

# Liquidating Cross-Border Assets and Recovering Cross-Border Claims

*James S. Feltman – Moderator*  
Mesirow Financial Consulting, LLC; Miami

*Harold D. Moorefield, Jr.*  
Stearns, Weaver, Miller, Weissler, Alhadeff & Sitterson, PA; Miami

*Margaret J. Smith*  
Glass Ratner Advisory & Capital Group LLC; Atlanta

*Marcus A. Wide*  
PricewaterhouseCoopers; Halifax, N.S.



**GLASSRATNER**  
ADVISORY & CAPITAL GROUP LLC

PRICEWATERHOUSECOOPERS 

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**By:**

Margaret Smith  
*GlassRatner Advisory & Capital  
Group LLC*

Marcus Wide  
*Price WaterhouseCoopers*

## > Objectives

- Discuss the nature of cross-border assets and claims
- Establish a process to identify and monitor cross-border assets
- Identify methods to recover cross-border claims



## > Identifying Cross-Border Assets

- Difficult when aggressive action is taken to hide assets
- Time-frame to locate assets is lengthy
- Costly process
- Attempt to determine early on what assets actually exist-segregate the assets by type (real estate, equipment, bank accounts, etc...)
- Identify hidden and known assets-use of cash tracing
- Identify the location of the assets

## > Identifying Cross-Border Assets

- Establish a plan to monitor the assets
- Obtain periodic updates regarding the status of assets
- Investigative efforts must be aggressive, imaginative and constant
- Identify your key sources of information-individuals or organizations (ex-employees, ex-spouses, competitors, financial advisors, government officials, etc...)

## > **Recovering Cross-Border Claims**

- Be country and culture specific
- Understand the judicial system in the country housing the assets
- Know your opponents
- Make sure you have identified the real “pot of gold”
- Develop a plan to prevent dissipation of assets identified
- Make sure the investigative component of the team understands what is necessary to take control of the assets and how to put the recovery plan into action quickly

## > **The Claim Game**

- The class will break up into groups
- We will pass out one index card to each group. The index card will detail cross-border claim scenarios. Each group will develop an action plan for monitoring the asset(s) and recovering the asset(s)
- We will discuss together the various action plans

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## The Realities of the Market

- The bankruptcy process often places a high priority on adhering to “process”. Trustees, who are generally attorneys or accountants, are focused on fulfilling their fiduciary responsibilities which may not necessarily lead to maximizing returns.
- A “cash is king” mentality often does not lead to maximum recoveries.
- Algon’s principals have observed that there is an opportunity to create additional value for the estate in special situations including unique, complex and overlooked assets in “below the radar” transactions.

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## Monetizing Unique & Illiquid Assets

Recently monetized unique and/or illiquid assets:

- **Agway Liquidating Trust** - 17 environmentally contaminated commercial and industrial properties.
- **Mego Financial Corp.**
  - litigation opportunities.
  - reversionary real estate interest and electrical cooperative capital credits.
- **Aerosonic Corp.** - 28% minority interest in thinly traded Amex listed company.
- **Advanced Lighting Technologies, Inc.** - 3% quasi-equity minority interest in private equity backed \$175 million company.
- **Fiberstars, Inc.**- 25% common stock in thinly traded NASDAQ listed company.
- **Hexagram, Inc.** - 4.6% minority interest in privately held, family controlled company.
- **MortgageHub and speechVantage** - 20% minority interest in two venture capital backed, early stage companies.

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# Case Studies

## Agway Liquidating Trust:

- Among the assets in the \$400 million liquidating trust were 24 environmentally contaminated properties. The financial advisors to ALT, had estimated the net value of these properties at \$2.0 million.
- To date ALT has realized a gross recovery from the first 17 deals of approximately of \$3.5 million.

## Mego Financial Corp.:

- This timeshare and vacation home developer filed Chapter 11 in July 2003. The trustee spent the first 18 months liquidating major assets via 363 sales, collecting receivables and divesting high profile assets. A financial advisor was retained in March 2005 to liquidate a portfolio of miscellaneous assets and direct the potential litigation claims, if any, against the former board and outside professionals.
- Through December 2006 the estate has recovered \$4.3 million, net of costs, from litigation settlements and \$1.3 million from miscellaneous assets.

## Aerosonic Corp.:

- Synovus, a holding company for 34 banks in the Southeast, made a loan to a CEO of a small public company. After an accounting scandal decimated the stock price, the bank had to foreclose and take possession of 1.1 million share (28%) in a thinly traded Amex listed company. The market value of the stock was \$4.9 million at the time. Banking regulations limit holding equity securities for an indefinite period.
- In March of 2006 the bank liquidated its position in two transactions totaling \$7.1 million.

