: $10, individual annual & lifetime members
$20, non-members

At the Venture Forum's February meeting, Natalie S. Rudolph, Ph.D., principal of Rudolph Biomedical Consulting, will examine the issue of Small Business Innovation Research (SBIR) programs. Using her experience and expertise in the field, she will advise entrepreneurs how to strategically use SBIR programs for the advancement of their companies.

Established in 1982, the SBIR program will be in existence for the next several years. The Small Business Reauthorization Act of 2000 sanctioned the program until September 30, 2008. According to the law, federal agencies with extramural research and development (R&D) budgets in excess of $100 million are required to administer SBIR programs using 2.5 percent of that money. Ten federal agencies currently participate in the SBIR program: the Environmental Protection Agency (EPA); the National Aeronautics and Space Administration (NASA); the National Science Foundation (NSF), and the Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services and Transportation. To date, more than $10 billion has been awarded to various small businesses through the program.

These competitive grants have been provided to qualified small businesses for the exploration of a variety of scientific research projects. Intended to stimulate technological innovations in the private sector, government agencies seek to strengthen the role of small business in meeting federal research and development needs with these awards. Some SBIR-funded projects include an Internet CareLink system for pediatric home chemotherapy; computer-assisted support for under-served smokers; novel therapy for female sexual dysfunction; analysis of functional genomic data; development of lower infectious risk donor pigs for xenotransplantation, and a device for the repair of mucogingival tissue.

Rudolph's consulting practice focuses on strategic support for R&D ventures, particularly competitive technical, market and intellectual property analysis, strategic R&D program and project planning, and technical, grant and business writing. With a doctorate in genetics from the University of Wisconsin at Madison, Rudolph has conducted post-doctoral research at the University of Rochester Medical School and Harvard Medical School. Most recently, she held the position of Director of Scientific Development for TSI Corporation. Rudolph is also a former member of the WPI Venture Forum's Program Committee.

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** Please note change in meeting location.*

SuturTek Incorporated

Case Presenter

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In a recent statement, the Centers for Disease Control (CDC) indicated that needle-stick injuries are caused by the design of unsafe needle devices rather than by careless health care workers. "Safer needle devices…significantly reduce the incidence of accidental needle-sticks and exposure to potentially fatal blood borne illnesses," said a spokesman for the CDC. SuturTek is creating a portfolio of patented, proprietary needle-protected suturing wound-closure ▶

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Letter From the Chair

The old and the new

by Dick Prince

During a break in the activities this holiday season I happened to pick up an old copy of Benjamin Franklin's Poor Richard's Almanack. While browsing through the collection of proverbs I was surprised to find most of the sayings were applicable to "present day" lifestyles. Reading further, I found that many were related to business practices, especially entrepreneurship. I would like to share with you some of this early 18th century wisdom.

- The first mistake in public business, is the going into it.
- Ill customs and bad advice are seldom forgotten.
- He that riseth late, must trot all day, and shall scarce overtake his business at night.
- Well done is better than well said.
- Experience keeps a dear school, yet fools learn in no other.
- Have you somewhat to do tomorrow, do it today.
- 'Tis easy to see, hard to foresee.
- Drive thy business, or it will drive thee.
- Pay what you owe, and what you're worth you'll know.
- Industry, Perseverance, & Frugality, make fortune yield..
- Avoid dishonest gain: no price can recompence the pangs of vice.
- Learn of the skilful: He that teaches himself, hath a fool for his master.
- The creditors are a superstitious sect, great observers of set days and times.
- The things which hurt, instruct.
- Beware of little expenses: a small leak will sink a great ship.
- Be always ashamed to catch thyself idle.
- Great talkers, little doers.
- He that won't be counsell'd, can't be help'd.
- He that waits upon fortune, is never sure of a dinner.
- You may delay, but time will not. Lost time is never found again.

- 'Tis against some men's principle to pay interest, and seems against other's interest to pay the principal.
- Diligence is the mother of good luck.
- Do not do that which you would not have known.
- When the well's dry, you know the worth of water.
- He that sells upon trust, loses many friends, and always wants money.
- He that can have patience can have what he will..
- Bad gains are true losses.
- Good sense is a thing all need, few have, and none think they want.
- Fools need advice most, but only wise men are the better for it.
- The second vice is lying: the first is running in debt.
- The doors of wisdom are never shut.
- Being ignorant is not so much a shame, as being unwilling to learn.
- He that would catch fish, must venture his bait.

These are but a few of the time tested and battle worn pearls of wisdom Ben Franklin collected for his almanac. Use them judiciously.

