

# **ÆGIS**



## ***Addressing threats that affect your bottom line***

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From the case files of

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### **SPECIAL REPORT**

#### **Debt Collection from Small and Medium Judgments and International Asset Location and Recovery**

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## **1. Why we wrote this special report**

This **ÆGIS** special report is being written for two reasons.

The first is that creditors and victims need to be able to collect from debtors, fraudsters, and thieves.

The second reason is that we want you, the reader, to call us in to aid in your recovery process. That is, after all, how we earn our living.

Unpaid debt is a problem for most businesses, and, occasionally, for some individuals. It is a problem that can drain a company's resources, and put a company out of business.

Recovery from fraud and theft can affect both businesses and individuals with disastrous results. We have seen too much pain and suffering after fraud and theft because of the inability of victims and their counsel to locate and wrest from the fraudsters their ill gotten booty, and to punish the bad guys in court.

Collection of debt is a collaboration between an investigator and an attorney. Unfortunately, relatively few investigators and few attorneys know how to approach the collection of debt. This is because location and recovery of concealed assets – whether from fraudsters and thieves or from a spouse who concealed assets prior to a divorce – is an arcane universe all to itself, with only a handful of competent players in this international game.

## **2. Understanding the ground rules**

This is NOT a do-it-yourself guide on collections. No such manual could ever exist. Each collection professional, even those who buy bushel baskets of receivables from lenders and sales companies, knows that each debt stands upon its own foundation and has its own circumstances.

We will cover strategy and tactics, but not procedure. Procedure varies widely from jurisdiction to jurisdiction, and is simply not something that can be covered in a general piece such as this. The information here is to allow a creditor to understand options, and thus ask informed questions of counsel.

Collection from recalcitrant debtors is about getting what is lawfully due the creditor. It is not an exercise in being nice or politically correct. If you feel that there is a place for being nice in collections from people who do not want to pay you, we urge you to put this down and step away, as what we write will only aggravate you.

We want you to gain a working understanding of the many different ways a claim can be pursued. Experience and tradecraft count here more than almost anywhere else in litigation.

The facts are simple: The law does not favor the creditor; the law favors the debtor. The collections process has a large number of rules and procedures, and if you don't follow them, the debtor can – and will – come screaming after you! As one experienced attorney said, “for the creditor to be successful they must understand it is a dog-eat-dog world, and the creditor is wearing Milk-Bone™ underwear.”

Keep in mind also that there is a cost to collections that must be balanced against what you collect. You may win a case, but if you cannot collect on the judgment, then why bother?

### **3. Basic collections: \$5.00 to \$100,000**

In this section we are going to focus on the smaller amounts, often handled by creditors themselves or by an attorney, and for which you are unlikely to need the services of FE & E. The vast majority of collection matters in this range stem from the breach of a contract for services, or from an unpaid debt.

First, one must ask some factual questions.

- Is there a contract or agreement? Where is it?
- What court has jurisdiction: Federal? State? County?
- What happened? Between whom? Is there anything mitigating or aggravating the sums due?
- How much money is involved? Will small claims or justice court do?
- Does the statute of limitations apply? How long is the statute of limitations in this jurisdiction, and when did it begin to run?

Once you have assembled the facts, you need to decide if the matter is worth pursuing. No matter how ticked off you as the creditor may be, this is a choice that has to be made. There are several reasons why the matter might not be worth pursuing.

For a start, you have to figure out if all the parties can even be found in a cost effective manner. Not everyone can be found within economical limits. And some people may be easy to find, but have incurred the debt in one state, where the contract is domiciled, but moved to a new state where the amount is too small to litigate, or the state has laws that make it very difficult to collect.

In addition, you may determine that the debtor simply has no assets from which you might collect.

If you feel that the debt cannot be collected right now – at least not in any economically feasible manner – you have two choices. First, you can wait and re-examine the debtor’s situation roughly a year before the statute of limitations runs out. The risk you face if you choose this option is that you might not be able to find the person to serve them. Alternatively, you can serve them, get a judgment, and make periodic inquiries to the person’s financial health, renewing the judgment as appropriate.

If still not collectable after waiting, you can document the debt, issue a 1099C for forgiveness of the debt, and send that to the IRS. While you may or may not have dealt with the tax consequences of the loss, this allows you properly transfer the gain to the debtor, forcing a tax obligation on the debtor through the forgiveness of the debt. For more information on debt forgiveness and its consequences, visit <http://www.irs.gov/> and search for *debt forgiveness*.

### ***So you have determined the debt is collectable***

The truth is that most debts are collectable. We have aided in the collection of debts from people, many of whom had other liens and judgments, where others failed to collect. How? We did our homework, and you can, too.

#### **First notice**

It is a requirement under the *Fair Debt Collection Practices Act* (FDCPA) that the debtor be given a notice of the debt. Some jurisdictions believe first notice must be issued before litigation, and others believe that the suit you’ve filed and are serving on them constitutes adequate first notice. While first notice requirement is governed by the FDCPA, what the courts have held in your jurisdiction is what counts. You must have all of the appropriate disclosure contained with the first notice, with your jurisdiction dictating what constitutes “appropriate.”

#### **With whom are we dealing?**

##### **The street debtor**

The street debtor is the person who racks up unpaid bill after unpaid bill. They have an apartment and, other than in Manhattan, they usually have a car. They are also good at avoiding process servers and judgments. After all

they have had a lot more experience at avoiding the consequences of the system than the system has ever had at enforcing the debt. They are the knowledge worker in this circumstance.

You cannot threaten this person into paying and you cannot cajole them into paying. You must corner them, and force them to pay. Thus, put out of mind all the old processes you've known, and think about the problem anew. You must start to think like the experts.<sup>1</sup>

Street debtors are hard to serve because they know that strangers at the door are bad, holiday cards do not arrive certified, and nothing good ever happens when answering a collection letter.

As an example of the difference between doing it right and doing it *right* in dealing with street debtors, in one episode we were looking to serve papers on a Mr. Mann. He was pretty elusive, as shown by the fact that eight process servers were trying to serve Mann, but none had done so in three months. One of the other process servers cunningly located the house where he believed Mann to live, and simply knocked on the door. The process server asked if Mr. Mann was at home. He was told, "No, this is Mr. Steel's home," and the door was shut in his face. The process server returned without serving the papers, but undaunted in his desire to locate Mann's home.

Our research identified this same house as the place where Mann was staying, and that it *was* Mr. Steel's home. We had DMV photos identifying Mr. Mann. Our process server went to the house – actually she started with the house at the beginning of the block, so she could be observed going from house to house. She knocked on the door with a photo of lost dog.

