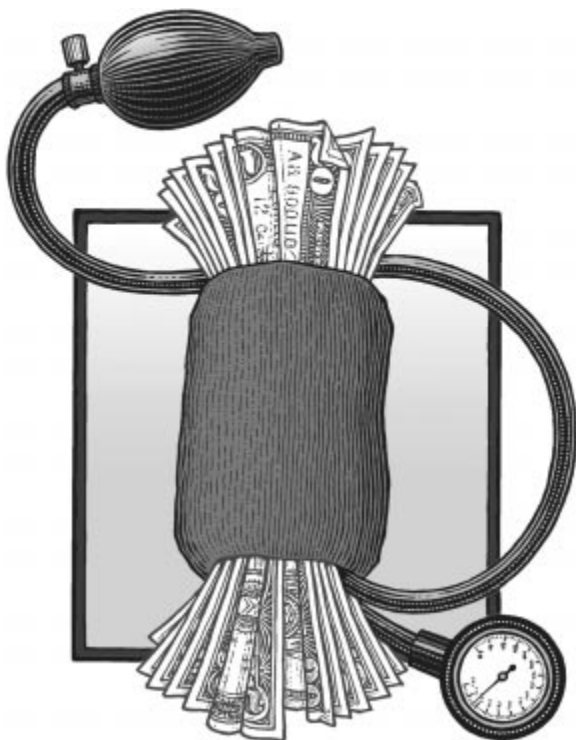


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# No Shortage Of Future Legal Concerns

Independent manufacturers' representatives will have their work cut out for them in the future in one very important area other than sales. That's the opinion of Gerald M. Newman, partner in Schoenberg, Fisher, Newman & Rosenberg (SFNR), a Chicago-based law firm that has developed an expertise in the area of rep law.



**A**ccording to Newman, “In the future, we see a number of concerns that will affect how the rep conducts his business. Contracts will become more complex; the growth of international business will impact how the rep works; and the frequency of fraudulent terminations will increase. Put all these ingredients together, and it becomes more important than ever for the rep to have professional legal counsel available.”

Newman’s words carry the weight of a law firm that can trace its beginnings in rep law all the way back to 1947 when it was re-

sponsible for the legal work in the incorporation of the Electronic Representatives Association (ERA). Today, the law firm continues its involvement with reps, as Newman serves as legal counsel for ERA, and SFNR serves as a valuable resource for all reps with legal concerns. SFNR was one of the legal firms specializing in rep law that participated in the MANA Agent Law/Legal Symposium as was reported in the December 2003 issue of *Agency Sales*. Detailed information concerning the firm may be found on the Internet at [www.sfnr.com](http://www.sfnr.com).

Since its beginning in 1947, Newman explains that SFNR has

***...Newman maintains that from his experience, the most common error reps commit in the legal area is a “failure to adequately read and understand their contracts.”***

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developed an expertise in all aspects of manufacturer-representative relations and the laws related to the protection of reps. "As a result of our years of experience, we're able to save our clients time and money, largely because we don't have to learn what the rep business is all about. We've already done the research and know the law and the precedents involved. Our background and in-depth knowledge of rep-manufacturer dynamics and relations enable us to focus on the issues in order to achieve a more expedient, successful and less costly result."

### Choosing Legal Help Carefully

It's those kinds of results that reps should focus on when choosing the legal counsel they will work with, and Newman emphasizes how important it is for the rep to choose properly. In answer to the question, where does a rep find the legal representation that is right for him? Newman maintains "the search begins with someone who is a good contract attorney. Ultimately, your search should end with someone who specializes in rep law or at least handles a good deal of rep issues." He suggests reps looking for an attorney should check with other reps they know, go on the Internet and search under the heading of "sales rep law" and be sure to check with trade associations — especially rep associations.

As an attorney who has been selected by many reps and several rep associations, Newman maintains that from his experience, the most common error reps commit in the legal area is a "failure to adequately read and understand their contracts. There are a num-

ber of reasons for that omission:

- "First, too often reps are so anxious to obtain a line that they ask the prospective manufacturer to send the contract and say, 'I'll sign it right away and get it back to you tomorrow.' This type of behavior is common, especially if the line is a particularly attractive one.
- "Next, many reps believe the contract can't be negotiated, that they have to accept what the manufacturer offers, so what's the difference? They couldn't be more wrong.
- "Third, is the laziness factor. They simply can't or won't make the effort to read the contract.
- "And finally and perhaps most importantly, they don't want to spend the money to invest in having the contract reviewed by a qualified legal counsel.

"Sure, all of this takes time, but it's time well spent. When a rep takes the step to have a contract reviewed, perhaps the best case scenario is that the attorney finds something that would put him at a disadvantage, and it's best to have it taken care of. In the worst case scenario, perhaps there's absolutely nothing wrong with the contract, and it's one that the rep should sign. But with the latter case, at least he's made the effort to better understand exactly what he's getting into. He now knows he doesn't have to keep looking over his shoulder for something bad to happen."

### Negotiate from the Beginning

"In all of these cases, reps must be made aware that the best opportunity for them to get a good contract is at the beginning — during the time when you're negotiating with the principals. What many reps fail to realize is

***"What many reps fail to realize is that the manufacturer has come to him because he recognizes the benefits of going to market with the rep."***

that the manufacturer has come to him because he recognizes the benefits of going to market with the rep. As a result, the rep is in the strongest negotiating position he's ever going to occupy. It's incumbent upon him to take advantage of that position."

If that's the most common problem that comes across the desks of the attorneys at SFNR, Adam J. Glazer, also a partner in SFNR, describes the scope of services the firm has available to address the needs of reps in virtually any legal situation. "Specifically the services we offer to manufacturers' representatives include:

- Litigation to enforce sales rep contracts and resolve commission claim misunderstandings.
- Sales, mergers and acquisitions of rep organizations.
- Succession planning and documentation to provide for the next generation.
- The already mentioned negotiation and review of rep-principal contracts with suggestions on how to make the contracts more beneficial to the rep.
- Comprehensive tax planning.
- Preparing state-of-the-art employee manuals.
- Advising reps on general corporate matters.
- Employee benefit programs, including pension and insurance programs."



**Gerald M. Newman**

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If this selection of services represents the needs of the typical rep that SFNR works with, both attorneys are quick to offer that there are other concerns on the horizon that the rep planning for the future had better be ready for. "For the future," says Newman, "I can see contracts getting even more complex than they are today. As the pace of mergers and

consolidations continues as it is, and as more and more business moves overseas, and as manufacturers continue to grow in size, there is going to be greater pressure on the rep. He'll need to be able to follow the order and the commissions that should follow properly. That all has to be covered in a contract. And, you can add to that the growth of inter-

national business which puts a whole different body of law on the table. The rep must be prepared."

Glazer adds that he sees concern in the future for fraudulent terminations. "I define a fraudulent termination as one that occurs when a principal encourages reps to perform various functions on the one hand, while on the other hand the principal is planning to go in a different direction — a direction away from the rep. It's going to be critical that reps are made aware of these practices and keep themselves informed on what they can do about them."

Newman concludes by making the point that "the huge majority of independent manufacturers' representatives that we conduct business with are good businessmen. But that doesn't lessen the importance for them to be kept aware of legal trends and developments and have competent legal counsel available to them." □