Dick Prince

Dick Prince is retired from Norton Company and Siebe, plc and is presently a partner in Brooksville Associates, a merger and acquisition company specializing in the health and safety industry. VF

A look at December's meeting

Forecasting the future

by Brian M. Dingman

Christina L. Pappas, managing editor of the Worcester Business Journal (WBJ), gave an informative talk on near-term business issues. Pappas based her presentation on the wealth of information she has gathered from spending nine years talking to and writing about businesses, primarily in this geographic region. She has developed an interesting outlook regarding the current business climate as well as existing opportunities for entrepreneurs.

Pappas observes that the economy now is more "normal" than it was in recent history. Companies are making more "well-reasoned" decisions and spending "well reasoned" money on infrastructure and deals. In general, though, the obstacles facing business people are the same now as they were when the economy was stronger, she says. In fact, the business downturn presents opportunities for savvy entrepreneurs, according to Pappas.

Due to the economic dislocation moving through the market, the quality of the labor pool has vastly improved, Pappas notes. Also, the costs of labor and infrastructure are down; accordingly, there are actually more resources available now for entrepreneurs to start businesses. However, it is critical in today's climate for an entrepreneur to recognize where to look for an appropriate opportunity. She suggests that you ask yourself what markets you are experienced in, where core customers can be found and which customers can pay your bills. With this knowledge, and the pool of available resources, Pappas indicates that there is plenty of opportunity for discerning entrepreneurs.

Pappas also spoke briefly on several industries and sectors. Due to huge inventory backlogs and reduced demand, she expects the telecommunications market to take all of 2002 and part of 2003 before it begins to rebound. She notes that now, more than ever, venture capitalists are looking for experienced management teams, and for companies that are cash flow positive. Pappas observes that investment in medical device companies has increased. She also cites a nationwide push to save healthcare dollars, which translates into opportunity for companies that can present products and services that decrease the length of hospital stays and offer a course of disease treatments. Companies that target the needs of the aging population also have a bright outlook, according to Pappas.

Case Presenter

Walter Stock, co-founder of Vayusa, Inc., presented his case to the audience and panel of experts at the December meeting. Stock, a former engineer with an MBA from Babson, founded Vayusa with three of his classmates. Vayusa's goal is to exploit its innovative technology that allows quick and easy point-of-sale purchases with the use of cell phones.

The company is taking advantage of the ubiquitous cell phone market and the trend of wireless telecom providers to try to capture new revenue sources. Vayusa's product is user-friendly system that allows consumers to pay for purchases at the point-of-sale utilizing their cell phones. The user needs only to dial a telephone number provided by the retailer, and then enter his or her pin number. Once the transaction is completed, the technology maintains a ledger and a digital receipt.

Vayusa is targeting teenagers as its first market. Eleven million teenagers have cell phones and in 1999, this population spent $150 billion. However, teenagers typically cannot use credit cards and their parents want to know where their children are spending their money. The Vayusa product allows the use of prepaid accounts that are accessible to the teenage market, and provides the record keeping that parents desire.

One challenge of this scheme is that the sale requires simultaneous buy-in by both the consumers and retailers. Accordingly, the team is looking first to roll out the concept in a targeted number of shopping malls. This method will allow users to make purchases in a large number of establishments, and also allow retailers to decrease risk by running small test markets. ▶

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Getting started

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devices (FDA 510k cleared) that prevent harmful suture needle sticks, thus protecting surgeons, patients, nurses and other healthcare personnel.

In its case presentation, SuturTek will highlight its first product, the patented FastClose™ device, which is scheduled for release in the third quarter this year. The first and only wound closure suturing device designed to comply with legal requirements for "engineered sharps injury protection," FastClose™ is cost-effective, re-usable and hospital-sterilizable. The comfortable, ergonomically designed device is easily loaded in a single-use, sterile disposable plastic suture cartridge. The needle remains safely inside the cartridge during loading, handling and unloading, keeping the point of the needle away from hands and fingers. In addition to preventing suture needle sticks that comply with federal and state needle stick safety laws, the company proposes that the device is destined to become the gold standard in wound closure techniques. FastClose™ will allow hospitals to utilize operating rooms more efficiently by decreasing the time spent in surgery and enabling the scheduling of additional revenue-generating cases.

Congress and 20 states, including Massachusetts, have passed needle-stick safety legislation. The Joint Commission on Hospital Accreditation (JCOHA) bases hospital accreditation on compliance with needle-stick safety. Already proven in surgery and endorsed by surgeons, the patented FastClose™ represents the ideal device to comply with the new regulations.