When Mr. Mann opened the door to look at the picture she served the papers. Mann explained that this was Mr. Steel's home! Our process server turned the dog photo around and showed Mr. Mann his own DMV photo. The door slammed, but the papers had been served.

### **The event debtor**

Event debtors are a lot closer to most of us than we care to acknowledge. These are the people that have ended up in debt through a reversal of fortune

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<sup>1</sup> An interesting article that deals with the issue of expertise – more properly expertise and talent – can be found in Scientific American at <http://scientificamerican.com/article.cfm?chanID=sa006&articleID=00010347-101C-14C1-8F9E83414B7F4945&pageNumber=1&catID=2>. Please understand, we are not smarter, we just have been doing this a lot longer. We have developed more tradecraft than people who have not done as much of this as have we.

beyond their control, such as a divorce, loss of a job, or an injury. We know many who have been at this juncture in life, and it stinks.

Here we see the big difference between those who have been unfortunate and those who are the street debtors: Authenticity.

Unlike street debtors, who blame everyone else and learn the street skills of avoidance, event debtors tell you what happened, that they can't pay, and that you should re-contact them in a period of time, at which point they will make good on their debt.

Often a kind phone call and letter offering a payment plan and some empathy goes much further than threats. Simply making the call and sending the follow-up letter will work slightly more than a third of the time. This makes it worth the effort, since the effort is so minimal.

If it does not work, proceed as you do with the street debtor. The difference is that in the end, the event creditor will be easier to find, and will attempt some settlement. Unlike the street debtor, the event debtor will be passive, or passive aggressive, like change jobs when garnished too heavily.

## **Court**

A vast majority of debtors – in the neighborhood of 95% – end up with default judgments against them. The response to the judgment generally falls into three categories.

### **It's not my debt**

In many cases one will have a contract to work with as evidence of the debt. Sometimes one does not have a contract, but rather a debt purchased from a large institution where it costs money to get copies of the contract, but the institution *can* provide affidavits.

A recent court case says that an affidavit of the debt is good enough. However, some judges believe that they must see the contract. You may have only an affidavit and thus have to produce the affidavit and proper court citation allowing affidavits in front of their face. You must know the judge before hand and be prepared for what ever may occur.

This will address most of the "It's not my debt" arguments.

Our experience has shown that most of it is their debt; it has just been so long since any one did anything about collecting the debt they either forgot or are going to challenge the system's memory to prove it.

It's the wrong me.

It's the wrong me can occur when people steal IDs and rack up debts using the stolen ID. In addition, people have similar names and have lived in similar locations. Or parents name their children after themselves, and one or the other is a debtor.

Here one must be diligent in the proof of the debt and the physical identification of the person after whom you are going.

Social Security numbers, dates of birth, address histories, and motor vehicle records all can play an important rôle in knowing our facts, and properly identifying the debtor. This is becoming more difficult as both state and federal governments rush to pass *Deadbeat-Dad and Fraudster Protection Acts* laws restricting access to Social Security numbers, as well as other kinds of critical information. While these laws will not hinder investigations when you have a lot of money to throw at the problem, such as in recovery of stolen assets, or when working for the wealthy, it will greatly impede the collection of child support and alimony by impoverished mothers, and recovery of funds in cases of identity fraud where the sums involved are too low to interest law enforcement.

Identity is not always entirely clear. In one case we served a Danielle Chris and the debt was in the name of a Dan Christopher. As it turned out, Dan Christopher had changed his name to Danielle Chris concurrent with a transgender operation. The judge was not amused by the high-jinx of denial, and specifically stated that the new name and new gender was not enough to make Danielle a different person. While he may have run up the debt, she had to repay it.

### The constitutionalist

The constitutionalist will challenge not only the origin of the debt, requiring all original documents be presented, but also the authority of the court itself. These folks can be a real pain in the butt.

With their attitude, you can assume they are so angry that they can't hold down a job. This means that they have all the time in the world to devote to making the collection process miserable, for you (remember that the laws favor these folks) and for themselves.

For the uninitiated it can seem to be a great deal of fun to hound these folks like a bad rash, but it is expensive and time consuming, and your job is to get your money, not make their lives more miserable. While you fortunately

do not run in to many of these folks, they always leave a lasting memory, and provide for good stories at gatherings.

When collecting from the constitutionalist you will need good intelligence, iron-clad facts, and repeated appearances in front of a judge. Eventually the judge may get as sick of them as you are and come down on them hard. The operative word is *may*. And even when you do win you will most likely need the assistance of law enforcement to collect their assets.

Depending upon the debt it sometimes makes more sense to offer the constitutionalist a settlement they cannot refuse (which they will anyway), and then send them a 1099 for forgiveness of the debt. The IRS has a whole department dedicated to dealing with the constitutionalists.

Fight to collect and/or turn over to the IRS: It's just an economic choice, but don't just walk away.

### **Settlement**

Sometimes the debtor will offer to settle for a smaller amount than the agreement. The amount you settle upon is up to you, and something may be better than nothing, depending on your estimate of what you are likely to get in the future.

They might suggest, or accept, a payment plan. Always get a payment plan when you can, even if it is for a small amount for a trial period of 6 months, and have it revisited at a later date.

When you have a payment plan you have a medium of communication between you and the debtor and through this medium you can develop some good intelligence. You'll need this intelligence later because eventually most of the people on a payment plan fail to make payments. After all, if they could not meet the original obligation, what makes you think they will meet this one? Thus, take the payment plan and start collecting information on checking accounts used to make payments, phone numbers, addresses, vehicles they travel in to make the payments, et cetera.

### **Provisional remedies**

The provisional remedy process allows the debtor to prove to the court that they have a solid fact based case and wish to enforce their collection rights immediately. This is available in some, but not all, jurisdictions, and allows the creditor almost immediate action. To do this the creditor must post a bond to the court, in case they are wrong and cause damage to the other side.

The provisional remedy can be a useful means of collection if the judgment is of a large size or you expect the debtor may move fast to conceal assets.

## Writ of replevin

A writ of replevin is a pre-judgment process ordering the seizure or attachment of property. The writ generally requires a bond from the plaintiff, and allows the plaintiff to secure the debt either with the named collateral of the debt (a car or heavy equipment, for example), or with other assets such as banks accounts if it is a contractual debt.

After the writ is issued there is a generally-short time period – usually very short a few days – during which the debtor can either re-replevin the asset by posting a bond with the court, or object to the replevin.

This type of writ is commonly used to take property from an individual wrongfully in possession of it and return it to its rightful owner. It is a quick fix, and the bond will generally be between 100% to 200% of the obligation or of the value of the property. As you would expect, the bond is required to be posted in case the plaintiff is wrong.

