

**AN INTRODUCTION TO CORPORATE FRAUD AFTER WORLDCOM, ENRON,  
ETC. - THE USE OF BANKRUPTCY TRUSTEES AND EXAMINERS**

The 1898 Bankruptcy Act, as amended, had two provisions to deal with corporate reorganization. Chapter X was meant to be used for the reorganization of large publicly-held companies with complicated debt and equity structures. This Chapter required the appointment of a trustee who would be authorized to operate the debtor's business, investigate debtor's business affairs and pursue causes of action on behalf of the estate and finally to provide information to creditors and the public and to stockholders. Chapter X directly involved the Securities and Exchange Commission. The Chapter X trustee, in consultation with creditors and stockholders, was responsible for developing a plan of reorganization. Although the Act provided for the retention of management, in practice the trustee displaced pre-petition management. Provision was made for the appointment of a co-trustee from management, but such a person was not often so appointed. The mandatory appointment of a trustee was the most troubling part of the Chapter X process. The trustee was less interested in detecting pre-petition fraudulent conduct than in finding a way to reorganize the business.

Chapter XI was intended to apply to smaller businesses with less complicated debt and equity structures and where the public investor was generally not involved. Chapter XI provided for less control of the debtor in the reorganization process.

Provision was made for the appointment of a receiver but in practice that was not done unless some reason surfaced for divesting pre-petition management.

In 1970 a commission was established by act of Congress. In its 1973 report, the commission rejected the mandatory trustee appointment process. It instead proposed a more liberal debtor-in-possession model with provision for appointment of a trustee upon application by an administrator (similar to the current United States Trustee) or on application of a party in interest. In cases involving a company with debt of One Million Dollars or more or with 300 or more security holders, there was to be a presumption that appointment of a trustee was warranted unless the court found it either unnecessary or that the expense would be disproportionate to the protection afforded. The commission proposal provided no standard for reviewing appointment of a trustee in smaller cases.

The commission proposals were introduced in the 93rd Congress and reintroduced in the 94th Congress in a bill, along with an alternative bill proposed by the National Conference of Bankruptcy Judges. The two were different in significant ways but strikingly similar on the subject of appointment of a trustee in reorganization cases. The elimination of the mandatory trustee appointment was strongly opposed by the Securities and Exchange Commission. Hearings were held but no vote was ever taken on either of the bills in those Congresses.

In the 95th Congress, different bills were introduced in both the House and the Senate. They differed considerably on the subject of use of independent third parties in reorganization cases. The House bill called for a cost-benefit analysis prior to appointment of a trustee and made the appointment of a trustee discretionary. The Senate version required appointment of a trustee in "public company" cases, defined as a company having debt of more than Five Million Dollars (exclusive of debts for goods, services and taxes) and where more than 1,000 security holders were present. The Senate bill also provided for appointment of an examiner to conduct such investigation "as is appropriate" and made the appointment of an examiner mandatory "if such appointment would serve the interests of the estate and security holders."

The House and Senate versions were eventually compromised with the Senate mandatory appointment of a trustee in public company cases eliminated but in its place the mandatory appointment of an examiner. At the last minute, the provision was changed to require the request of a party in interest before the appointment of an examiner in any case. The result is the statutory scheme we see today.

Current law, in § 1104(a), provides that on request of a party in interest or the United States Trustee, the court shall order appointment of a trustee (1) for cause or (2) if such appointment is in the interest of creditors, any equity security holders or other interests of the estate. The first contemplates

cases of fraud, mismanagement, dishonesty or gross incompetence. The second seems to be concerned with a benefit to the estate overall and not to any particular constituency. Section 1104(b) provides that when a trustee is not appointed, the court shall order the appointment of an examiner (1) if the appointment is in the interests of creditors, any equity security holders or other interests of the estate or (2) where the debtor's fixed, liquidated, unsecured debts, other than those for goods, services or taxes or debts owing to an insider exceed Five Million Dollars. The statutory standard (interests of creditors, equity security holders or other interests of the estate) mirrors that provided for appointment of a trustee.

It is assumed the standard requires a comparison of costs and benefits of an examiner appointment similar to that required for trustee appointments. The cost of an examiner is very likely less than for a trustee in most cases. The management remains in place and retains the exclusive right to propose a plan, unless otherwise ordered by the court. However, an examiner's cost can still be significant. The examiner is compensated for his time expended. The examiner's retained professionals will be compensated. This is balanced against or offset by the various committees not conducting their own overlapping investigations of the same issues and thus the appointment of an examiner may actually result in a net saving to the estate.

An examiner may be sought where the debtor fails to meet projections and suffers continuing losses (*In re Table Talk, Inc.*, 22 B.R. 706 (Bankr. D. Mass. 1982)). In the absence of evidence of dishonesty or fraud, the court will likely decline to direct appointment of an examiner (*In re Mechem Financial of Ohio, Inc.*, 92 B.R. 760 (Bankr N.D. Ohio 1988)).

