

# International Practice



Published by the International Practice Section

## LETTER FROM THE CHAIR

**Jerry Okarma, Chair**

With the end of the summer, our thoughts turn to cooler evenings, the coming of autumn's colors and the beginning of the school year. I hope everyone enjoyed the summer, with our typical Wisconsin weather, hot days and often muggy nights.

The Board of the International Practice Section has been busy planning a year full of activities, intended to enrich our practices and foster camaraderie. In this regard, we have identified a small handful of initiatives we will be focusing on as an organization. They fall into four categories: technology, law school outreach, our Section newsletter and the May 2002 Section program at the next State Bar Annual Meetings. Let me take them one-by-one:

### TECHNOLOGY

During the next year, we will, under the leadership of Terry Peppard (Madison), take steps to establish the Section's first internet "listserve," as well as begin upgrading our Section site on the State Bar webpage. Establishing the listserve will allow all of our Section members to communicate electronically via email instantly with all other members of the Section. This is most useful when you are looking for someone who has information that can point you in the right direction, and is willing to share it amongst our Section. Additionally, we have taken steps to improve both

the content and presentation of the information on our website. Terry has more to say about this in a separate article in this Newsletter.

### LAW SCHOOL OUTREACH

This year we are going to commit to staging one event at each of our two resident law schools, Marquette and UW-Madison. Michael Waxman (Milwaukee) is leading the effort with respect to Marquette, and Gina Carter (Madison) is heading up things for UW-Madison. The Board believes it is important to build bridges to both law schools, at both the faculty and student level, and would be interested in any ideas you might have to advance the effort here.

### SECTION NEWSLETTER

Simply stated, we are committed to producing a quality publication to our members on a quarterly basis. In the past, we have had some wonderful individual articles and informative overall issues; however, our record in keeping to a consistent schedule has been spotty. Cathy Davies (Milwaukee) has assumed the point position here in making sure that we accomplish our mission. She will be working with the Board and the folks at the State Bar to get this done. Anyone wishing to suggest an article for inclusion in a future Newsletter should contact Cathy.

### MAJOR PROGRAM FOR 2002

We are hard at work planning a major program for the May 2002 State Bar Annual Meeting, to be held in Madison. Rob Misey (Milwaukee) is heading up this effort and we will keep you posted on our plans.

This is our "strategic plan" for the coming 12 months. Our view is that it is preferable to concentrate our efforts on a small handful of initiatives—and make significant progress—rather than have many, and only partially achieve them. As always, feel free to contact any of your Board members on issues about the Section, where it is heading and how we can enhance the experience for everyone.

### Inside this Issue

Advising Clients on Distributing Product Overseas	2
The Section on the Web	4
Students Attend Free	4
Jonathan Aked	4
New Bar Members—Receive Free Membership In Our Section For One Year!	7
Board Roster	7

# ADVISING CLIENTS ON DISTRIBUTING PRODUCT OVERSEAS

**Catherine L. Davies**

---

U.S. companies utilize a variety of methods to distribute their products overseas. Companies seeking the least complex method for distributing products overseas usually sell their products directly to a foreign buyer. However, companies selling products directly may not be able to take advantage of all opportunities in the foreign market. Companies may be able to maximize sales in the foreign market by utilizing alternative methods of product distribution. Alternative methods include working with sales representatives or distributors, negotiating licensing arrangements, establishing branches or foreign manufacturing subsidiaries, forming joint ventures and merging with or acquiring foreign entities. This article will outline some of the basic advantages and disadvantages you should consider when advising clients to utilize sales representatives and distributors or negotiate licensing arrangements.

## SALES REPRESENTATIVES AND DISTRIBUTORS

Sales representatives and distributors can offer several advantages to a company which does not have a great deal of experience in exporting. One advantage is that the sales representative or distributor acts as a local “partner” to assist the company in identifying and servicing its customers. Also, the sales representative or distributor can help the company work with the foreign government to resolve problems and take advantage of government procurement opportunities. The company receives another benefit by using a distributor because it can require the distributor to maintain an inventory of its product.

If the distributor maintains a local inventory, the company will cut down on delivery time to its customers and will be able to provide replacement parts and service for its customers more rapidly.

Using a sales representative or distributor also involves certain disadvantages. However, you can help your client minimize many of the disadvantages through careful planning. For example, if your client use a sales representative or distributor, your client has less control over the sales process than if it identified and worked with customers itself. To minimize the risks associated with lack of control, you should advise your client to conduct thorough due diligence on the proposed sales representative or distributor.