A writ of replevin can be a very effective tool if you know the location of the assets, and can direct law enforcement to the assets. It is not a good tool if you have no idea where the asset is, or if there are “issues” that may need to be litigated.

## ***Moving forward***

So you have decided that the debt is collectable. You have a judgment and you wish to move forward with collecting the debt. You are ready to roll. – well, almost: You can only garnish those funds and assets that are non-exempt.

## Exempt versus non-exempt

Certain assets are exempt from garnishment. Which they are exactly differs from state to state, and upon the nature of your judgment. In *general* terms:

- A portion of a car’s value is exempt.
- A portion of a person’s home is exempt.
- Some retirement funds are exempt.
- Some insurance is exempt.
- A portion of a person’s wages are exempt.
- A portion of a bank account is exempt.
- Some deposits such as with landlords and utility companies may be exempt.

- Sometime some of the marital property is exempt.

One is not supposed to be allowed to transfer non-exempt assets, such as those from a crime, into exempt categories, so if the judgment is a criminal judgment, many of the exemptions may not apply.

Also some of the exempt assets such IRAs, retirement plans, annuities, assets under a trust may be not be available to your judgment, but may come into play in a bankruptcy. This being the case, it may be an option to get together with other creditors and explore forcing the debtor into bankruptcy.

## **Assets**

There are a few categories of assets that most people have, and which can generally be garnished with relative ease. There are a number of ways to develop information on these assets. The best way for most is to begin with the credit report, the credit application if it is available, and any and all applications and correspondence to date. You are looking for clues.

## **Job**

The employer job is the old standard. Everyone has got to have a source of money and most people work.

The credit bureaus and the old application sometimes give a clue to the job type. Were these people in a particular industry? Have they always lived in the same neighborhood?

Were they a licensed person such as a realtor, car dealer, food handler, beautician, medical assistant, et cetera? If so, check their licenses to see if you can get a lead. All of this helps.

This can fail too. Sometimes you find an employer and garnish the job, but the employer says there is no employee working there by that name. How can this be? You saw them there! They could be a contract person, not actually an employee, they could be working through a temp agency, they could be a leased employee (a large and growing category), or the employer could be lying.

## **Bank or credit union**

Bank information is good, but how you get it can be bad, and possibly illegal. Make sure the information has been obtained without breaking the rules. Otherwise the information may not be usable, and you may face legal action yourself.

Check to see if the person works for a company that has a credit union, check to see if they made payments in the past and from where those payments were drawn. All of this can help to pin down a banking relationship.

But keep in mind that while most people used to have at least a small account. However, with check cashing centers sprouting up, there has become a whole sub-nation of the un-banked.

### **Property**

For most of us this is the home we live in. Check public records for ownership or refinancing of owned property.

If the debtor does not own property, are they renting? And from whom? Sometimes the landlord can be a good, if unwitting, source of information as to where the money is coming from.

### **Cars**

Unless you live in Manhattan, cars are part of the fabric of society. Everyone drives and is required to have a license and insurance. Pull DMV records to see if they own a vehicle that is worth more than \$1,000 over the exempt amount in their state. If so garnish it.

And even if they don't own a car, the DMV records can be a good source of information on where they have been driving, and in whose car they are getting tickets. As it works out, many a debtor has received a ticket in a company vehicle, which has in turn pointed us to their employer. Trailers and mobile homes are often listed under the same category when one goes to DMV for records.

It's a stab in the dark when you are getting down this low but it can really pay off. As an example, Nick was an experienced deadbeat. He lived an OK life but no one could figure out how he made money. The DMV was littered with old registrations of mobile homes, but only one current. What he had done is over the years he had purchased and then lived in a number of trailers or mobile homes. Once the registration expired, he would rent it out to someone and go buy another. So we went to his trailer park and just watched as people come to his door all afternoon and handed him money and envelopes.

We spoke to a few of the people and learned that Nick was their landlord. Nick had rented out old trailers in local trailer parks and was collecting the rent once a week in cash. The garnishments hit his tenants and the sheriff hit

his trailer home late Sunday evening. The fit he threw was wonderful: Hollywood quality.

### **Boats**

A watercraft can be anything from a canoe to a steamship liner. Most of what we find are jet skis and small – 10 to 25 foot – canoes or fishing boats.

With a watercraft you need to find the watercraft and assess the condition of it before taking action. This is not an easy task.

Some trailer manufacturers only make trailers for watercraft. This can give you a hint at watercraft ownership when you look for trailers licensed with the DMV.

### **Company shares**

Company shares, such as those in a corporation, LLC, or Partnership may or may not be able to be found with the particular state registrar. These can be worthwhile or a mess, depending upon the entity and the assets of the entity.

You may also find that the debtor works for the entity he owns. This can make for some particularly good opportunities to expand the pool of liable parties of a judgment.

The self-employed debtor usually does not answer a garnishment served on their own company. Thus, usually through a contempt-of-court action, the company is now liable, too, and you can go after the company's customers.

### **Collectables and personal property**

Many a debtor has large collections of DVD and VHS tapes, books, art, jewelry etc. Depending on the jurisdiction, they can be seizeable or they can be deemed personal property and possibly exempt. These are assets most creditors have never taken the time to go after. There has to be a sufficient amount of the items at fire sale prices – about \$1,000.00 – to make it worth the effort.

### ***Judgment Debtors Exam***

A Judgment Debtors Exam (JDE) is a tool where you summon the judgment debtor for questioning.

About half of time the debtor no shows and a civil arrest warrant may be issued. The enforcement of the civil warrant is generally hit or miss, and will vary greatly from jurisdiction to jurisdiction. In most jurisdictions the police

do not track them down, and even when they are stopped by the police for a traffic violation, the police do not bother to act on the civil warrant.

When the debtors do show up at a JDE, they are required to bring records specified in the subpoena and answer questions truthfully. They most always look pitiful and don't bother to bring any records. It should be a time for honest disclosure, but it is not.

The more effective exams have the examiner asking many questions of the debtor showing a reasonable knowledge of the debtor's activities and whereabouts. A good background report of just public information regurgitated by an examiner when questioning can really rattle a debtor. A well-prepared examiner usually can elicit some form of concession. An examiner who goes in with no knowledge hoping the debtor will voluntarily give themselves up, is wasting their and the debtor's time, since most people do not commit fiscal suicide without a good a push.

As an example, after many previous lies and no-shows to debtor's exams we requested a JDE in front of a judge. This fellow showed up to JDE wearing a new suit and an expensive watch and arrived in a new Cadillac.

