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KUWAIT -- SOME OPPORTUNITIES

AFTER THE GULF CRISIS

(Presentation to Automotive Exporters Council, Chicago)

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A few weeks ago, a business column in the Chicago Tribune¹ poked fun at all the "experts" who appeared during the Gulf Crisis:

You may recall that business consultants wasted no time after America's quick victory in Operation Desert Storm. Before the sand had settled, it seemed like every guru with a letterhead -- from the Big Six (accounting firms) to the little guys who crank out four-pagers from their offices-in-the-home -- had published a set of management do's and don't's based on the gulf war.

One Boston outfit said Bush won the conflict through superior "networking"; a New York shop found fault with Saddam Hussein's "negative motivational technique."

After reading that stuff, one might have thought that Bush, Cheney, Powell & Schwartzkopf fought the war with decision trees, options matrices, management by objectives and all those other [Business]-school bromides.

The legal profession was equally evident with its self-inspired expertise and advice, no doubt attributable at least in part to the increased law firm use of public relations consultants, media advisors and in-house "spin doctors." One client told me, during the Gulf Crisis, that he was receiving a literal deluge of unsolicited promotional mailings from various law firms, all touting their Middle East capabilities. In the aggressive, competitive (and over-populated) legal profession, many lawyers were jumping into the Gulf Crisis hoopla and thinking "Oh, boy! Here's some work for us!"²

My favorite example was a newspaper report in the early days of the crisis, in which one lawyer working in Riyadh proudly stated that his law firm was assisting the Saudi government by locating manufacturers of gas masks.³ Gas masks! Thank God for the lawyers!

Of course, the legacy of the Gulf Crisis was not, first and foremost, opportunities for businessmen (or lawyers). Therefore, before I discuss what I believe are some opportunities in Kuwait for automotive exporters, we might initially consider some of the human dimensions of the Gulf Crisis.

The Kuwaiti personal dimension to the crisis

Kuwait, and really the rest of the world, has just lived through an immense tragedy, the full implications of which have not yet been accurately gauged. We see the burning oil wells, and we hear about the dangerous mine fields that remain. But there is also the less visible damage to Kuwaiti society and culture.

Bassam al-Ghanim, one of the country's leading merchants, recently compared the Kuwaiti economy to one of the control panels in his factory. "When you open it up all the wires inside have been cut, and when the electricity is turned on all the live wires fuse out. Inside it's like spaghetti fusing. But when you close the box up it looks perfect."⁴ We might consider the comparison equally applicable to current Kuwaiti society.

Despite the pessimism, however, there is some cause for optimism. I was trying to communicate by telefax with our Kuwaiti correspondent attorney a few weeks ago, in connection with some client matters. He had returned to Kuwait during the summer and stayed, while many of his fellow nationals simply returned long enough to check on their homes, determine if looters had taken personal property, then left again for the traditional vacation away from the oppressive Kuwaiti summer heat.

The Kuwaiti attorney responded promptly to my telefax, although I was surprised to see that he had written his lengthy response entirely in longhand. His "postscript" apologized for this: "Sorry about the longhand, but our computer system is down, and my printer is in Baghdad for maintenance." That telefax told me a lot - both that working conditions continue to be extremely difficult, but also that the Kuwaiti sense of humor might be reappearing after a year of bitterness and hatred.

Opportunities in automotive sector

Despite the human tragedy that occurred in Kuwait, many Kuwaitis were prepared to quickly get back to business. Perhaps the best example is Mohammed Saleh Behbehani, one of the country's largest automobile importers (General Motors Buicks, Isuzu cars and Chrysler Jeeps). The 69-year-old Behbehani lost 57 pounds during his seven-month imprisonment in a tiny 6' x 9' Iraqi jail cell. Nonetheless, Behbehani has been able to look to the future: "Business is business. I've already ordered new cars. The Iraqis stole hundreds of thousands of cars, so there will be a good market."⁵

(a) Summary of destruction

As a recent report observed, "One of the few benefits of the Iraqi invasion of Kuwait was that it temporarily solved the country's traffic problems. [Iraqi] troops laid waste to Kuwait's pre-war fleet of about 560,000 cars, leaving as few as 200,000 intact."⁶

The al-Sayer group, which markets Toyota, lost more than 2,200 vehicles looted by the Iraqis as well as spare parts worth about KD16m. The group's headquarters was completely destroyed by fire.

Meanwhile, the al-Mulla group, which sells Mitsubishi products, lost about 1,600 showroom and rental cars, while about 3,000 leased and trading vehicles were stolen or destroyed. The company estimates the losses of cars alone at between \$25m-\$30m. Its servicing garage, which it claims was the world's largest, was destroyed, as was the spare parts facility and the group's headquarters.

The Behbehani group lost 750 new vehicles worth about \$15m: its main showroom was set ablaze and destroyed; the best spare parts, worth about \$3.5m, were taken. And Al-Ghanim Industries lost 7,000 cars, comprising a mixture of new, used and leased vehicles. The company refuses to provide an estimate of the value of its losses.

(b) New sales

Some of you may have seen the article in last Sunday's Chicago Tribune, "War's end helps sales to the Mideast."⁷ The article notes the

strong upward trend in exports of trucks and buses to the Middle East. Those exports rose to 9,435

units in the first six months of 1991 from 1,360 units a year earlier. . .

