

Fasten your seat belts, folks!

The last word of the theme for ERA's 2017 Conference is accelerate!

Boy! How much faster will the changes come flying at us, or by us? It seems as if our industry continues to change and evolve at a faster and faster pace.

Which category do you find yourself in?

- Those who make it happen?
- Those who watch it happen?
- Those who wonder what happened?

I am sure that all of us THINK we are in the first category at all times. But, do we ever find ourselves in the second, or (perish the thought) the third category?

The evolution (or revolution) of our industry just continues to accelerate.

Who among us could have foreseen the major changes in the channel over the past 60 days? CEOs, presidents and vice presidents get demoted and/or depart. A major distributor gets bought. Consolidation continues among the manufacturers, and the new management broom sweeps clean ... all as a means to satisfy Wall Street and shareholders EPS expectations.

Everyone seems to be looking to cut costs and improve the bottom line. But what price are they paying over the near/long term in market and customer penetration and sales initiatives? What has been the impact to OUR customers throughout all of this? Does anyone care?

What does this mean to the local rep, the local distributor branch or the local/regional manager for a manufacturer? LOTS!

Your customers value consistency of service, continuity of supply, consistent (lowest?) pricing and NO surprises. Nothing is more upsetting to any of them (or us) than to get notified of a change in their account coverage, missed delivery or unforecasted cost increases. So how do we avoid these throughout all of this industry chaos?

It is not an easy solution, is it? Day-to-day communication between the reps and the distributor branch offices on the latest

new product introductions (NPI), lead time changes and pricing visibility has become more complicated. There are many CRM and MRP systems that need to be navigated and coordinated BY PEOPLE who then meet and TOGETHER visit the customer to show alignment on behalf of the manufacturer. Nothing can replace this human interaction.

Yet, you hear all of the time about the phasing out of the in-person sales call ... how it is all digital now ... NOT TRUE!

Earlier this year, ERA announced its Distribution Membership Initiative on July 1. This was done to help facilitate, under one organization (ERA) an open and ongoing dialogue between the local rep office and the local distribution branch office, all to help better support their common customers for common manufacturers. What a concept — talking to each other, visiting the customers TOGETHER — to help grow sales for our manufacturers through excellent coordinated customer service. The rep and the distributor salesperson become stronger when they coordinate their efforts TOGETHER at the

customer's desk, and both the customer and manufacturer benefit! This benefit should translate into increased sales and commissions for all.

Let's not complicate a ham sandwich here. Visiting customers together is a main tenet for good rep companies and distribution branch sales personnel. Nothing can replace this unless we allow ourselves to be replaced by digital marketing and websites. We need to show manufacturers how we use their digital campaigns to augment our customer meetings and how we are in fact an extension of their efforts, not separate from them.

So, what's ahead? Your ERA continues to reinvent itself as these market changes require.

- We have transitioned our ERA National headquarters to a "virtual office," saving our staff many hours of commuting time, thus allowing more time to service our members.



by Walter E. Tobin

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EXECUTIVE COMMENTARY: Accelerate with ERA

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- COLT training is scheduled for this Fall — a huge benefit to chapter leaders to help them lead and direct their local chapter activities.
- We increased membership by more than 100 NEW members in rep, manufacturer and distributor categories.
- 2017 Conference planning is well underway — this will be a “NOT TO MISS” event.
- We will participate in electronica 2017 in Munich in November — we have become truly global with membership in both EMEA and Asia.
- Consultants have been added to our “Kitchen Cabinet” team of industry experts who bring to ERA years of valuable experience in sales, engineering and channel management. Watch this space for further additions to this valuable team!

In summary, changes will continue. We need to manage the change and not let it manage us!

As always, I am open to your thoughts, comments and criticisms on what YOU see ERA needing to do — this is YOUR ERA, not mine. My email is wtobin@era.org and my phone (617-901-4088) is always on! ■

LEGALLY SPEAKING: Court overturns rep contract

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independent sales representative statute. California’s rep statute — a version of which is also found in most other states — enables a sales rep who is not paid under a contract with its principal to collect three times the amount of unpaid or late paid commissions. To be eligible, the rep must “solicit wholesale orders at least partially within” California.

Karcher resisted application of the statute to the unpaid commissions on sales to Menards on the grounds that those sales were all made outside California. Judge Michael S. Tigar again refused to let Karcher wriggle off the hook, noting that 181 Sales qualified by soliciting orders in California, albeit unsuccessfully, to Fry’s.

As he explained, “Karcher used the services of 181 Sales to solicit wholesale orders from Fry’s Electronics (in California) as well as Menards (outside California).” This was sufficient to make Karcher liable for three times the amount of unpaid commissions on the Menards business.

The ‘Choice of Law’ provision must be specific

One other point from Judge Tigar’s well-reasoned decision also deserves a mention. The strong California sales rep statute, under which 181 Sales collected exemplary damages, did not get invoked without a fight.

Karcher argued Delaware law should apply, relying on the MRA’s formidable-sounding choice of law provision: “This Agreement shall be made and construed in accordance with the laws of the State of Delaware.” Not surprisingly, Delaware is one of a handful of states without a sales rep statute.

181 Sales argued convincingly that the contract language pointing to Delaware law was limited to the making and construing of the contract, and did not include language (often found in other manufacturer-drafted contracts) specifying that any disputes related to the contract will be governed solely by Delaware law.

Accordingly, Judge Tigar concluded that “while the narrowly worded choice of law clause in the MRA is sufficient to govern interpretation of the contract, it does not bar non-contractual causes of action of another state, including 181 Sales’ claim under” California’s sales rep act. This key finding enabled 181 Sales to avail itself of California’s statute rather than get mired in Delaware law.

With this triumph, it was a complete sweep for 181 Sales. Summary judgment was entered in its favor for the unpaid commissions, exemplary damages, attorney’s fees, costs and prejudgment interest, and a trial was avoided. Perhaps more importantly, in racking up this impressive victory, the legal gains scored by 181 Sales are made available to the larger sales rep industry. Similarly mistreated reps may well be able to draw upon one or more of the pro-rep rulings found in this legally significant decision. ■

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