The JDE started and the guy could barely remember his name. After several trip ups orchestrated by a very well prepared examiner the judge was red faced. Literally red faced. He told the debtor to empty his pockets and to remove all jewelry. The debtor froze. A moment later a bailiff walked in and was instructed by the judge to empty the debtor's pockets and remove the jewelry.

What was found was the beginning of the recovery trail. Several charge cards in company names, \$1,100 in cash, an \$8,000 watch, a Rolex with real diamonds, and business cards for his many ventures. The judge tossed him in lock up and held the assets for the creditor. The debtor was released at the end of the day, after the meter on the Cadillac has expired and the car was towed - to the furthest lot in the city.

Lesson: Find the right judge and help the debtor to tick off the judge.<sup>2</sup>

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<sup>2</sup> A brief side-note on courts. According to one Assistant District Attorney of our acquaintance, court cases are often won based on the preponderance of perjury, and our experience bears this out. Debtors have shown up and lied in front of judges and the judges have done nothing for as long as there were debtors and judges. Expect it, but be ready to force the judge's hand if you can. Most judges really do care, some do not. You can request on-the-spot jail time for contempt of court. If you don't get it, maybe in the future you should notice the judge since the judge doesn't seem to give a darn.

## ***Effective collection***

Collection is a process not an event. It is actual a series of serial events not a point in time. Success depends upon being diligent, persistent, smart, persistent, and possessing expertise, tradecraft, and persistence.

The debtors and deadbeats rely on gaming the system and the rules. Don't take it personally: You are just another to be toyed with.

When providing testimony in a case, a debtor screamed, visibly shaking with rage, "How dare you take my money, it was my money you took you thieving B@\$!& (%."

The calm response from counsel was, "Madam, it is not your money, you took it from the bank. The bank tried to get you to pay it, you did not. A collection agency tried to get you to pay it, and you did not. When we bought the debt we offered you a discount on the debt or a payment plan, you did not respond."

"We served you with papers and you never showed up in court and we obtained a default judgment."

"After six or more attempts of trying to collect the judgment we are here in court today, and you are arguing that we took your money? No ma'am, you took the banks money and never repaid it. We have no malice; we are just collecting on a debt you did not pay. The money never became yours absent the obligation to repay the money."

Her response, "Gee, I never thought of it that way."

## **The Fair Debt Collection Practices Act is your enemy**

The FDCPA was put into place to halt some of the outrageously abusive acts perpetrated by creditors, and to force the worst of debt collectors to act in a manner closer to human. It sets forth many rules that you must follow so the debtors have a chance to honor their debt. Unfortunately, the FDCPA obviously was not written by anyone who has had to collect on debts.

The FDCPA follows in the long tradition of much-needed but ill-written legislation. One immediately thinks, for example, of the XIII<sup>th</sup> Amendment to the Constitution which was so ill-thought out in that it granted slaves freedom but not citizenship. This required the XIV<sup>th</sup> Amendment, which in turn required the Civil Rights Act of 1866 (the difference between civil and political rights has largely been blurred since then), which in turn allowed the Supreme Court's decision in Plessy v Ferguson, which we would argue

to be the low point of American jurisprudence, but which stood until *Brown v Board of Education of Topeka Kansas* in 1954.

In any case, acts such as the FDCPA, the Gramm-Leach-Bliley Act of 1999, and FTC rulings are about what you cannot do to collect on a debt, and what happens to the plaintiff if you break the rules. Thus, learn the rules so you don't break them, or retain someone who knows the rules. It is through gaming the system a wily debtor can frustrate you until you make a mistake. Once you've crossed the line and done something improper you will have your faced rubbed in it, and the debtor can become your creditor!

#### **4. Mid-range collection: \$50,000 to \$5,000,000**

The term *mid range debt* is something of artifice, but it serves to point out the differences between the collection of small debts which can often be done by one's self or by virtually any attorney, and the collection of larger debts where you need a specialized team to collect the money.

Debts of this scale are usually business debts where someone has racked up a good deal of money that is owed. People do not end up with these large judgments because they are dumb. Recovery of debts in this range, while conceptually similar to collection of basic debts, often means fixing some fundamental business problem, which requires the cooperation of a financially experienced skilled practitioner on the level of *Financial Examinations and Evaluations (FE & E)*, and an attorney specialized in both collections and business recovery.

These debts often come from guarantees and or the mishandling of funds. We have seen these come from guarantees at restaurants for liquor and food, guarantees on inventory loans, taking funds held in trust and using them for personal business, or just borrowed and not repaid.

#### ***Character of the debtor***

The debtors in these cases are typically middle to senior level managers, business owners and professionals who got into trouble. They saw something happening and they tried to take a bit of money or weave a story for more credit.

Sometimes these people had no concept of business and costs structures, and were losing five cents for every dollar in sale. Their motto is "we can make it up on volume," when volume actually spins them into the ground faster.

An example was a freight forwarder that was losing about 3 cents for every mile its trucks ran. The owner was certain that if he could run more miles and deliver more freight, he could work his way out of debt. We were sent in by the creditor to find out what was happening to the business.

When we ran the numbers and the sensitivity analysis, the owner was dumbfounded, but respected both the process and the results of the creditor to initiate the study of his business. He initiated several cost savings programs and raised his rates. Almost immediately he was profitable.

The creditor, while pleased, did have to call one of the three loans and while this upset the debtor, the debtor sold some of the trucks and paid down the loan. The other loans were brought current over about 11 months.

It was a unique circumstance where the creditor was a private fund and possessed both the luxury and flexibility of not having to report to the OCC, Federal Reserve, or an Auditor armed with SOX required disclosures.

### Nature of debt

Debt this large and does not generally accrue overnight: It takes a bit of time to auger into a six-figure debt. While this is true of most of debts in this range, we are aware of several million-dollar loans that were funded and went almost immediately into default.

### The trail of debt

There will be a trail that will lead to the debtor as sure as the sun will shine tomorrow. The question is whether you can find the trail, followed by what the trail will lead to, and what you will find at the end of the trail. What the trail often tells us is that the debtor saw the fiscal crash coming.

The trail began with the realization by the debtor that troubled times were ahead. This is when the debtor begins planning. What or how they are planning is not always that clear, but they are planning. This beginning of the trail has certain hallmarks; items such as blaming employees for theft, suspicious fires or floods that always destroy records, and more absences from the business than would seem appropriate for the situation.

We have seen all sorts of ways to shovel money out of a dying business. Single premium annuities expensed as insurance, large travel budgets where tickets are full fare tickets and can be redeemed at anytime for face value, payments to doctors that were covered by insurance where the insurance refunds the payment to the business owner, fake suppliers, side jobs, etc...

All these are done in an effort to drain whatever they can from the business to their own pocket before the collapse.