Where the statutory tests of § 1104(b) are met and a party in interest or the United States Trustee requests appointment of an examiner, the appointment is mandatory (*Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498 (6th Cir. 1990)), even where the court may believe the appointment unnecessary. Where the court has a strong feeling the appointment is unnecessary, the court may limit the scope of the examiner's duties.

Both trustees and examiners perform two primary functions. They investigate debtor's management and operations to determine whether the management of the business is appropriate, whether reorganization is realistically possible and perhaps what causes of action the estate has that may or should be pursued. Secondly, they may displace management where the management appears to be dishonest, incompetent or incapable of achieving a reorganization. In addition, an examiner or trustee may resolve or defuse disputes among various creditor groups and debtor and perhaps, with no appearance of a conflict of interest, help negotiate an achievable plan of reorganization. Once appointed an examiner, that party is foreclosed from thereafter being appointed a trustee

in the same case but there is no prohibition to the party seeking, and to the court ordering, an expansion of a serving examiner's duties.

In providing for the examiner alternative to a trustee, Congress was mindful of the greater flexibility of the examiner concept. Section 1106(b) authorizes the court to order the examiner to perform any of the trustee's duties. The court's ability to limit and thus mold an examiner's scope of authority permits addressing specific issues without disrupting the otherwise orderly administration of the estate. This tends to promote a level of confidence in lenders, creditors and other parties in interest. It also provides the court with eyes and ears in the case to offset the informational disadvantage to the court resulting from the 1978 Act's removal from the court of many of the administrative duties which the court was assigned in the 1898 Act.

Thus, we see that a third-party trustee or examiner can assist in the reorganization process in a number of ways. In this era of heightened concern regarding corporate fraud and abuse, the examiner's greater flexibility makes that appointment the preferred vehicle for rooting out any such evidence.

In preparing this introduction to the subject, I have relied in large part on: Barry L. Zaretsky, *Trustees and Examiners in Chapter 11*, 44 S.C.L. REV. 907 (1993) and Leonard L. Gumpert, *The Bankruptcy Examiner*, 20 CAL. BANKR. J. 71 (1992).

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Anthony E. Grabicki  
Peter J. Grabicki  
Douglas J. Siddoway  
RANDALL & DANSKIN, P.S.  
601 West Riverside Avenue, Suite 1500  
Spokane, Washington 99201  
509-747-2052

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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON

|                         |   |                            |
|-------------------------|---|----------------------------|
| In re:                  | ) |                            |
|                         | ) | Case No. 04-00757-W11      |
| METROPOLITAN MORTGAGE & | ) | CHAPTER 11                 |
| SECURITIES CO., INC.    | ) |                            |
| and                     | ) | MOTION FOR ADDITIONAL AND  |
| SUMMIT SECURITIES, INC. | ) | CLARIFYING INSTRUCTIONS TO |
|                         | ) | UNITED STATES TRUSTEE AND  |
| Debtors.                | ) | EXAMINER AND REQUEST       |
|                         | ) | FOR EXPEDITED HEARING      |

The Creditors Committees appointed herein with respect to Metropolitan Mortgage & Securities Co., Inc. ("Metropolitan") and Summit Securities, Inc. ("Summit") (and collectively the "Committees") move the Court for additional instructions directed to the United States Trustee and to the Examiner appointed herein, and request an expedited hearing on this Motion, based upon the following facts:

- Appointment of Examiner.** Samuel R. Maizel of the Los Angeles law firm of Pachulski, Stang, Ziehl, Young, Jones & Weintraub was appointed Examiner ("Examiner") herein by the Court on April 15, 2004.

**FILED**

APR 19 2004

T. S. MCGREGOR, CLERK  
U. S. BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON

MOTION FOR ADDITIONAL AND CLARIFYING INSTRUCTIONS TO UNITED STATES TRUSTEE AND EXAMINER AND REQUEST FOR EXPEDITED HEARING - 1

RANDALL & DANSKIN, P.S.  
ATTORNEYS AND COUNSELORS  
1500 BANK OF AMERICA  
FINANCIAL CENTER  
601 WEST RIVERSIDE AVENUE  
SPOKANE, WASHINGTON 99201-0653  
(509) 747-2052

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direct the nature, extent and duration of the Examiner's investigation. *In Re Revco D.S., Inc.*,  
898 F.2d 498, 22 C.B.C.2d 841 (6th Cir. 1990).

WHEREFORE, the Committees request that the Court set this matter for expedited  
hearing and, at such hearing, issue further directions to the Examiner and the United States  
Trustee regarding a maximum budget for the initial 45 days of the Examiner's appointment.

DATED this 19 day of April, 2004.

RANDALL & DANSKIN, P.S.

By: [Signature]  
Peter J. Grabicki, WSBA # 5467  
Attorneys for Unsecured Creditors Committee  
Metropolitan Mortgage & Securities Co., Inc.

SOUTHWELL & O'ROURKE, P.S.

By: [Signature]  
Daniel O'Rourke, WSBA # 4911  
Attorneys for Unsecured Creditors Committee  
Summit Securities, Inc.