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## Case Studies

### Advanced Lighting Technologies, Inc. (“ADLT”):

- ADLT filed for Chapter 11 in February 2003, and the equity holders, believing that they were “in the money” were able to have an equity committee formed. Under the plan of reorganization approximately 21 million shares of common stock were eligible as beneficiaries. The stock, which had been trading as low as \$.04 per share, was then trading at \$.25 per share. Equity holders accepted shares of Hexagram, Inc., a family controlled private company, Fiberstars, Inc., a thinly traded technology companies, and 3% of the reorganized company in lieu of a small cash recovery.
- The Fiberstars, Inc. stake was sold for \$12.3 million in 2004 and the two remaining positions were sold in 2006 for approximately \$4.0 million.
- The equity holders received approximately \$.72 per share in the aggregate.

### MortgageHub/speechVantage.:

- Chapter 7 trustee held minority interest in two venture funded, early stage high tech companies.
- Trustee divested positions which resulted in a recovery for the estate.

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## The Bankruptcy Process - Maximizing Recoveries

- The bankruptcy process involves multiple parties who have conflicting priorities, with one exception: Most parties have a “cash is king” approach to decision-making.
  - DIP Lender and/or Senior Secured Creditor want to get paid ASAP (i.e. get the cash out of the estate), before administrative costs (multiple sets of professionals, attorneys and expenses) potentially erode their recovery.
  - Trustees have a fiduciary responsibility to safeguard the estate’s assets and maximize beneficiary returns. This fosters a “bird in the hand...” mind set, where risk adjusted discount rates are often very high. Decision makers cannot be criticized for monetizing an asset, particularly an unusual one, but can be criticized for missing an opportunity to generate cash.
  - The process is accounting oriented not business oriented. This leads to cash being over-valued and illiquid assets being under-valued.
- Bankruptcy estates and liquidating trusts are frequently cash strapped and unable to pay past due and ongoing professionals fees. This exacerbates the “cash is king mentality.”
- Creditors are constantly pressuring the trustee to distribute cash. Trustees typically focus on the more easily liquidated assets such as operating subsidiaries, accounts receivable, inventory and real estate and sometimes overlook unusual and illiquid assets.
- Trustees are reluctant to deploy cash resources to fund business opportunities and would rather take a large discount and sell a position than be exposed to additional business risk.
- The administration of a bankrupt estate is a very “process driven” activity. Counting the beans frequently takes precedence over maximizing the returns. Cash flow projections have the highest priority.
- Trustees typically have had no previous involvement with debtor and may not have the resources to investigate every situation leading to overlooked or under-appreciated assets.

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## Litigation Claims - Creating Recovery Opportunities

Debtor companies frequently become financially distressed due to questionable pre-petition actions of their board, senior management or outside professionals. The bankruptcy estate may have claims against these parties or an insurance (D&O or Professional Liability) carrier. Litigation claims often are not pursued, due to the political landscape of large institutions, lack of understanding of the facts and the high cost and long time frame of pursuing litigation.

**There is a need for a financial advisor who has substantial experience analyzing and managing the issues around litigation claims:**

- Analyzing the value of claims from a business standpoint.
- Analyzing hourly vs. contingent fee legal representation.
- The business strategies involved in arriving at acceptable settlements.

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## Troy T. Taylor, President, Algon Group

Mr. Taylor was formerly President of GMA Partners, Inc. an investment firm backed by a Forbes 400 family. In that capacity, he assumed the position of Chairman of 1-800-Auto-Tow, Inc., a publicly traded “roll-up” that experienced substantial financial and operational issues and ultimately filed Chapter 11. Mr. Taylor was previously a Managing Director at KPMG Peat Marwick LLP, where he was responsible for the firm’s corporate finance activities in the Southeastern U.S. and parts of Latin America. Earlier in his career, he held various investment banking positions with Thomson McKinnon Securities, Inc., Oppenheimer & Co., Inc. and Morgan Keegan & Co., Inc.

Mr. Taylor has broad financial markets expertise including:

- Divestitures of numerous companies and assets.
- Orchestrated debt financings in excess of \$1 billion.
- Acquisitions and related financings for 12 transactions.
- Completed 15 IPOs and other public offerings.
- Chairman of the Audit Committee of Barjan, Inc., a distribution company controlled by General Electric.
- Selected by Creditor’s Committee for Board of Directors of Keystone Consolidated, Inc.

*Mr. Taylor holds an MBA and a BS (cum laude) from The Wharton School of the University of Pennsylvania and is a CPA in Pennsylvania (inactive). He is also a sustaining member of the American Bankruptcy Institute.*

Phone: 404.423.8086  
[troy@algongroup.com](mailto:troy@algongroup.com)  
[www.algongroup.com](http://www.algongroup.com)