## The plans

The plans mostly set up the business or transaction for failure by pointing the blame at others, while at the same time squirreling funds away for a recovery or a good lifestyle.

As an example, Carl ran a laundromat – actually 11 of them – with limited partners, and it was failing.

We were called in to investigate money missing from the “foolproof” card dispensers that the laundromats had for washer and dryer use. Tens of thousands of dollars were missing.

Our research showed that a lot of money was indeed missing, but that the prime suspect (the general manager) named by the owner could not be the culprit. This was because the machines were as well designed and close to foolproof as one might wish.

They had a date time stamp every-time they were opened, and good records showing how much cash was in them and when the cash was taken out of them. This was, of course, when the theft was occurring. While the owner blamed the manager, on most recorded times the manager was at different location opening that other laundromat’s revenue and properly recording it.

Further, these losses only occurred when the owner or his sons, the only other people who had access to the machines, were in town. We pointed this out, and were promptly dismissed by the owner.

The business went under about 7 months later. The owner told his partners that cause of failure was uncontrolled theft from employees. We were, sadly, not called in by the limited partners.

## The obligation

The obligation must be fully laid out and documented.

Attorneys – which includes judges – and law enforcement officers do not generally go to school to learn cash management techniques. Therefore, when presenting a scenario you are addressing the sum total of all of their ignorance and fears.

There is nothing wrong with this. Most attorneys did not study business, cash management techniques, fluid dynamics, or medicine. Thus, one must

explain the case facts so that a high school student could follow, because that's about the point in time when most attorneys stopped taking business classes and begin specializing. If this is not your expertise, retain an expert who understands the field.

At any time you can assert fraud, misfeasance, or malfeasance do so, but understand the court really only understands clear and convincing proof. The laundromat story proves that the manager could not have taken the funds, but it does not prove in a clear and convincing way the owner did (though we'll lay money that we could have proven it had we been retained by the limited partners, who had more incentive than the owner to find the thief).

The bottom line is that you need to tie the knot nice and tight around the debtor, then litigate like a fiend.

### Defense by the debtor

Bombast, delay and hyperbole are as good as anything when there are no facts in the debtor's favor. Be prepared for the twilight zone. Anything else is a pleasant surprise. What should you be prepared for?

- Can't find the debtor to serve them.
- Lender liability. If it were not for you lending or investing the money, I would not have to pay it back!
- Counterfeit documents have surfaced in a number of instances. If you don't remember signing a document you may not have signed it.
- Bribery of or intimidation of witnesses has been known to happen.
- When you get the judgment there may be endless rounds of appeals on all sorts of minor things.

### Collection

By this time the debtor has had time to hide and re-title assets. They will have tried to move the assets from non-exempt to exempt status or had them re-titled in other names or entities.

One fellow was a car collector and had some excellent late 50's Chrysler autos. He did not want to lose them so he transferred the title of these vehicles into his girlfriend's name. So we went after her and obtained a judgment against her for frustrating and impeding the collection of the judgment. It took two more years of chasing her and him but we got paid mostly from her bank accounts and garnishing her wages. We believe the relationship ended when the processor server showed up at her doorstep.

Never did get even one of the cars, though.

## Strategy

The best strategy after a long litigation is to sit back and take stock of what you know. Hire Financial Examinations & Evaluations, Inc. to help you, then make some choices based on the options available to you.

Is it time for a full-fledged assault on the debtor, or is it time to wait until another day? Sometimes it is a good strategy to look like a moron (as anyone who ever watched Colombo knows, things often work better when the opposition thinks you do not know what you are doing) and appear to quit, giving the debtor time to drop their defenses. Sometimes you need to pounce like a badger and rip into the debtor again and again.

The facts, the circumstances, and your budget of time, money, and emotion all to be taken into consideration.

## Information

Be patient, and invest your money in information to further the case prior to action.

### **If he has no visible means of support**

*Means versus ability* testing is always an appropriate place to start. How is a fellow with millions of dollars in judgments against him living in a million dollar home? What is he doing, where is he doing it, and when is he doing it? This may require extensive research.

### **Third parties**

Can you tie any third parties in for assisting the debtor in the concealment of the assets? If you can, they may become liable for the debt.

Subpoena bank account records.

Depose their employer and subpoena the personnel file.

Pull a credit report and subpoena every company reporting a relationship with the debtor.

Collect their garbage.

Have them followed.

Depose their dog. Some dogs talk more than others, and you might be lucky.

## Process

Many of these debtors used to avoid bankruptcy because of the disclosure requirements. Now they avoid bankruptcy not only because of the disclosure requirements, but also because of the new mountains of paperwork and other requirements that are being enforced. For one gentleman who had gone through a divorce and loss of a business, it took him, 4 months and over 100 hours of labor to file a relatively simple bankruptcy.

There are often many rounds of discovery, asset location, proving up and garnishing the asset and doing it again. An ideal process, if there is one, is to have the garnishment process self-fund the investigation, discovery, and future rounds of garnishment.

### **5. Location and recovery of concealed assets**

This area of recovery usually belongs to:

- The massively failed business where senior managers have stolen great sums of money.
- Serial fraudsters who have cheated individuals, or groups of individuals collectively, out of large amounts of money.
- The politician who has absconded with his country's wealth.
- Certain divorces where a lot of money is involved.

Locating and recovering these assets is a highly specialized field, with only a handful of firms like LUBRINCO playing the game, and only a handful of attorneys skilled in this abstruse discipline.

While for the sake of simplicity most of what we write here will start with the serial fraudster (largely because they are the most interesting to chase down), what we say here applies to all categories of recovery where there are large-scale concealed assets, so we will generally refer to the villain as “the criminal.” We have also tried here to get avoid the Latin legalese, and to avoid a discussion of technical legal issues. Keep in mind that the fact that the victims in a fraud differ in origin from victims in cases of theft or divorce or political malfeasance, the location and recovery process is the same.

#### ***The making of a fraud victim***

While it is certainly true that some people lose money because they have been cheated in spite of their best intentions, rather than because of greed, WC Fields was largely right when he said “you can't cheat an honest man.” The world is filled with people looking for a secret formula with which to

gain riches. What they really want is a recipe – a double secret recipe is even better – that, when followed, will bring them the riches they deserve. And if this involves pushing the envelope, why, that is ok.

Since following the recipe is hard, they always look to an expert who has the special “fix,” and knows how to get exactly what they want. And if this involves pushing the envelope, why, that is ok.