SuturTek closed its Series A financing, led by Tyco Ventures, the venture capital unit of Tyco International, in March 2001. The company is now seeking Series B financing to support expansion of the senior management team; development of sales and distribution capabilities; transition of its first product to manufacturing; pre-launch marketing activities, and initial launch of FastClose™ in the third quarter of 2002. Citing a $1 billion global market opportunity, SuturTek will present its strategy for obtaining additional dollars to fund its innovative product.

Following SuturTek's presentation, a panel of experts, including the guest speaker, will evaluate the company's written business plan and offer constructive feedback. VF

Outsourcing: part II
The clued-in and the clueless

by Stephen J. Doig, Ronald C. Ritter, Kurt Speckhals, and Daniel Woolson

In last month's article, the authors explored the issue of outsourcing and its impact on manufacturers. In part II, they offer examples of companies who chose the outsourcing route and the eventual outcome of that decision.

The make-or-buy riddle can be answered correctly only if you first understand the strategic (and not just the dollar) value of key activities and then assess the efficiency and capabilities of their providers, internal or external. A large office products manufacturer exemplifies this comprehensive approach, for it assessed its processes in a full operational context. Managers asked not just how much they could save in direct costs if a given function were farmed out, but also (in the case of steel stamping, for example) how much floor space could be opened up by doing so. The company realized that it could not only outsource the stamping operations at each of its plants, but also move the operations of an entire plant into the vacated space.

Outsourcing the stamping operations should produce savings of 15 to 20 percent, and the plant closing will more than double the savings. Had the company looked at stamping alone, it would have kept that function in-house, since operational improvements can produce savings comparable to those from outsourcing. But as a result of examining the big picture, the company can also eliminate overhead by mothballing a plant and improving the productivity of the remaining plants in ways that benefit the entire supply chain.

Counter-example

An aerospace company facing a slowing business environment and an asset base bloated by acquisitions provides a counter-example. Management had a gut feeling that the company ought to shed its $50 million printed-circuit-board assembly operation, which was burdened by overcapacity at several facilities. Recognizing that local buy-in was important, senior executives delegated the task to plant managers, who considered creating an internal "center of excellence" that would shoulder the board-assembly work of the existing plants. Concerns about losing any portion of their business loomed large, however, since this course would raise their overhead rates, make their capacity even more underutilized, and thus pose a grave threat to their long-term viability. Moreover, none of the managers wanted to run the risk that someone else would be put in charge of such a prestigious operation. Establishing a center of excellence generally leads to initial cost savings of about 10 percent, but infighting and an instinct for self-preservation whittled the team's estimate to less than 1 percent.

Before deciding whether to go forward with the plan, the team asked suppliers to bid on the assembly business, even handing over the company's bill-of-materials costs. After seeing such vast inefficiencies and the managerial ineptitude that tolerated them, none of the bidders felt it had to offer more than a token 5 percent savings on the company's current costs. That ought to have been deemed too low to warrant moving the assets. The suppliers, given the higher volume of their purchased materials, should have been able to deliver 15 to 20 percent savings in the cost of materials alone (9 to 12 percent of the full cost). Combined with direct-labor and overhead savings, this should have produced overall savings of 14 to 22 percent. Nevertheless, the managers took the bait.

The aerospace company fell victim to a hard truth: managers accustomed to meeting internal benchmarks often have no idea how their costs and capabilities compare with those available in the marketplace. Our experience shows that internal improvements can produce savings comparable to those of outsourcing—for instance, 20 to 30 percent gains in direct-labor productivity, better materials costs through improved purchasing practices, and significant reductions in required floor space. In most cases, a thorough make-versus-buy analysis will uncover total savings of 8 to 18 percent. They may come from enhancing internal operations, from external suppliers, or from some combination of the two. Managers who accept less are probably leaving money on the table—or in their suppliers' pockets.

Making the assessment

It is vital to know how the true cost of manufacturing goods internally stacks up against the ▶

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> ***"Even if you're on the right track, you'll get run over if you just sit there."***
>
> -Will Rogers

A look at December's meeting: Case presenter

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Vayusa is seeking funding for its beta product, and a roll out. The company is also searching for connections to shopping mall property developers and the wireless telecom industry. Additionally, Stock and his partners need to establish relationships on both the retail and the payment (banking) sides.

Panel review

Panelists Christina Pappas, Sean Seton-Rogers, an associate with Commonwealth Capital Ventures in Wellesley, and Barbara Finer, a high technology marketing professional in Hudson, commented on the company and its business plan. Finer noted that the written plan needs a better explanation of the sale cycle and early sources of income. The company should also better explain how protectable the concept is and what barriers to entry potential competitors will face. Finally, the Vayusa team should look at similar models to determine how best to find the partners it needs in order to launch the product.