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1 HELANE L. MORRISON (Cal. Bar No. 127752)  
 2 ROBERT L. MITCHELL (Cal. Bar No. 161354)  
 3 PATRICK T. MURPHY (Admitted in New York)  
 4 KRISTIN A. SNYDER (Cal. Bar No. 187175)  
 5 LLOYD A. FARNHAM (Cal. Bar No. 202231)  
 Attorneys for Party in Interest  
 6 SECURITIES AND EXCHANGE COMMISSION  
 44 Montgomery Street, Suite 1100  
 San Francisco, California 94104  
 Telephone: (415) 705-2500  
 Facsimile: (415) 705-2501

**FILED**  
 APR - 9 2004  
 T. S. MCGREGOR, CLERK  
 U. S. BANKRUPTCY COURT  
 EASTERN DISTRICT OF WASHINGTON

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 9 UNITED STATES BANKRUPTCY COURT  
 10 IN THE EASTERN DISTRICT OF WASHINGTON

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 12 In re  
 13 METROPOLITAN MORTGAGE &  
 SECURITIES CO., INC.

14 Debtor.

Jointly Administered Under  
 Case No. 04-00757-W11

Chapter 11

ORDER DIRECTING APPOINTMENT  
 OF EXAMINER

15  
 16 In re  
 17 SUMMIT SECURITIES, INC.

18 Debtor.

19  
 20 The Securities and Exchange Commission has filed a Motion for an Order  
 21 Directing the Appointment of an Examiner, joined by the Washington State Attorney  
 22 General's Office, Division of Consumer Protection and the Washington State  
 23 Department of Financial Institutions. After due deliberation and consideration of the  
 24 evidence, the papers filed regarding the motion, and argument presented at the hearing,  
 25 and sufficient cause appearing therefore, it is

26 ORDERED that an Examiner be appointed for the Debtors in the above-  
 27 captioned cases, Metropolitan Mortgage & Securities Co., Inc. and Summit Securities,  
 28 Inc. (hereinafter "Debtors"). The Examiner shall have the authority to investigate and

ORDER DIRECTING APPOINTMENT  
 OF EXAMINER

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1 report on transactions involving Debtors and any entities controlled by or affiliated  
2 with Debtors. The United States Trustee shall appoint a disinterested person as  
3 Examiner in the above-captioned cases, subject to the Court's approval; and it is  
4 further

5 ORDERED that said Examiner be, and hereby is, directed to investigate  
6 the acts, conduct, assets, liabilities, and financial condition of the Debtors, as specified  
7 below; and it is further

8 ORDERED that the Examiner shall have the authority and power to  
9 investigate issues and transactions, as follows:

- 10 (1) Whether the Debtors' boards of directors and management are
- 11 independent and can be relied upon to bring legal causes of action
- 12 against appropriate parties or to propose and implement a plan of
- 13 reorganization that will be in the interests of creditors;
- 14 (2) Whether in the interests of creditors and other parties in interest the
- 15 Court should appoint a trustee for either or both of the Debtors;
- 16 (3) Debtors' commercial loans originated, acquired, disposed of, pending
- 17 or in default during the period including the 2000 fiscal year to the
- 18 present;
- 19 (4) Sales or transfers of assets and any related transactions among the
- 20 Debtors, Debtors' subsidiaries, or any other related party, during the
- 21 period including the 2000 fiscal year to the present;
- 22 (5) Sales of assets with a value of more than \$250,000 to any third party,
- 23 during the period including the 2000 fiscal year to the present;
- 24 (6) Any additional areas of concern, issues, transactions, or subject
- 25 matters that warrant investigation.

26 It is further ORDERED that on or before 45 days from the filing by the  
27 United States Trustee of an application for approval of the appointment of the  
28 Examiner, said Examiner shall file with this Court a statement of the investigation.

1 The statement shall address each of the above categories of issues, including (1) the  
2 facts ascertained and any conclusions drawn, (2) whether any further investigation of  
3 the issue is warranted, (3) further steps required to complete the investigation of the  
4 issue, (4) the estimated cost and duration of further investigation, (5) the anticipated  
5 benefit to the estates of further investigation, and (6) any other information relevant to  
6 the Court's consideration of the issue. The statement shall also indicate when the  
7 Examiner will file a further statement of investigation. The Examiner may, if  
8 appropriate, seek leave to file any statement or portions thereof under seal as provided  
9 by applicable rules or statutes. It is further

10 ORDERED that as soon as practicable after the appointment of the  
11 Examiner, the Examiner shall meet with representatives of the United States Trustee to  
12 establish a form for a fee application that may later be submitted to the Court in  
13 support of the Examiner's application for fees and expenses. The form fee application  
14 should include categories corresponding to the services performed and the expenses  
15 incurred during the course of the investigation, and categories corresponding to the  
16 issues investigated; and it is further

17 ORDERED that the Debtors shall provide the Examiner all documents  
18 and information that the Examiner deems relevant to discharge the duties under this  
19 Order or as such duties may be expanded or limited by this Court; and it is further