Once we have a person with money and greed, who doesn't believe that “If it sounds too good to be true, it probably IS too good to be true,” you have a fertile field for the fraudster. Even if the greed is thinly disguised (I didn't know that getting 30% APR was an unreasonably high return) the ~~greedy~~ ~~dupe~~ investor can be maneuvered into giving money to the fraudster, and into being subjugated by the fraudster, with the subsequent disappearance of money as predicable as the disappearance of the water at low tide.

Once the fraudster has the money, some is sprinkled back on the garden of secret formulas to keep the faithful subjugated and the gullible convertible into the faithful. Noting that cognitive dissonance theory explains why most of the victims will never believe that they have been defrauded, we move on to the more interesting subject of how we get them back their money, when a few of them force the rest into oft-unwilling action against the fraudster.

### ***Where is the money?***

Most of the money, independent of whether or not there is fraud involved, usually disappears in bursts of activity, and lands in many far-off locations, where it metamorphoses into many disparate forms. Soon all assets are well concealed from the victim and the asset recovery team by the dishonest obligor. (By the way, when one owes a few thousand one is a debtor and a deadbeat. When one owes millions, one disambiguates into a dishonest obligor.)

### ***Concealed asset recovery***

Concealed asset recovery involves getting back your assets after they have been laundered, camouflaged, or hidden. This simple explanation, however, glosses over the complexity that accompanies the process. It is a difficult and time-consuming activity. It requires detailed planning, and the concentrated labor of a group of skilled people. The term covers not only the end goal – the actual recovery – but all stages from discovery through recovery. A successful asset recovery process must be based on a logical sequential analysis of what has transpired; an indexing and grading of leads;

a calculation of what value has been taken; and the formulation of a model designed to maximize ultimate recovery.

Any effective civil recovery model involving substantial missing assets requires the employment of a professional recovery team. This team will end up including financial forensic experts, investigators, multi-jurisdictional pre-emptive remedy lawyers, information technology experts, and fraud experts. This team must have an in-depth understanding of the fraud and the fraudster. It is not a game for amateurs.

The recovery of concealed assets involves the management of risk because there is a substantial financial and human capital investment that must be balanced against the likely recovery. The risk is a function of the degree of complexity of concealment and the number layers of legal relationships and jurisdictions are interposed between the corpus of value taken and the corpus concealed. The cost of recovery is not a function of the measure of the value of the obligation. The cost of pursuing a \$10 million claim can be the same as pursuing \$100 million. As more capital is spent on the process, the risk of complete failure declines.

There is also, on (fortunately) rare occasion, physical risk. In one case involving the outright theft of roughly \$700 million, we were given to understand that the bad guys decided that it would be as easy to kill us as it would be to kill our clients, at which they had not, thankfully, been successful.

### ***Asset protection***

There are legal mechanisms used in the concealing of wealth. Legal means will be used to protect wealth, even if the means for acquisition of the wealth turn out to have been illegal (though you need to exercise due diligence in determining on the source of funds you are investing for a client).

Many jurisdictions seek to superimpose seemingly insurmountable walls around bank, trust, and company secrets. Abstract legal concepts and relations such as ‘company’, ‘contract,’ and ‘trust’ are used by law-abiding citizens and fraudsters alike. These barriers are used by criminals to confuse law enforcement, or to defraud creditors and victims. The problem is compounded by the spread of events and facts across national boundaries. Limited territoriality of law is a principal strength to fraudsters.

Concealed asset recovery involves a careful deconstruction of the fiscal fortress crafted by the fraudster to show a link between the assets discovered and the underlying wrong.

## ***Why are assets concealed or laundered?***

Legitimate and illegitimate investors have the same principal objective in the use of asset protection devices: Their own material and financial protection. Asset protection offers those with wealth – honest and dishonest alike – the means to deal with large amounts of capital without the constraint of normal legal relationships.

In any successful asset recovery plan, one must remember the primary aim of the money launderer is to make legitimate the stolen assets, so that they can be used openly and without risk or suspicion. A criminal must conceal the fruits of his crime to avoid having to account for his wrongdoing. He must hide the existence of his ill-gotten gains, where he has concealed it, and where it came from.

However, any system of concealment has its weakness. A thief knows not to give his plunder to another thief. Rather, the dishonest obligor relies on jurisdictions and legal relationships where obligations are honored. While stolen funds of great value may circulate by electronic means through a bank in Belarus, or Grenada, they aren't much use there, so it must eventually move to London, New York, and other centers of law and order where it will be more accessible.

## ***Spreading the blame***

The successful asset concealer cannot and does not work alone. The concealment of assets involves and implicates a number of parties. Sophisticated plans for asset protection (called *structuring* in the trade) employ an array of trustees, nominees, straw men, companies, and jurisdictions to act as layers of barriers to hinder asset location and information about the assets by increasing the complexity and confusion surrounding where the assets are concealed. From strategic and tactical perspectives, these schemes assume that all victims have scarce financial, human, and knowledge resources available to cut through the confusion, and that the victims will give up before they find their assets.

A criminal will even use friends and members of his family to hide stolen assets. These innocent parties are innocent of the original fraud or theft, but not of the secondary act of concealment, and thus does not let the innocentish holder of stolen wealth off the hook. If tainted wealth is acquired with actual or *imputable* knowledge of the crime, then the current holder can be held accountable.

This ability to share the responsibility is often overlooked by inexperienced asset recovery folk. The more experienced know that everyone who comes in contact with the loot must be evaluated by the recovery team as a possibly responsible party from whom some recovery can be made.

Bankers, lawyers, trust managers, and others who handle money or information concerning assets are required by law to report any “suspicious transaction.” If suspicious activity is not reported, can the banker and financial institution become one of the parties to the recovery? Yes!

### ***The path to recovery***

While there are no guarantees that victims will regain their assets, the key to success lies in the ingenuity and experience of the investigators and lawyers used, and the determination and persistence of the creditor.

The initial planning phase, where you prioritize tactical objectives, is critical in any asset recovery. Do you have a strong case either for damages or against misappropriated assets? Which jurisdictions are involved, and are they favorable to you? Finally, where and what are the accessible assets, and where are they located in relation to your principal legal action?

The jurisdictions involved can be separated into two broad categories: Where the crime took place, and where the assets are currently located or through which they passed. The critical consideration in deciding where to start legal action should be given to the likely favorable judicial response in the jurisdiction chosen. A judgment will, with some basic requirements, be enforced abroad if it can be proven the defendant:

- (a) was resident in the country of judgment at the time that the proceedings were instituted,
- (b) was served with process while he was physically present within the court’s territorial jurisdiction,
- (c) submitted to the jurisdiction of the court by voluntarily appearing in the proceedings, or
- (d) entered into a contract prior to the institution of the proceedings which gave rise to the judgment, agreeing to submit to the jurisdiction of the court in question.