Also, it is often difficult and/or costly to terminate a relationship with a sales representative or distributor. Many countries have laws that impose restrictions on the ability to terminate such relationships. These laws generally will require your client to provide the sales representative or distributor with appropriate notice before termination. Each individual country will impose different time periods to determine whether your client has given “appropriate notice.” If your client fails to provide appropriate notice and does not otherwise have just cause (as defined by local law) for terminating the relationship, your client may be required to compensate the sales representative or distributor. This compensation could consist of several months of presumed lost profits to the sales representative or distributor. Consequently, you must draft the termination provision in

the sales representative or distributor agreement to avoid any such payment. Your client should be aware, however, that in some countries, the sales representative or distributor is not allowed to waive its right to such a payment. Thus, even if the sales representative or distributor has agreed in the contract to a certain notice period and/or waived its right to indemnity, you should review local law before your client terminates the relationship.

When drafting a sales representative or distributor agreement, you also must consider other foreign laws and international conventions which may apply. For example, the European Union has enacted antitrust laws that may prohibit some types of restrictive covenants (e.g., certain noncompetition restrictions). In addition, if the distributor is located in a country that is a signatory to the United Nations Convention on Contracts for the International Sale of Goods (the CISG), the CISG generally will automatically apply unless you specifically exclude it in the agreement. In such cases, the CISG replaces the Uniform Commercial Code (the UCC). Although the CISG is similar to the UCC in many respects, you should be familiar with some important differences, and you should advise your client of these differences so the client may determine on a case-by-case basis whether they want the CISG or the UCC to apply.

You also should consider relevant U.S. laws. For example, you should advise your client to take steps to

*continued on page 6*



**Respected  
attorney.**

**Great dad.**

**Cocaine  
abuser.**

As lawyers, we need to escape the day-to-day pressures of the profession.

Occasionally the way we escape begins to destroy our lives.

The demands and deadlines of practice sometimes manifest themselves into chemical or alcohol dependency. Without help in understanding how to deal with these obstacles, our families and our work can be drastically affected.

WisLAP, the Wisconsin Lawyers' Assistance Program, provides confidential, meaningful assistance to alcoholic or chemically dependent attorneys, their families and associates. The program uses a support network of recovering co-professional associates, intervention, and, where appropriate, treatment.

**You're never alone.  
1-800-254-9154**

**WISCONSIN LAWYERS'  
ASSISTANCE PROGRAM**

## THE SECTION ON THE WEB

The International Practice Section has had a presence on the State Bar's award-winning website for several years, but it's been a decidedly shy presence. In fairness, that shyness has been justified up to now by the relative newness and small size of the section. But times are changing, and section leadership has determined that our web page can and should be a more helpful instrument for encouraging our growth as a section and projecting our image and value to members and nonmembers alike. So the Board of Directors, at its July 19, 2001, meeting, decided to brighten up the section's web presence, and to do so as soon as possible.

Armed with this mandate, newly ordained web page committee member Terry Peppard met with WisBar section coordinator Tina Nodolf and web producers Jennifer Kersten and Jeff Hershberger at the Bar Center on August 1 to share ideas and plot strategy. Our guiding principles were few and simple: make the section's web page inviting, useful and prideful, and do it without delay. We decided to start the project by examining the web page of the American Bar Association's Section of International Law and Practice for helpful hints, and we found them there in abundance.

### QUICK POINTS OF COMPARISON

WisBar's International Practice Section web page currently has four groups of substantive information: a twenty-two word introduction to the section, copies of board meeting minutes, six items of reference materials and a segment offering help in joining the section. The ABA's comparable page has the following additional features: a welcoming statement from the current section chair, a calendar box showing upcoming activities, a list of relevant

"featured sites," a linked page devoted to law students, and, finally, a members-only page with a roster of section members and related contact information, plus full text copies of recent section newsletters.

### WHAT LIES AHEAD

So we got to thinking: "Why not us? And why not better?" The committee and bar staff are now hard at work fashioning answers to those questions. Pending board approval, the results should be announced in the next edition of this newsletter. Meanwhile, keep an eye on the section's web page for previews of coming attractions. And don't be shy about contacting the committee via e-mail at either [tpeppard@execpc.com](mailto:tpeppard@execpc.com) or [terrypeppard@hotmail.com](mailto:terrypeppard@hotmail.com) if there's anything you'd like to see added to the section's web page or if you know of another site that might give the committee and bar staff more food for thought.

## STUDENTS ATTEND FREE

All Marquette and UW-Madison law students enrolled as of May 2002 will be welcome to attend the Section's program at the State Bar Convention without paying the Section program fee. The topic of the Section program is tentatively "The International Treaty on Cyberspace."