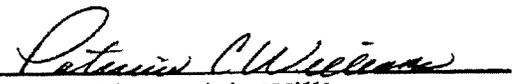
20 ORDERED that the Examiner shall have the power to waive, on an issue-  
21 by-issue basis, the attorney-client privilege of the Debtors' estates with respect to pre-  
22 petition communications relating to matters investigated by the Examiner. This  
23 provision does not affect the ability of the Debtors to waive any privileges held by the  
24 Debtors' estates. For any pre-petition communications or other documents that  
25 involve a privilege jointly held by an entity or individual other than the Debtors, the  
26 Examiner may not unilaterally waive any such privilege and may waive the Debtors'  
27 privilege only to the extent the Debtors would be permitted to do so under applicable  
28

1 law. The Examiner shall notify the Debtors' counsel of the fact and scope of any  
2 waiver of the attorney-client privilege of the Debtors' estates. It is further

3           ORDERED that the Examiner may retain counsel and other professionals  
4 pursuant to section 327 of the Bankruptcy Code, if he or she determines that such  
5 retention is necessary to discharge his or her duties. The Examiner and any  
6 professionals retained pursuant to an order of this Court shall be compensated from the  
7 Debtors' estates pursuant to section 330 of the Bankruptcy Code and any further orders  
8 of this Court.

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DATED: April 9<sup>th</sup>, 2004

  
Honorable Patricia Williams  
United State Bankruptcy Judge

Barry McHugh, ISB #3439  
 Bruce A. Anderson, ISB #3392  
 Taeya Howell, ISB #6858  
 ELSAESSER JARZABEK ANDERSON  
 MARKS ELLIOTT & McHUGH, CHTD.  
 Attorneys at Law  
 1400 Northwood Center Court  
 Coeur d'Alene, Idaho 83814  
 Tel: (208) 667-2900  
 Fax: (208) 667-2150

Attorneys for Trustee

UNITED STATES BANKRUPTCY COURT  
 DISTRICT OF IDAHO

|                                    |   |                           |
|------------------------------------|---|---------------------------|
| In Re:                             | ) |                           |
|                                    | ) |                           |
| GERALD & ONA LINDSEY, d/b/a        | ) | Case No. 03-21652         |
| SEARCHLIGHT TRUST and RIVER        | ) |                           |
| MOUNTAIN RANCH,                    | ) |                           |
|                                    | ) | AP Case No. 04-6098       |
| Debtors.                           | ) |                           |
| _____                              | ) |                           |
| FORD ELSAESSER, Chapter 7 Trustee, | ) | ORDER GRANTING MOTION FOR |
|                                    | ) | PRELIMINARY INJUNCTION IN |
| Plaintiff,                         | ) | PART AND SCHEDULING       |
|                                    | ) | EVIDENTIARY HEARING       |
| vs.                                | ) |                           |
|                                    | ) |                           |
| MICHAEL IOANE; et. al.,            | ) |                           |
|                                    | ) |                           |
| Defendants.                        | ) |                           |
| _____                              | ) |                           |

BEFORE THE COURT is a motion by Ford Elsaesser, Chapter 7 Trustee in the above-entitled action, pursuant to Rule 65 Federal Rules of Civil Procedure, for a preliminary injunction to enjoin the Defendants named below (hereinafter "TRO Defendants") from transferring, spending, investing, loaning, or in any way moving assets of the TRO Defendants without prior approval of the Trustee or the Court:

Searchlight Trust  
Cornerstone Ranch, LLC  
Mountain Property Management and Trust Company,  
L.T. & L., Inc.  
National Holding Trust  
Equitable Financial Services  
American Lending Services  
Mud Creek Mining, Inc.  
Candle Mountain Mining Company, Inc.  
Nevak Mining LLC  
H.F. Livestock Company  
Acacia Corporate Management, Inc.  
Golden Opportunity Trust  
True Technologies, Inc.

Further, the Trustee requests that the TRO Defendants place into storage all vehicles and equipment. The preliminary injunction is sought against all assets of the TRO Defendants, including:

1999 Lincoln Town Car, Serial No. 1LNHM83WXXY691499  
1993 Ford F150, Serial No. 1FTEX14N8PKA91661  
1994 Toyota, Serial No. JT4RN13P2R6061626  
1996 GMC, Serial No. 1GKEK13R6TJ736900  
1994 Nashua Mobile Home, Serial No. NCID32763  
1983 Vogue Mobile Home, Serial No. 350403534  
1984 Skyline Mobile Home, Serial No. 22960261T  
Brother Fax Machine MFC4350, Serial No. U56360E8984775  
Tiger Computer System, Serial No. 003054072  
HP Scan Jet, 6200C, Serial No. SG95J171V6  
HP Desk Jet 895CSE, Serial NO. SG91T1W1Z  
Desk

On April 20, 2004, Plaintiff filed a Motion for Temporary Restraining Order and Preliminary Injunction. After review by the Court, and no objections being filed, on April 26, 2004, at 11:45 a.m. the Court granted Plaintiff's Motion for Temporary Restraining Order and scheduled a hearing on the Motion for Preliminary Injunction on May 4, 2004, at 9:00 a.m. Pacific Daylight Savings Time in Moscow, Idaho. At that time the Court held a hearing and considered the evidence and arguments presented by the parties.