Some courts apply the notion of ‘extended jurisdiction.’ This permits the court to exercise its power over defendants who are abroad when it is deemed appropriate for a trial to take place locally.

Once the question of jurisdiction has been considered, there are other issues to be considered before concluding where the principal asset recovery proceedings should take place. If the judgment would not be recognized in certain countries, the proceedings should not be launched there.

The next issue to be considered when designing multi-jurisdictional proceedings to recover assets is how multiple litigations are to be managed and harmonized to achieve objectives set for each satellite proceeding, as they relate to the principal action.

In a pre-judgment context, multi-jurisdictional litigations are launched in three waves. Some may over-lap and be run concurrently:

- (a) Pre-emptive discovery litigation to compel the disclosure of confidential records under court-sanctioned seals and gags;
- (b) Pre-emptive asset freezing or preservation litigation; and
- (c) The principal or centerpiece proceedings to obtain a final and conclusive judgment capable of being enforced in each of the jurisdictions abroad where assets have been preserved by judicial decree.

For multiple satellite asset-freezing proceedings to hold together, it must be designed to sustain the stress of multiple and sustained attacks by the defendant. Once assets have been discovered and preserved by means of freeze orders, and once the defendant has been served, it is in the interest of both sides to attempt to stay all satellite litigation pending the outcome of the principal proceedings. The defendant may find tactical advantage in rejecting this notion. The defendant may try to burn out the other side financially, by filing a snowstorm of motions. The defendant may also object to the plaintiff's first choice of venue. The plaintiff needs to have a plan ready to force a stay of proceedings in each satellite jurisdiction.

It is important that the plaintiff, when speaking to multiple courts, does so with a clear and consistent voice. All draft pleadings and forms of evidence must be reviewed carefully to ensure consistency of method of expression and content, legally and factually, throughout the chain of foreign counsel, experts, and fact witnesses. In the absence of this consistency, the defendant will discover and exploit inconsistent statements. If this happens, it weakens the integrity of the overall effort on behalf of the victim.

You can contrast this structured approach to the naïve approach in which the creditor hires a local lawyer to 'get a judgment.' The lawyer goes through the normal proceedings and, often after years of delay, the creditor gets a judgment. By which time the bad guy has now hidden and re-hidden his

assets. So then the creditor hires a local investigator, who discovers that no assets in the name of the debtor can be found. Bummer!

Concealed asset recovery can and should be conceptually as simple as the term suggests, provided the correct approach is both adopted and followed. The only effective strategy is to bypass the fraudster's strengths. Those strengths are the money to do battle (your money!), the unknown origin of the money, the freedom of international movement, the freedom to attack you with no moral or factual impediments, and the ego that has them believing that they are smarter than anyone else.

The recovery team must work in secret to gather intelligence on the criminal's empire without the reverse occurring. We start by understanding that the criminal has access to a wealth of information and professional advice concerning the obscuring and "legitimization" of ill-gotten gains. They and their professional advisors are well informed, have identified loopholes, and will exploit them accordingly. But the techniques and devices used by the money launderer are similar to those used by wealthy, law abiding citizens, whose objective is the reduction of tax liability or more effective estate management. The recognition and understanding of this fact is central to our ability to deal with the criminal and the paper trail created.

Our goal here is to attempt to rebuild the hypothetical asset fortress, keeping in mind the methods and techniques available within a particular sphere or jurisdiction, and an analysis of how the thief has acted in the past. Serious financial criminals seem to possess many common traits and follow similar patterns and modes of operation.

An inventory of assets, known and suspected, should be prepared. You should also prepare a set of hypothetical income statements and balance sheets to help in estimating the scope of assets missing. Most of the big frauds bring money in and send money out. It is part of the seeding process to keep the fraud going. If \$100 million was taken in and 80 million paid out, the most we could get back would be \$20 million. But criminals spend money as if it were not their own, because it is not. Thus a reasonable spend rate must be surmised from what we know. If we surmise that they are spending \$3.2 million per year and the funds intake stopped three years ago, the target for recovery is  $(100 - 80) - 9.6 = \$10.4$  million. The difference between the missing \$100 million and the potentially-available \$10.4 million can be, not surprisingly, a startling revelation for the victims.

A map should be drawn showing the location of known and suspected assets. Once you look at known and suspected assets, patterns usually emerge of the

means used to hide the assets. After all, the common ways to hide assets are a finite set, and professional advisors, particularly within the asset protection world, usually employ recognized devices.

The value of investigation prior to litigation and pre-emptive remedies cannot be overstated. When a picture of the assets and how they are held and controlled is in place, and a pre-emptive freeze on those assets is executed, the fraudster will then act to check his assets. In this effort to check his concealed assets, the actions often reveal additional assets not found during the initial investigation. Further, with pre-emptive remedies, you help deprive him of the fuel that will drive his defense to protect the assets and frustrate your recovery efforts.

The secret is to avoid a *crisis of imagination* and a narrow look at what can and cannot be done. Crises of imagination have doomed more ongoing asset recovery efforts than anything else.

### ***Connecting the criminal to the crime***

Once concealed wealth has been located, you need to link the assets to the criminal. Linking control over, or enjoyment of, concealed assets is the most difficult part of asset recovery. Criminals know the large task of proving a concrete case against them. Evidence will need to be clear and convincing, and the trail of proof needs to be substantially unbroken in order for the court to reach the conclusion favorable to the victim.

The initial ‘ground-pounding’ stages must be carried out with the utmost attention to detail and legal restrictions. Interviews with both friendly and unfriendly parties can be very useful. Admissions as to ownership of assets can be obtained if clever pretexts are used. If the criminal likes to boast – and most do – don’t stop them (and yes, we often deal with them face to face under one pretext or another). The objective is to obtain valuable clues as to the use and location of the misappropriated funds.

All evidence must be clear, correct, and convincing. The evidence of investigators will be the crucial missing link. Where extraordinary civil search and seizure or secret document disclosure orders have been obtained, all procedures, and their execution, must be complied with to the letter. There are two reasons for this. First, there is often the opportunity to do bad things in this business, and you simply shouldn’t do bad things. LUBRINCO has three prime rules which govern behavior. The first is that we don’t work for bad people. The second is that we don’t do bad things. We have turned down clients because of the first rule, and we have had clients turn us down

because of the second. We are quite comfortable with both of these. It is our belief that the end does not justify the means, and that there is always another option to get the information that we need.

The second is that the admissibility of evidence wrongly obtained is always an issue. It is true that there is no rule that automatically excludes evidence that has been obtained by improper or illegal means when not acting under color of law, and that where evidence is relevant it is admissible, many times regardless of its provenance. Nonetheless, judicial opinion frowns upon illegal or improper methods of obtaining evidence, and the court has a duty to reject evidence that is not admissible. Because of this, many asset recovery exercises have failed because a technicality.