Seton-Rogers discussed the four key questions that venture capitalists must ask when thinking about making an investment. First, what is the business problem, whom does it affect, and what is its size? Second, what is the solution? Third, what is the competitive advantage, and fourth, what about the team makes it special? Seton-Rogers thinks that the company explained the first two criteria well, but needs to better describe the competitive environment and competitor's barriers to entry. He also thinks Vayusa should find additional talent with more relevant experience and should discuss that in the plan. Seton-Rogers advises Vayusa to seek more contacts in the related business arena of telecom, banking and retail. He says the company should better explain what it intends to do with the capital it raises and how and when it expects to become cash-flow positive.

Pappas adds that the company must understand better the requirements of the large nationwide retailers that Vayusa is soliciting to carry this service, and what would be involved in convincing these retailers to accept Vayusa payments.

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Breakfast with the Stars

The Cambridge Business Development Center continues its Breakfast with the Stars series. In its sixth season, the Breakfast is a monthly networking event that brings together high-profile entrepreneurs in an informal setting with presidents, CEOs and founders of growing high-tech companies who tell personal stories of founding and growing their companies.

Breakfast attendees benefit from the speakers' insights, networking opportunities and community building. Some of the Breakfast's past speakers include Mitch Kapor of Lotus, Bob Metcalfe of 3Com, Shikhar Ghosh of Open Market, and Jeff Taylor of The Monster Board.

The next meeting of the Breakfast with the Stars will take place on January 23, 2002 and features Carl Hoffman of Basis Technology.

For more information, visit the website at www.cbdc.org/bwts or contact Theresa Park, program manager for the Cambridge Business Development Center, 494 Massachusetts Avenue, Suite 4, Cambridge, MA 02139, 617-349-4690, extension 204 (phone), 617-349-4691 (fax), Theresa@cbdc.org.

Outsourcing: part II

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cost of acquiring these goods from suppliers. To make the assessment, senior management must consider three dimensions of performance.

Strategic: Does owning or enjoying preferential access to the asset have any strategic importance? How does the company's manufacturing strategy meet the needs of its overall business strategy? Ownership of design and manufacturing assets gives Intel, for instance, fast product ramp-ups and prevents the loss of technological know-how to outside suppliers.

Operational: What are the performance targets and the needs (such as lead times and unit costs) of the manufacturing process and the supply chain? Irrespective of ownership, what are the optimal supply chain arrangements for meeting those targets? Dell configured its supply chain to make good on its overall business strategy of delivering customized computers shortly after orders are placed.

Organizational: How does the business, having linked manufacturing strategy to business strategy, achieve results? Established companies, whether they manage reconfigured networks or operate long-standing internal ones, seldom have the skills to transform their supply chains.

Senior managers must use this three-dimensional perspective to assess, first, internal operations; then, external capabilities; and, finally, what combination of the two can create the most value and capture it through good network management.

Coming next month: Improving internal operations, gauging external capabilities, determining the mix and capturing value through relationships.

Stephen Doig is an associate principal in McKinsey's Minneapolis office; Ron Ritter is an associate principal in the Orange County office, where Daniel Woolson is a consultant; Kurt Speckhals is a consultant in the Detroit office.

Using insurance to ensure the smooth sale of your business

Jill Swaim, Esq., Lucash, Gesmer & Updegrove LLP, Matthew R. Field, Mazonson, Inc.

The imaginative ways that insurance can be used to facilitate the sale of a business are not widely known. This article uses a hypothetical situation to illustrate the techniques used on behalf of two companies. While the example provided here is somewhat specific, there are a variety of ways sophisticated legal counsel and insurance brokers can make effective use of insurance in the context of mergers and acquisitions.

The opportunity

A publicly traded Fortune 100 corporation, BuyInc, approaches the founder of SellCo, a privately held software company, to acquire the business. BuyInc makes it clear that its primary interest is in the intellectual property, as SellCo has little revenue. SellCo enters into discussions regarding the material terms of the transaction under an appropriate nondisclosure agreement. However, the current market climate has prompted an increased level of scrutiny by buyers, along with an unwillingness to accept more than minimal risk with a business acquisition. The potential buyer's higher level of scrutiny poses a significant obstacle to the sale.

Matthew R. Field, Mazonson, Inc.