Based upon the evidence and argument presented to the Court in support of the Trustee's motion, and in opposition thereto presented by Nevak Mining, LLC, the Court finds as follows:

1. The evidence presented satisfies the requirements of *Earth Island Institute v. U.S. Forest Service*, 351 F.3d 1291 (9th Cir. 2003) for a preliminary injunction, as set forth below.

a. Strong Likelihood of Success on the Merits

A preliminary injunction is necessary to prevent the likely immediate and irreparable injury, loss, or damage to the bankruptcy estate through the dissipation of assets which appear to be property of the bankruptcy estate. The evidence establishes that in 1994 there was an attempt by Debtors to establish the Searchlight Trust (hereinafter "Searchlight"), allegedly for estate planning purposes. Debtors, and L. T. & L., Inc., Debtors' wholly owned corporation, received nothing for the transfer of virtually all of the real and personal property owned by them, which included thousands of acres of property. Debtors have assert in testimony that there was an oral agreement that would allow them to build and furnish their current residence with Searchlight funds, that they could live there until death, that Searchlight would purchase and maintain vehicles for Debtors, and that Searchlight would pay their insurance, medical, and other living expenses until death. No such agreement exists in the document purporting to establish Searchlight.

In the time since Searchlight was purportedly established, no limits have been placed on the amount of living expenses incurred by Debtors. Further, Debtors acted no differently towards the property after it was transferred to Searchlight, and used the assets to build and furnish a lavish residence. It appears that none of the shares called for by Searchlight's establishing document were ever issued. Further, the trustees were mere figureheads, doing as Debtors wished with regards to Searchlight property. Mike Ioane (hereinafter "Ioane") was

selected by Debtors to be the “administrator” of Searchlight after receiving an assessment letter from the Internal Revenue Service. Even though that position does not exist in the document purporting to establish Searchlight, Ioane appears to have used Searchlight and the other TRO Defendants to hide and encumber assets transferred to Searchlight.

The above facts prove to the Court a strong likelihood of success on the merits regarding Plaintiff’s claim that Searchlight is an invalid trust under Idaho law, or a sham trust or alter ego of Debtors. *U.S. v. Geissler*, No. 92-0338-S-EJL, 73 A.F.T.R.2d 94-459, 1993 WL 625535 (D. Idaho 1993). That conclusion leads to a finding that Plaintiff’s request for the assets held by the TRO Defendants will be returned to the bankruptcy estate. Therefore, a preliminary injunction is appropriate as to Debtors, Searchlight, River Mountain Ranch, and L. T. & L., Inc.

With regards to Mountain Property Management and Trust Company (hereinafter “Mountain Property Management”), National Holding Trust (hereinafter “National Holding”), Equitable Financial Services (hereinafter “Equitable Financial”), and American Lending Services, the evidence presented shows that Plaintiff has a strong likelihood of success regarding the claims which assert that these entities are sham trusts or alter egos for Debtors, and that they own or hold interests in property which originally came from Debtors and L. T. & L., Inc. Assets previously transferred to Searchlight were subsequently transferred to these entities, or these entities were granted interests in the assets. There was no apparent consideration for the transfer of the assets or for the interests granted to these entities. Debtors have little or no knowledge of the entities, even though the entities now hold most or all of the Debtors’ significant wealth, and Debtors appear to have no knowledge regarding what might happen to the assets which were purported to have been transferred to Searchlight for estate planning purposes. Julie Fowler (hereinafter “Fowler”), a trusted friend and former employee of Debtors, and a

person holding positions with Mountain Property Management and National Holding, appears to have no knowledge of the purpose of these entities and takes her direction from Ioane.

A preliminary injunction regarding Mud Creek Mining, Inc., Candle Mountain Mining Company, Inc., and True Technologies, Inc. is appropriate to protect the interests in those entities in assets which originate from Debtors' assets. The Mud Creek Mining, Inc. 2002 return shows that National Holding is a 95% shareholder, and the 2002 Candle Mining Company return shows that Bernard Gira, Noel Tanner, and National Holding are each 33% shareholders. Gerald Lindsey unilaterally decided to relinquish Mud Creek Mining mining claims to National Holding despite having no knowledge of National Holding. The evidence also establishes the involvement of Mr. Lindsey with Mud Creek Mining by signing affidavits of annual labor on its behalf for the years 2001, 2002, and 2003. True Technologies, Inc. is an Idaho corporation formed in September, 2002. The Articles of Incorporation state that National Holding is a 50% shareholder. This evidence shows a strong likelihood of success by Plaintiff in returning assets of those entities to the estate.