## JONATHAN AKED

The Board of Directors of the Section would like to express its gratitude for the many contributions of Board member Jonathan Aked, our friend and colleague, who passed away July 9, 2001.

"I need to find a recent Wisconsin Supreme Court decision."

"My client wants to pay my fee with a credit card. Is that ethical?"

"I need to send a fax to the Brown County courthouse. Where can I find the number?"

Information never sleeps.  
[www.wisbar.org](http://www.wisbar.org)

24 Seven  
State Bar of Wisconsin

# EASY ACCESS TO INFORMATION...

## IT'S A TEAM EFFORT!

Let the State Bar's **Member Service Team** help you access the information and services you need quickly and efficiently.

### THE MEMBER SERVICE TEAM CAN HELP YOU:

- ▼ **Get in touch with someone** - Need a colleague's address or phone number? Or maybe you need to talk with someone here at the Bar but don't have his or her direct dial phone number? We can provide the information that will set you on the right track.
- ▼ **Access the tools that help make your practice more efficient** - From CLE books and Law Office videotapes, to the Loislaw CD-ROM and various consumer information pamphlets, we can take your State Bar product orders directly over the phone which means you receive your product in a matter of days.
- ▼ **Answer your questions on CLE credits and programs** - "How many CLE credits do I have?" "When and where is your next ethics seminar being held?" In addition to answers to these commonly asked questions, we can also take, change or cancel your CLE seminar registration. It's as easy as one phone call.
- ▼ **Provide information on just about anything the State Bar does** - Do you need to locate a section or committee staff liaison? Would you like to learn more about a State Bar product, service or program? Or maybe you need to track down an article that appeared in a past issue of the *Wisconsin Lawyer* magazine? We'd be happy to help you find the information you're looking for.

Hundreds of calls coming into the State Bar each day are handled by one of the Member Service Team's Customer Service Representatives. For you, this means fast, easy access to information.

Responsive and friendly service is our commitment to you. So give us a call... in Madison or surrounding areas (608) 257-3838, or call (800) 728-7788 nationwide. Or, email us at [service@wisbar.org](mailto:service@wisbar.org)



# ADVISING CLIENTS ON DISTRIBUTING PRODUCT OVERSEAS

*continued from page 2*

reduce the risk that its sales representatives and distributors will cause your client to incur liability under the U.S. Foreign Corrupt Practices Act (FCPA). The FCPA generally prohibits U.S. companies from offering or paying anything of value to a foreign official for the purpose of obtaining or retaining business. In some countries, buyers and/or intermediaries customarily request that the seller provide them with special payments to facilitate the transaction. You should advise your client that neither it nor its foreign agent is allowed to make a payment or gift which violates U.S. law. Therefore, your client should require its employees and agents to agree not to violate the FCPA and you should provide your client and its employees and agents with guidelines to help them understand and comply with the FCPA.

## LICENSING

As an alternative to entering a foreign market through a sales representative or distributor, your client may choose to license a party in the foreign market to manufacture products using your client's technology and/or know-how. Generally, your client will receive royalties from the foreign licensee's sales of the products. Your client also may receive a base license fee or service fee of some sort. Under a licensing arrangement, your client can generate income from the sale of products in the foreign market without incurring the financial investment necessary to establish a physical presence. Furthermore, licensing may be an ideal method of entering a foreign country's market if the foreign country imposes significant import tariffs on your

client's product but not on its technology.

However, you should advise your client of the significant disadvantages of licensing arrangements. Under a licensing arrangement, your client provides the specifics of its technology and/or know-how to another company. As a result, your client may be training its own future competition. You can minimize this risk by carefully drafting the license agreement to protect your client's rights to its technology, know-how, other intellectual property rights and any improvements developed by it or its licensee. You also should advise your client to consider registering its intellectual property rights in the applicable countries. In fact, under certain international treaties, by registering in one country, your client's intellectual property may be protected in several countries. You will need to conduct a cost/benefit analysis to determine whether it is appropriate to register in other countries.

Your client faces another potential disadvantage under a licensing arrangement because it must monitor the foreign licensee's sales of products to ensure that the licensee pays all royalties to which your client is entitled. To some extent, your client can reduce this burden by conducting thorough due diligence on the prospective licensee prior to entering into the relationship.

## CONCLUSION

To assist clients in selecting the appropriate method for entering foreign markets, you must consider a variety of business and legal issues,

including the issues identified in this article. You should advise your client of the various advantages and disadvantages of each method so that they may select the best approach to pursue their goals within the foreign market. Once your client has identified the best approach, you then can assist them in managing the associated risks by conducting appropriate due diligence and carefully drafting the agreement.