In addition, we do not want the bad guy to have the opportunity to attack the methods used to obtain evidence. This is often overlooked by some, at their own peril, and some have ended facing charges themselves, even while the evidence itself was accepted.

### ***Pre-emptive strikes***

Once a clear and convincing picture of asset concealment is drawn by the victims' team, a case may be put to court for extraordinary relief<sup>3</sup>, by which we mean that we ask the court to freeze the assets. This will have the effect of maintaining the status quo pending a final determination in the case. It is important to remember that the utmost care and accuracy and completeness of disclosure are demanded in this type of request. All of these applications should be made without the involvement of the defendant. This must be done so the case cannot come under attack in the final proceedings.

Pre-emptive strikes to preserve assets should be carried out swiftly and simultaneously. Those strikes in different jurisdictions should be as closely aligned as possible, and each order should be sealed and accompanied by a gag order, so that the criminal will not be made aware of what is happening, which would encourage him to further concealed assets. The key elements are speed and surprise.

In one particular asset freeze, the execution of the orders was timed so that there were no holidays in any of the different countries that would preclude

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<sup>3</sup> Extraordinary relief is, indeed, extraordinary. You are, after all, seizing someone's assets without their knowing, without normal open legal action, and, frequently, without letting them know. Because of this, there are a host of constraints and regulations on when and how this may be done. We originally included a painfully long section on the legal issues involved, but removed it based on our belief that the principle was important to understanding the process, but that the fine points of the law would merely serve to distract.

an execution that day. They were scheduled to take place on a day when it was known that the criminal was flying from one location to a far-distant location, and would thus be unavailable to learn of the freeze orders and move the assets to another place. It was a reasonable and prudent effort, for when he learned of one freeze he promptly tried to move all of the other assets we knew of, and some of which we were not previously aware.

Once the asset is secured, you will have to inform the defendant. The victim can expect fierce litigation in an attempt to thaw the freeze prior to the hearing on the merits.

With the pre-emptive freeze in place, the victim is now in a stronger position to consider his options, and the criminal, deprived of many of his assets, is in his weakest position. At this stage, the victim's team must concentrate upon building its case in advance of the final hearing of the merits.

### ***Financing the cost of asset recovery in the United States***

In the United States there are two methods to finance the asset recovery process: (1) attorney contingency fees and (2) third-party investment.

#### **Contingency fees**

A party who has suffered a loss of millions of dollars may be wary of investing additional funds, or simply unable to do so. Attorney contingent-fee arrangements are lawful in order to allow indigent plaintiffs with meritorious claims access to the judicial process.

In the United States, attorneys working under contingent-fee arrangements are permitted to advance costs. This is important, because investigators, forensic analysts, and local counsel must be retained, often in multiple jurisdictions, and paid on an on-going basis (though we can tell you from long and painful experience that attorneys can string the investigators along for a long time without paying them).

#### **Third-party investment**

In the absence of finance through the attorney contingent-fee model, the most practical method to finance asset recovery plans is through access to the capital markets. In the major financial centers there are numerous financial entities that take positions in situations where the likelihood of success is unclear. Investment in asset recovery plans is a natural addition to these markets. These businesses provide advances to plaintiffs of pending

personal injury lawsuits or judgments on appeal in return for an interest or a large percentage of the award.

### ***Why asset recovery cases fail***

There are several enemies to successful asset recovery.

#### **Time**

For a start, time is on the fraudster's side. The longer any actions are delayed, the longer the fraudster can spend and enjoy the obligor's money. The more time they have the more layers they will construct to frustrate and impede collection efforts. The two biggest time wasters are getting the victims to admit they have been taken, and the subsequent arguing among themselves as what should be done.

The first is emotional. When a fraud or theft large enough to merit an international recovery effort has taken place, we by definition have a criminal that is smarter and more cunning and ruthless than the victim or victims. The victims must admit to themselves they were conned. This hump is one of the most difficult to get over. They have to come to the realization that their personal decision making system was wrong. It is easier for some victims to walk away from the money than to admit they were wrong.

Committees of angry defrauded people decide little and often turn on one another. Fraudsters tell stories to victims to explain what happened to the funds. They all can be summarized as "The money is gone and it wasn't my fault." Some of these stories can be very elaborate and very convincing. But they are just ruses to buy more time.

#### **Law enforcement**

There is nothing wrong with calling the cops when a crime has been committed. The problem is that criminal prosecution and asset recovery have two different goals. Prosecution is revenge, and asset recovery is about getting some of the funds back to the victim. This is not to say the two are mutually exclusive: While you work on asset recovery you build a case for law enforcement. When law enforcement is building the case, however, they don't – really can't – share information, and several years later the fraudster has spent all of the funds defending the criminal matter and there is nothing left to recover.

Also, new and growing threats to asset recovery are *proceeds of crime* legislation. The assets of the victim in the criminal's hands are proceeds of a

crime, and it is not unknown for a government to file to seize all of the proceeds of the crime, depriving both the criminal and the victims of the assets by converting them for government use.

## Insurance

If the victim is a company, make sure they check their insurance policies immediately to see if there is any coverage. After all what we are trying to do here is recover from a loss. If the client has insurance coverage that will cover the loss, it makes more sense to be made whole by the insurance carrier rather than by mounting a recovery effort. The insurance carrier may (most often in embezzlement and employee-related frauds) require that the incident be reported to law enforcement. Failure to do so may bar the victim from making any recovery of the loss from the insurance carrier. Leave that up to the insurance carrier.

## 6. Final thoughts

This report is directed at anyone thinking about collecting on a debt or obligation, or recovering missing assets. It is not a cure-all or a road map, but, rather, a primer to get the reader to think about the process, independent of whether the sums involved be small or large. Creditors contemplating an asset location and recover strategy must be particularly clear in thinking about the process and the plan: The process is too complex to be undertaken when inadequately prepared.

While, obviously, some smaller obligations are fraudulent and some very large one may not be, we hope you find our categorization to be a useful tool for thinking about the process.

Debt collection, and location and recovery of concealed assets, are each complex fields, involving a specialized team. Whether you come to FEEINC for debt collection or LUBRINCO for asset location and recovery, we will immediately recommend experienced counsel appropriate to the case. In the case of asset location in a divorce (please see the article *Location of hidden assets in divorce proceedings* in the March 2000 issue of AEGIS), we work at the behest of your divorce attorney.

And if you are an attorney wishing either to collect on debts, or to locate concealed assets for recovery, we will be delighted to work with you.

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