A continuation of the temporary restraining order with regards to Nevak Mining, LLC is appropriate pending a full evidentiary hearing can be heard by the Court. Gerald Lindsey signed the Mud Creek Mining, Inc. tax returns for 1999 and 2000, and for Nevak Mining in 1999, despite his lack of knowledge regarding their management and administration. Tax returns signed by the preparer, Mary Fuentes, but not signed by an entity representative show that National Holding was a 95% shareholder of Nevak Mining, Ltd. in 2002, and these entities appear to be one and the same. Further, the 95% National Holding interest appears to have come from Gerald Lindsey (55%) and Noel Tanner (40%), a business associate of Gerald Lindsey. While National Holding may have transferred a 90% interest in Nevak to third party investors, it

is unclear the nature of that transaction and what assets were used to pay for the 90% interest. Therefore, a full evidentiary hearing is necessary to fully determine the parties' claims

A preliminary injunction is appropriate as to H.F. Livestock Company and Acacia Corporate Management, Inc. in that these entities have been receiving checks from Equitable Financial. On March 5, 2004, Julie Fowler withdrew \$6,000.00 from the Equitable Financial checking account and obtained a cashier's check to that entity. On September 17, 2003, an Equitable Financial check for \$3,000.00 was made to Acacia Corporate Management, and on December 5, 2003, a \$6009.12 Equitable Financial check was made to Acacia Charitable Foundation. This shows a strong likelihood that H.F. Livestock Company and Acacia Corporate Management, Inc. have property of the bankruptcy estate.

A preliminary injunction is appropriate as to the Golden Opportunity Trust as Searchlight is the sole beneficiary of the Golden Opportunity Trust and Searchlight's beneficial interest is property of the bankruptcy estate.

A preliminary injunction is appropriate as to Cornerstone Ranch, LLC in that it is the owner of a parcel of property in Nevada, in which debtors report a 50% ownership interest in their bankruptcy schedules. Given the actions of Debtors in this action, the preliminary injunction is necessary to protect estate assets.

A preliminary injunction is appropriate as to John Doe 1-20 based on the Court's conclusion that other persons or entities may be involved in this matter or hold interests in property subject to the preliminary injunction. Specifically, Gerald Lindsey has refused to testify about his loan of \$660,000 to an individual in 1999 or 2000. This specific evidence leads the Court to believe that other unknown individuals may be involved with the TRO Defendants or may hold estate assets. Therefore, their activities are hereby enjoined.

b. The Possibility of Irreparable Injury to Plaintiff if the Preliminary Injunction is not Granted

There is credible evidence before the Court that individuals, including Fowler, have been actively transferring and spending estate assets. In March, 2004, Fowler withdrew \$29,925.78 from the Equitable Financial account and \$4,427.52 from the Mountain Property Management account in the Sterling Savings Bank. She withdrew \$15,000.00 in March, 2004, from a Wells Fargo account for Nevak Mining, Ltd. before the Trustee seized the remaining \$32,237.89 on March 15, 2004. On March 11, 2004, Fowler withdrew \$14,007.75 from a National Holding bank account. Further, many of the entities are now using a new address, 108 E. John Street, Suite 200, Carson City, Nevada, the address of attorney Steven Stucker. These activities appear to be in reaction to Plaintiff's actions in this matter. Without the preliminary injunction, there is a strong possibility of irreparable injury to the bankruptcy estate through the dissipation or hiding of assets.

c. A Balancing of Hardships Favors Plaintiff

While the strong possibility of irreparable injury to Plaintiff weighs heavily in favor of Plaintiff, little or no hardship arises to the TRO Defendants. It appears that the TRO Defendants conduct little or no business outside of the care and management of assets that were once owned by Debtors. To the extent that the TRO Defendants desire to conduct business, it can be accomplished with the approval of the Trustee, or if necessary, through the Court.

d. The Preliminary Injunction Advances the Public Interest

The creditors to a bankruptcy estate are the equivalent of "the public interest" requirement for an injunction. In re Eagle Pitcher Industries, Inc., 973 F.2d 855, 861 (6th Cir. 1992).

2. The evidence presented satisfies the requirements of the alternative basis for a preliminary injunction set forth in *Earth Island Institute v. U.S. Forest Service*. Plaintiff has demonstrated that serious questions are raised and the balance of the hardships tips sharply in his favor. *Id.* at 1298 (citation omitted). As set forth above, Plaintiff has not only proved that serious questions are raised, he has proved a likelihood of prevailing on these issues. Further, the hardships tip sharply in Plaintiff's favor. The evidence demonstrates efforts on the parts of some of these entities to move and hide assets in the face of Plaintiff's inquiries regarding assets. The Court is aware of the extreme difficulties faced by Plaintiff in tracing and securing assets which others are trying to hide. There has been minimal hardship presented by the TRO Defendants, and none that cannot be overcome through the cooperation of Plaintiff and his counsel. These hardships tip sharply in Plaintiff's favor, and therefore a preliminary injunction is justified on this alternative basis.

3. Notice was provided by the Trustee by mail to almost all TRO Defendants after a good faith effort by the Trustee to identify addresses for those entities, and personal service was attempted on Julie Fowler, Boyd Hopkins, Ray and Marianne Holes, and Debtors. An Order for Publication of Summons directed to American Lending Services, Golden Opportunity Trust, Cornerstone Ranch, LLC, Darrell Willis, Vern I. Brown and John Doe 1-20 has been authorized by the Court. Further, the order granting the temporary restraining order, which also established the hearing date, time and place for the hearing on the Motion for Preliminary Injunction was published in the Idaho County Free Press on Wednesday, April 28, 2004.