Structure & negotiations

BuyInc and SellCo agree upon a purchase price of $10 million. Of that, $9 million will be paid to SellCo at closing with $1 million held in escrow to secure SellCo's indemnification obligations. The purchase and sale agreement will contain representations and warranties made by SellCo and its founder. If, after the closing of the transaction, BuyInc discovers that any of SellCo's representations were inaccurate when made, they will indemnify BuyInc (that is, SellCo will be responsible for the payment of any losses BuyInc incurs in connection with the misrepresentation). SellCo's lawyer advises them to limit potential liability through the use of: (1) a threshold claims amount, i.e., the minimum amount of damages that must be incurred by BuyInc before it can seek indemnification from SellCo; (2) a limited survival period for the representations and warranties, and (3) a liability cap, i.e., a maximum amount which SellCo would be required to pay to BuyInc.

SellCo successfully negotiates a threshold; the parties agree that BuyInc will be responsible for payment of the first $100,000 worth of claims and that claims based on misrepresentation will survive only until the second anniversary of the closing date.

SellCo and its founder negotiate a cap on potential liability in the amount of $750,000. However, there is one aspect of the negotiation that is not easily resolved - BuyInc insists that it will not accept any risk associated with the purchase of SellCo's intellectual property. BuyInc requires an express exception to the liability cap, i.e., with respect to any misrepresentation regarding intellectual property, SellCo's liability - and the potential liability of its founder - must equal the purchase price. In addition, BuyInc insists that claims based on misrepresentations related to SellCo's intellectual property must survive for a period of six years.

Jill Swaim, Esq., Lucash, Gesmer & Updegrove LLP

The sale of SellCo to BuyInc presents an attractive opportunity, but SellCo is seriously concerned about BuyInc's indemnification requirements regarding intellectual property representations.

Although SellCo has never been accused of the practice, competitors might be motivated to make allegations of intellectual property infringement following the sale of SellCo to BuyInc, due to BuyInc's large size and deep pockets (at least when compared to SellCo). SellCo is reluctant to accept the greater risk demanded for the intellectual property representation as compared with the other representations regarding SellCo's business. After BuyInc indicates that it is unwilling to reduce its demand with respect to intellectual property indemnification, it appears that negotiations with BuyInc may have reached an impasse.

An insurance solution

To moderate concerns and assist in moving negotiations forward, legal counsel introduces SellCo to an insurance broker specializing in mergers and acquisitions (M&A) transactions in order to explore possible insurance solutions. The insurance broker recommends that SellCo and its founder transfer the risk of breach of all the representations and warranties, ▶

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Seeking alternative financing? There is no substitute for cash revenue

by Jamie F. Rice

Jamie Rice

Many financially strapped start-up companies execute a cost-containment plan to accelerate to cash flow breakeven. However, cost reduction by itself, without more effective selling, can backfire and turn into a race against insolvency.

Recently, PricewaterhouseCoopers LLP conducted a survey of America's fastest growing companies. Among those that said the current recession has adversely affected their business, 55 percent said they preferred marketing strategies, such as selling to new customers and improving marketing productivity, as ways of pulling themselves out of the rut. Meanwhile, 41 percent cited cost-containment strategies, such as purchasing smarter, negotiating better terms with suppliers and reducing the cost of capital, as their favored methods. In the past 12 months, the companies that emphasized marketing posted revenue growth of 18.5 percent, more than double that of the 6.9 percent posted by cost cutters.

By all means, reduce expenses. Successful entrepreneurs equate cash with blood and only part with it when they stand to attain a significant value-enhancing milestone or when the return from that spend exceeds the company's cost of capital. But there is no substitute for more effective selling.

Case study

A Massachusetts-based start-up company makes the point:

Established in 1999, the company sells product lifecycle management software and services that reduce the cost of sales and accelerate the time to market for new products of discrete manufacturers. Given the recession, it has been a challenging sell.

By year-end 2000, the company had posted an annual revenue run rate of nearly $2.0 million, gross margins of 30 percent and a monthly cash burn of $400,000 per month. The economy worsened and sales slipped. The CEO was actively fundraising with venture capitalists but to no avail. Without financing and slipping sales, he saw that the company would not generate positive cash so he decided to execute a cost-containment plan.

He reduced staff from 35 to 20, keeping only those whose skills were critical to the business and those who could multi-task effectively. He opened a credit line with a commercial bank. He factored his accounts receivable. He assigned an employee to renegotiate many of the company's accounts payable. He halted all equipment purchasing. He negotiated with his landlord for lower monthly rent (and later moved the company to a different location). And he halted all travel and many other general expenses.