Catherine L. Davies is a shareholder in the Corporate and International Departments at Reinhart, Boerner, Van Deuren, Norris & Rieselbach, s.c. in Milwaukee, Wisconsin. Ms. Davies counsels clients regarding international and domestic commercial matters, including product distribution. She received her J.D. from the University of Michigan and a B.S. in Accounting from Marquette University. Ms. Davies may be reached at 414-298-8335 or by e-mail at [cdavies@ReinhartLaw.com](mailto:cdavies@ReinhartLaw.com).

## HOLD THE DATE...

The International Practice Section will be sponsoring a program at the 2002 State Bar Convention on Wednesday, May 15, from 12:30-4:20 p.m. Details to follow.

# NEW BAR MEMBERS—RECEIVE FREE MEMBERSHIP IN OUR SECTION FOR ONE YEAR!

Through 2001, any new Bar admittees who elect to join the State Bar's International Practice Section will not be required to pay the Section's membership fee for the first year. Learn more about the fields of international public and private law and join us in promoting education, activity and research in international law. Simply choose membership in the International Practice Section when the State Bar asks for your Section membership choices, or contact Cathy Davies at [cdavies@reinhardt.com](mailto:cdavies@reinhardt.com) or 414-298-8335 for more information.

## Board Roster

Following is a list of the members of the Board of Directors of the International Practice Section. If you would be interested in becoming involved on the Board, please contact Jerry Okarma at [jerome.d.okarma@jci.com](mailto:jerome.d.okarma@jci.com) or 414-524-3400.

### **Jerome D. Okarma, Chair**

Johnson Controls, Inc.

### **Robert J. Misesy, Jr., Secretary**

Reinhart, Boerner, Van Deuren, Norris & Rieselbach, s.c.

### **Eugenia G. Carter, Member**

LaFollette Godfrey & Kahn

### **Catherine L. Davies, Member**

Reinhart, Boerner, Van Deuren, Norris & Rieselbach, s.c.

### **John D. Gatto, Member**

Transatlantic Venture Solutions LLC

### **Edward J. Heiser, Jr., Member**

Whyte Hirschboeck Dudek, S.C.

### **Erik W. Ibele, Member**

Neider & Boucher, S.C.

### **Charles J. Labanowsky, III, Member**

Labanowsky & Associates

### **Terry F. Peppard, Member**

Law Office of Terry Peppard

### **Joseph E. Puchner, Member**

Quarles & Brady LLP

### **David C. Richards, Member**

Phillips, Richards, Mayew & Corrigan, S.C.

### **Paul G. Scesniak, Member**

Scesniak Law Office

### **Peter A. van Houwelingen, Member**

Corporate Legal Counsel, Ltd.

### **Michael P. Waxman, Member**

Marquette University Law School



**Don't get  
behind it.**

**Wisconsin's Rules of Professional Conduct for Attorneys** may be set forth in black and white ... but our day-to-day world is a palette of grays. As a result, we often face difficult questions of application and interpretation.

As a member of the State Bar, you have an exclusive resource to help you navigate this maze: **the Ethics Hotline.**

Just one phone call puts you in touch with an attorney who has extensive experience in addressing ethics questions -- and in helping State Bar members analyze problems and identify research directions to solve them. This service includes review of proposed professional advertising.

**Wednesdays, call  
800-728-7788 (Nationwide) or  
(608) 250-6168 (locally).**

**All other workdays  
call (608) 629-5721, from 8 a.m.  
to 12 noon, or leave a message  
from noon to 5 p.m.**



**STATE BAR  
of WISCONSIN®**  
YOUR PARTNER IN PRACTICE



**STATE BAR**  
*of* **WISCONSIN®**

---

**INTERNATIONAL PRACTICE SECTION**

P.O. Box 7158, Madison, WI 53707-7158

The **International Practice News** is published quarterly by the International Practice Law Section of the State Bar of Wisconsin. Questions and comments may be directed to:

**Catherine L. Davies**

Editor

Reinhart, Boerner, Van Deuren, Norris &  
Rieselbach, s.c.

**Phone:** (414) 298-8335

**Fax:** (414) 298-8097

**Email:** [cdavies@reinhartlaw.com](mailto:cdavies@reinhartlaw.com)

Individuals interested in joining the International Practice Section should contact the State Bar of Wisconsin, (608) 257-3838.

Non Profit  
Organization  
U.S. Postage  
**PAID**  
Madison, WI  
Permit No. 515