Based upon the motion, and good cause showing, and the Court's findings,

IT IS HEREBY ORDERED that the Motion for Preliminary Injunction is GRANTED as to all TRO Defendants with the exception of Nevak Mining, Ltd., and shall continue until further

order of the Court. The TRO Defendants named below, and their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, are hereby enjoined and restrained from transferring, spending, investing, loaning, or in any way moving assets of the Defendant trusts, corporations, or other entities without prior approval of the Chapter 7 Trustee or the Court:

Searchlight Trust  
Cornerstone Ranch, LLC  
Mountain Property Management and Trust Company,  
L.T. & L., Inc.  
National Holding Trust  
Equitable Financial Services  
American Lending Services  
Mud Creek Mining, Inc.  
Candle Mountain Mining Company, Inc.  
H.F. Livestock Company  
Acacia Corporate Management, Inc.  
Golden Opportunity Trust  
True Technologies, Inc.

The TRO Defendants are ordered to place into storage all vehicles and equipment. This order specifically applies to the following:

1999 Lincoln Town Car, Serial No. 1LNHM83WXXY691499  
1993 Ford F150, Serial No. 1FTEX14N8PKA91661  
1994 Toyota, Serial No. JT4RN13P2R6061626  
1996 GMC, Serial No. 1GKEK13R6TJ736900  
1994 Nashua Mobile Home, Serial No. NCID32763  
1983 Vogue Mobile Home, Serial No. 350403534  
1984 Skyline Mobile Home, Serial No. 22960261T  
Brother Fax Machine MFC4350, Serial No. U56360E8984775  
Tiger Computer System, Serial No. 003054072  
HP Scan Jet, 6200C, Serial No. SG95J171V6  
HP Desk Jet 895CSE, Serial NO. SG91T1W1Z  
Desk  
Office Equipment  
Farm Equipment

Further, the Court orders that no bond shall be required in connection with the preliminary injunction.

The temporary restraining order is continued regarding Nevak Mining, LLC pending a full evidentiary hearing on the motion for preliminary injunction, which is hereby scheduled to be heard on the 17<sup>th</sup> day of May, 2004, at 9:00 a.m. Pacific Daylight Savings Time, in Moscow, Idaho.

DATED this 4<sup>th</sup> day of May, 2004, at \_\_\_\_\_ .m.

/s/

TERRY L. MYERS

United States Bankruptcy Judge

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF IDAHO

In Re:  
RICHARD GIRNT BUTLER,  
Debtor.

CASE NO. 00-21265  
NOTICE OF PUBLIC AUCTION  
SALE OF BANKRUPTCY ESTATE  
PROPERTY BY BANKRUPTCY  
TRUSTEE

COMES NOW, the undersigned duly appointed Chapter 7 trustee in the above-entitled matter, and gives notice of sale as follows:

Pursuant to a Court order dated January 17, 2001, Ford Elsaesser, Trustee for the Estate of Richard Girnt Butler, (hereinafter "Trustee"), has been authorized under 11 U.S.C. § 363 (the Bankruptcy Code) to sell, at open auction, one combined lot of real and personal property, consisting of all of the Trustee's interest in the property of the above-named estate (hereinafter "Butler Estate"). The real property being sold hereunder, as further described below, is being sold free and clear of liens under §363 of the Bankruptcy Code, with any valid liens to attach to the cash proceeds received from the sale. The personal property being sold in combination with the real property is being sold by assignment or transfer of any legal or equitable rights of the Butler Estate without any warranty as to quality, quantity, nature, usability, or in the case of any intellectual property being transferred, the legal

NOTICE OF PUBLIC AUCTION SALE OF  
BANKRUPTCY ESTATE PROPERTY BY BANKRUPTCY TRUSTEE: 1

Handwritten initials or signature.

1 sustainability of any proprietary protections of said intellectual  
2 property. The real and personal property summarized below are being  
3 sold in an "as-is, where-is" condition, with any perspective  
4 purchaser relying on his or her own inspection and satisfaction with  
5 the quality and condition of said property.

6 The real and personal property shall be sold, in one lot, by  
7 open, public auction at the United States Bankruptcy Court, U.S.  
8 Courthouse & Federal Building, 205 N. 4th Street, Coeur d'Alene,  
9 Idaho, on the 13th day of February, 2001, at the hour of 9:00 o'clock  
10 a.m. There is an opening bid received by the Butler Estate of Two  
11 Hundred Fifty Thousand Dollars (\$250,000), with minimum overbids  
12 above that sum in increments of no less than Five Thousand Dollars  
13 (\$5,000). Prospective bidders, other than the opening bidder, must  
14 submit to the Trustee five (5) business days prior to the auction, a  
15 bid deposit in the cash amount of Fifteen Thousand Dollars (\$15,000)  
16 and an irrevocable letter of credit in favor of the Trustee in the  
17 amount of no less than Three Hundred Thousand Dollars (\$300,000),  
18 both of which would be refunded to the bidder unless the bidder is  
19 the successful purchaser. Because of certain liens that the opening  
20 bidder has upon the real estate, the opening bidder is entitled to  
21 credit bid a substantial portion of the purchase price.