Briefly, he inquired into a number of international- and domestic-based alternative loan programs, but met with no success because of the company's weak balance sheet.

By the second quarter of 2001, the economy worsened. The company's new cost structure extended the company's runway by five months, but with sales slipping and no new venture financing in the wings, bankruptcy still loomed on the horizon.

Sales and marketing strategy

The CEO reversed the company's prospects with a new sales and marketing strategy.

First, he changed his software and service company into a pure software company. By eliminating services, he eliminated 50 percent of his revenue but boosted the company's gross margin. As a result, he also had to lay off several more people.

Second, he signed strategic partnership agreements with three well-entrenched channel partners previously viewed as ▶

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Alternative financing helps cut costs

Even as companies strive to improve sales, there are a number of financing options that help cut costs. Among them:

Asset-based lending — Loans that use assets such as receivables or inventory as collateral. Your credit-worthiness is determined by quality of the collateral.

Credit line — A predetermined amount of funding, available from a commercial bank or secondary lender, which you can draw upon as needed, usually to even out cash flows.

Debt negotiation — Normally a course of last resort in which you negotiate downward with creditors or lenders the amount you owe in exchange for eliminating the obligation.

Equipment financing — This lets you use machinery without sacrificing your cash position. Banks and manufacturers will lend against the value of the equipment purchased, holding the equipment as collateral.

Equipment leasing — This can be more attractive than equipment financing. Since you don't take title, the equipment is off the balance sheet and the lease is taken as an operating expense, which lowers your taxes.

Factoring — A factor will purchase your accounts receivable at a discount and bear the risk of collecting funds owed directly from customers. Factors can be expensive.

Mezzanine financing — Unsecured debt is provided by merchant banks and development capital fund managers to growing companies that may not have access to equity capital, or who are unwilling to dilute their existing shareholdings, and where traditional bank financing may not be available.

Purchase order financing — Interim financing based on orders received from creditworthy customers.

Using insurance to ensure the smooth sale of your business

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including the proposed intellectual property indemnification, to a seller-based representations and warranties policy. The legal counsel and insurance broker work together to create a Representations and Warranties (R&W) Liability Insurance policy that mirrors the terms of the transaction and mitigates the risks of both parties. The policy is designed with a $10 million limit to match the purchase price and liability cap, and a $100,000 deductible to match the threshold.

Under this model, SellCo would pay nothing in the event of an unintentional misrepresentation, as the policy is structured to pay dollar-one after the threshold/deductible (absorbed by BuyInc) is exhausted. The policy does not recognize the escrow provision, thus protecting the escrowed funds in the event of a covered claim. SellCo chooses the maximum policy period: six years for the intellectual property representations and two years for all other representations and warranties. The premium is $350,000. Realizing that R&W Liability Insurance is critical to bridge the impasse in negotiations, BuyInc agrees to pay half the premium.

The difference in dollars

Assume that, after the closing, a third party sues BuyInc for intellectual property infringement relating to SellCo's business, and that the party claims damages in the amount of $1.1 million. Without R&W Liability Insurance, BuyInc would be responsible for the first $100,000 of the claim, and SellCo would forfeit the $1 million held in escrow to satisfy BuyInc's indemnification claim. SellCo's net proceeds from the sale of the business would be $9 million. With R&W Liability Insurance, BuyInc also would be responsible for the first $100,000 of the claim, and SellCo would forfeit the $1 million held in escrow in order to satisfy BuyInc's indemnification claim. However, SellCo would receive $1 million of insurance proceeds. SellCo's net proceeds from the sale of the business would be $9,825,000 ($10 million minus $175,000 [one-half the insurance premium])

Win/win

Secure in the knowledge that the insurance policy will compensate SellCo in the event of a claim, SellCo comfortably accepts BuyInc's strict conditions in association with the intellectual property representations. Both BuyInc and SellCo have achieved their transaction goals and are able to work together as a combined entity. R&W Liability Insurance is in place for SellCo and its founder, and the sale of the business closes within five days after the seeming impasse.

Conclusion

In this scenario, the negotiation process would have been stalemated without R&W Liability Insurance, and the sale of SellCo to BuyInc would not have materialized. Beyond R&W Liability Insurance, M&A insurance policies can be designed to protect buyers or sellers, reduce or eliminate the need for an escrow fund, achieve higher purchase prices, and lead to the closure of deals that otherwise might have been be abandoned.

An experienced M&A attorney, together with the services of an insurance broker specializing in the M&A field, can help companies explore the use of a properly designed insurance policy to augment negotiation strategies.