In the early days after the liberation of Kuwait, the Kuwaiti Emergency Recovery Program purchased a significant number of automobiles from General Motors, Ford and Chrysler.⁸ More recently, Arabian Motors Group (the Kuwaiti agent for Ford) announced plans to build a \$10 million, 22,000 square meter sales and service facility. Completion is scheduled for early 1992.⁹ Ford had previously announced that the Kuwaiti agent had placed an order for more than 1,000 cars and trucks, and a "substantial" order for parts and service equipment.¹⁰

Other U.S. dealerships have done equally well. Al-Ghanim estimates that it sold 1,500 automobiles by mid-June, with another 10,000 autos in the pipeline. Behbehani estimates that American manufacturers will double their market share in Kuwait. However, the Japanese appear to be equally successful. Al-Sayer sold approximately 1,200 Toyotas in both June and July, and plans to import between 1,600 and 1,700 vehicles per month for the near-term future.

Two final comments on the current Kuwaiti market. Many businessmen have found it to be quite competitive. According to one bus manufacturer: "Although there's more activity [now in Kuwait], you can't go in and demand any price and get it."¹¹ Moreover, the main problem in selling cars has been customer financing. Much of the recent success in Kuwait for U.S. manufacturers has been their willingness to help Kuwaiti dealers with credit facilities.

(c) Commercial agency issues

A so-called "sponsor" or "agent" in Kuwait is required and/or used in a number of different contexts, including local sponsorship for a foreign individual's entry visa and work permit in Kuwait. Under the Commercial Law, no foreign company may establish a branch in Kuwait or practice any commercial activities in Kuwait unless through a Kuwaiti agent. In addition, the Kuwaiti Government Tender Law states that sales to Kuwaiti government entities are not permitted unless the seller has a Kuwaiti agent appointed pursuant to an officially registered agreement and the Kuwaiti agent is named in the tender.

For these reasons, you will probably hear (ad nauseum) that "It is vital to establish lasting relationships with Kuwaitis who have the right business contacts: the local [Arabic] word for this sort of influence is wasta or 'Vitamin W' to some expatriates."¹²

There are different types of agents described under Kuwaiti law and practice. I will give three examples:

(i) Agents who undertake to find potential contracts for a foreign company, with the foreign company negotiating and executing those contracts directly; those agents are called "contract agents."

(ii) Agents who undertake to promote, distribute and sell a foreign company's products, taking possession and title of the goods, and selling them for the agent's own account; those agents are called "distribution agents."

(iii) Finally, there are agents that convince you to appoint them on an exclusive basis in a lucrative territory, but then disappear when you need help in locating sales opportunities; those agents are called "secret agents."

Incidentally, one of the most severe short-term disruptions is to the country's system of agencies. Although agencies must be in the name of a Kuwaiti, in practice many of these businesses in Kuwait have been staffed by expatriate workers. The departure of thousands of these expatriates during and after the occupation has left many Kuwaiti agencies severely hampered.

As some of you know, Kuwait has enacted "dealer protection" legislation, contained in provisions of the Commercial Law, primarily relevant in the event a foreign principal terminates or fails to renew its agency agreement.

Article 281 of the Commercial Law provides that a contract or exclusive distribution agency agreement is for the joint interest of both parties and the principal therefore may not unilaterally terminate such an agency agreement unless "upon the agent's error." If the principal terminates this commercial agency agreement and the commercial agent has not committed an "error," the principal shall be obligated to compensate the commercial agent for any damages the latter incurs as a result of the termination.

Under Article 282 of the Commercial Law, in the event the principal chooses not to renew a contract or exclusive distribution agency agreement, the contract or distribution agent is entitled to "fair compensation" if (i) the latter has not failed or committed any error in carrying out the agency agreement and (ii) its activities have resulted in considerable success in promoting the product(s) covered by the commercial agency agreement or increasing the number of customers.

A local agent or representative can be an important component of successful business or a foreign company in Kuwait. However,

the agency agreement should be carefully drafted to thoroughly define in detail the duties and responsibilities of the agent, as well as the operation of the agency. In addition, over the years, we have developed certain strategies which may alleviate some of the more onerous aspects of the Kuwaiti "dealer protection" law. I would be happy to discuss these or any other legal matters further, if you are interested.

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FOOTNOTES

1. McCarron, "Our coup runneth over with advice," Chicago Tribune, sec. 7 p. 3 (25 August 1991).
2. MacKinnon, "Problems for Companies, Problems for Countries," Middle East Executive Reports (Sept. 1990), p. 8 at 16.
3. The Wall Street Journal, 3 October 1990, p. B4.
4. Financial Times, 8 July 1991, special "Rebuilding Kuwait" Survey, p. 2.
5. Yaenger, "Kuwaiti gears to restart war-torn car empire," Chicago Tribune, (31 March 1991), sec. 1 p. 3.
6. Financial Times, 8 July 1991, special "Rebuilding Kuwait" Survey, p. 15.
7. Chicago Tribune, 8 September 1991, sec. 17, p. 9.
8. Middle East Economic Digest, 8 March 1991, p. 24.
9. Middle East Economic Digest, 16 August 1991, p. 18; and 23 August 1991, p. 16.
10. Middle East Economic Digest, 22 March 1991, p. 16.
11. Chicago Tribune, 8 September 1991, sec. 17 p. 9.
12. Financial Times, 8 July 1991, special "Rebuilding Kuwait" Survey, p. 19.