Jill Swaim provides general corporate legal services for high technology and IT companies. Her representation ranges from the start-up phase through day-to-day corporate matters and negotiation and completion of major transactions. Swaim's practice includes advice on founder and stockholder issues, employment matters, intellectual property protection, debt and equity financings, software licensing and development, strategic alliances, mergers, acquisitions and sales. She can be reached at Lucash, Gesmer & Updegrove, LLP Boston Attorneys-at-Law at 617-350-6800 or by email: jswaim@lgu.com.

Specializing in Mergers and Acquisitions and Technology, Matthew Field brings the experience of founding, operating and selling a business to his work at Mazonson, Inc. Field graduated in 1992 from the University of Montana in Missoula, where he was on the dean's list for academic achievement. He can be reached at Mazonson, Inc. in Peabody at 978-531-5200. VF

Ten strategies to avoid legal pitfalls and get the information needed to solve business problems

By Jean D. Sifleet, Esq., CPA

Jean D. Sifleet

Every entrepreneur is interested in acquiring practical legal and business strategies grounded in real experience. *Smart Fast: The Desktop Reference Guide for Running Your Business*, offers key information to help budding businessmen and women find success.

Ten tips excerpted from Smart Fast:

1. **Negotiating tips -** Bypass adversarial lawyers. Use a one-page list of key concerns called a "term sheet," communicate by email and insist on a clear, short agreement that tracks to the term sheet.
2. **Contracts -** Put it in writing! Use a simple letter or email to confirm your agreement and the key terms.
3. **Insurance -** Are you covered? Get competing bids and check the exclusions carefully.
4. **Renting space -** Don't rent from a jerk! Check out the landlord's reputation and make sure you understand the lease.
5. **Hiring -** Don't clone yourself. Communicate clearly what is expected in the job and listen carefully for whether there's a "good fit" with the candidate's abilities and the company's needs.
6. **Non-compete agreements -** Heavy handed is probably not enforceable. Be fair, reasonable and effective by not unduly restricting employees' future options.
7. **Firing -** Painful but necessary. Treat the person with respect, don't discuss other employees and don't let the process drag on.
8. **Protecting against copycats -** Imitation is not really flattering. Use smart business practices and agreements to protect confidential information.
9. **Business divorce -** Avoid a battle. Lay the foundation with a "buy-sell agreement," when everyone is calm and friendly.
10. **Improve cash flow -** Get paid promptly. Avoid collection problems by requiring deposits upfront, accepting credit cards and insisting on payment on delivery.

Smart Fast: The Desktop Reference Guide for Running Your Business is available for $18.95 plus tax and shipping from Infinity Publishing, http://www.buybooksontheweb.com/order.asp?ISBN=0-7414-0828-7

For more information, contact Jean D. Sifleet, Esq., CPA, 120 South Meadow Road, Clinton, MA 01510, phone 978-368-6104 or email her at jean@smartfast.com. VF

The WPI Venture Forum is pleased to present...

A special BioTech networking event

NETWORKING — FACILITIES TOUR

REFRESHMENTS

MBI: MASSACHUSETTS BIOMEDICAL INITIATIVES

(Includes tour of the MBIdeas Biomedical Innovation Center)

Thursday, February 28, 2002

6:00 - 8:00pm

25 Winthrop Street (West Entrance off Providence St)
Worcester, MA 01605

Our first two events, Wachusett Brewery and CAFA, were spectacular successes! So join your associates and friends in February for the continuation of the WPI Venture Forum Networking Series.

Make new connections in the community, re-establish old links, and tour some of the MBI Biomed companies and their laboratory facilities.

Admission is FREE.

RSVP to the WPI Venture Forum by 2/21/02

Online: http://www.wpiventureforum.org/Events/regform.html

Or by phone: 508-831-5075

Directions: see www.massbiomed.org

Book signing event

The WPI Venture Forum will hold its first book signing in conjunction with its monthly meeting on February 12. Although the meeting takes place in Kinnicutt Hall, the book signing will be in the WPI bookstore located in the new Campus Center Odeum on the first floor.

Come join us for this exciting new event! The following authors will be on hand to sign their books.

Author: Tony DiBella
Title: How organizations learn: An integrated strategy for building learning capability
Publisher: Jossey-Bass Business and Management Series

Author: Tony DiBella
Title: Learning practices: Assessment and action for organizational improvement
Publisher: Prentice-Hall

Author: Barbara Foster
Title: Optimizing light microscopy for biological and clinical laboratories
Publisher: Microscopy/Marketing & Education

Author: Sheryl Lindsell-Roberts
Title: Technical writing for dummies
Publisher: Hungry Minds

Author: Jean Sifleet
Title: Smart Fast – The desktop reference guide for running your business
Publisher: Infinity Publishing

Author: Helen Vassallo
Title: Intentional revolutions: A seven-point strategy for transforming organizations
Publisher: Jossey-Bass Business & Management Series

Author: Shari L. S. Worthington and Walt Boyes
Title: e-Business in manufacturing: Putting the Internet to work in the industrial enterprise
Publisher: ISA Press VF

New Event!

Recognition of entrepreneurs*

Last season the Venture Forum instituted a new event intended to give entrepreneurs an opportunity for a “60-second commercial.” We are pleased to announce the return of this much-anticipated event.

After the keynote speaker and before the break, seven or eight entrepreneurs (first come, first served) will be invited to give a one-minute presentation from the podium. Our goal is to recognize entrepreneurs.

The one-minute rule will be strictly enforced and there will be no questions allowed. Each entrepreneur will be allowed to show one overhead slide, which you can bring with you or use materials provided by the Venture Forum.

Each entrepreneur will be allowed only one opportunity to do this per each new business venture. Your main objective is to generate investments and/or advice through this opportunity, rather than sales.

**Definition of an Entrepreneur - One who organizes, manages and assumes the risk of a business or enterprise. This can include pre-startups.*

Seeking alternative financing?

Continued from page 8

predatory. The CEO all but abandoned his in-house lead generation and brand awareness strategies, but was now selling software on the back of accepted flagship products. With no direct sales staff, channel partner over-dependence loomed as a risk, but he continued to identify other channel partners to mitigate this. Revenue began to inch up.

Third, the CEO invested more money and hired two salespeople. These individuals had previously sold to the exact customers that the CEO targeted and were focused on products with high average selling prices.

By years’ end 2001, the company posted its first month of positive cash flow. The CEO continues to consider venture capital financing but now has both the time and the balance sheet to consider alternative business strategies.

This CEO re-learned two very simple lessons: (1) cost-containment, by itself, is not always enough; and (2) there is no substitute for creative selling and cash revenue. As a result, he successfully averted the race against insolvency and brought the company into the black.

Jamie Rice is a Principal at Zero Stage Capital, a leading venture capital firm based in Cambridge, MA. Before joining the company he was a top-ranked equity research analyst with SG Cowen Securities Corporation and Oppenheimer & Company, Inc. Earlier he served as a Peace Corps volunteer in Paraguay. He earned an A.B. in English from Harvard College and is a CFA Charterholder. VF

WPI Venture Forum Radio Show

Join fellow entrepreneurs every Saturday evening from 5 to 7 for the WPI Venture Forum radio show, broadcast on WTAG AM 580. Executive producer Bob Hokanson has more than 20 years of broadcast expertise. He interviews a variety of business professionals each week.

Some topics include: how to write a business plan, raise capital, create a benefits package or the best way to structure management. Weekly guests offer expert opinion and advice to rising business stars. If you’d like to participate in this lively, entertaining and informative radio talk show, call **508-755-0058** with your questions regarding entrepreneurship and managing technology-based corporations.

Please note that sports events or late-breaking news stories may occasionally pre-empt the regularly scheduled program.

WPI Venture Forum
Collaborative for Entrepreneurship & Innovation
Department of Management
WPI
100 Institute Road
Worcester, MA 01609-2280

WPI Venture Forum Calendar of Events

February 12 - Alternative Financing

March 12 - Identifying and delivering your message. Joint meeting WPI Venture Forum/Society of Professional Communicators (SPC).

Directions to WPI Campus, Kinnicutt Hall

From The East:

Take Mass. Turnpike (I-90) to Exit 11A (I-495). Proceed north to I-290, then west into Worcester. Take Exit 18, turn right at end of ramp, then an immediate right before next traffic light. At next light, proceed straight through, bearing to the right on Salisbury St. At the WPI sign, turn left onto Boynton St. There is parking in the large lot on the right behind Gordon Library or continue on Boynton St. then right onto Institute Rd., then right onto West St. Visitor parking is on the left after footbridge.

From The North:

Take I-495 south to I-290. Follow directions as from east.

From The South And West:

Take Mass. Turnpike I-90 to Exit 10 - Auburn. Proceed east on I-290 into Worcester. Take Exit 17, turn left at end of ramp, follow Route 9 west through Lincoln Square, straight onto Highland St. then right at light onto West St., through first intersection of West and Institute Rd. Visitor parking is on the left after footbridge. Additional parking on Boynton St. behind Gordon Library.