22 Serious prospective bidders may inspect the real and personal  
23 property by contacting the Trustee at the address and phone number  
24 set out below. The real and personal property are generally  
25 described in summary fashion as follows:

26

27

NOTICE OF PUBLIC AUCTION SALE OF

28

BANKRUPTCY ESTATE PROPERTY BY BANKRUPTCY TRUSTEE: 2

1 Bankruptcy Court at the United States Courtroom, Fourth and Lakeside,  
2 Coeur d'Alene, Idaho on the 13th day of February, 2001 at the hour of  
3 9:30 o'clock a.m., that the United State Bankruptcy Court for the  
4 District of Idaho confirm said sale, and allow closing of said sale  
5 within fifteen (15) days of the date of said confirmation order.

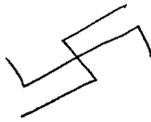
6 DATED this 17<sup>th</sup> day of January, 2001.

7   
8 \_\_\_\_\_  
9 Ford Elsaesser, Chapter 7 Trustee

10 For further information, contact:

11 Ford Elsaesser, Trustee  
12 P.O. Box 2220  
13 Sandpoint ID 83864  
14 (208) 263-8871

15 Please leave with any phone message, your name, business name, and  
16 daytime telephone number.  
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Nov 30<sup>th</sup> 00

Hey you Jewish Bastard  
release my mail ⚡  
you Edomite lying stinkin  
Piece of shit ⚡ these doors  
turn + turn, revolve in a circle  
& I shall not turn to the left  
or to the right so therefore release  
our mail, you Edomite Jewish  
Piece of Camel dung lookin  
Son of Belial ⚡ I do pray  
for you Ford, look out for the  
heaping coals of Brimstone falling  
upon your Head; from "YHWH" The  
"Great I AM" your King Jesus  
Christ shall judge between me & you.  
My King, My Savior Jesus Christ  
the Son of YHWH ⚡ your Anti-Christ  
Family is losers + deceivers as you  
are of your Father, who was a liar  
from the beginning, Blind leading  
the Blind & you all shall go down  
into the Pit ⚡

⚡ Struck A 88  
#

RALPH ROBINSON #878413  
12071 IN 3-22

FORD

YOU JEW FUCK, WHAT GIVES YOU THE RIGHT TO TAKE MY PASTOR'S MAIL, WHEN HIS BANKRUPTCY HAS NOTHING TO DO WITH OUR CHURCH. IF YOU HAVE ANY OF MY MAIL OF MY BROTHERS MAIL & SISTERS MAIL, WHICH I KNOW YOU DO. YOU JEW BITCH, WHAT GIVES YOU THE ~~THE~~ RIGHT TO BREAK THE LAW, FEDERAL LAW AT THAT AND TAKE PEOPLE'S MAIL.

WE DEMAND OUR PRIVACY AND OUR RIGHTS SO MAIL BACK OUR MAIL, AND KEEP YOUR FUCKING, SHIT STAINED FUCKING JEWISH PUNK ASS, OUT OF OUR RIGHTS AND BUSINESS.

YOUR FUCKING WORST  
NIGHTMARE

JESSE MENZONAROLS

11-19-00

MR. ELSEASSER

I'm curious as to what you intend to accomplish by seizing Church of Jesus Christ Christian incoming mails, with this being a communist act as well as disregarding one's first amendment rights. I understand seizing Mr. Butler's personal mails, but the church's incoming correspondence has no part in the chapter 7 in which Mr. Butler has filed. There are thousands of brothers, sisters, mothers and fathers who look toward Pastor Butler in times of need to answer questions of today's dilemmas which we face daily in this world where communist heathen bastards such as yourself ~~dictate~~ dictate.

MR. ELSEASSER I stress, this is not a socialist state but, one of rights + freedom for which our fathers + theirs shed their blood and tears to obtain. This is the United States of America for which many are proud to call home and land of the brave, unlike cowards like you which hide behind a legal curtain of communism.

furthermore, in the coming years I wish you endless days of wallowing in a quagmire of dung in which you've created for the swine of your kind.

Identity Christian

Paul Adam Davis

to: Ford Elsasseri

I am writing to you concerning 2 letters regarding religious & Political Views & beliefs to Mr. Rev. R. G. Butler % CJCC, P.O. Box 362 Hayden Lake, Id. 83835 dated 10-11-00 & 10-10-00.

I have been informed that you have illegally confiscated federally regulated mail to P.O. Box 362 in the mail you have confiscated is 2 letters from me, regarding religious & Political Materrals, None of which has anything to do with bankruptcy. These are personal letters NOT addressed to you or your office. I Demand These letters be returned to me immediately. What you have and are doing is illegal and infringing upon another religious and Political rights which you Nor anyone else has a right to do. Return my Letters & the others to the intended addressee at once. You are obviously a Jew bastard who support and is part of the ZOG system. Sooner or later what you have done will catch up to you and you will pay for your theft and oppression of a man of God for the White Aryan Race.

Ron Rocco DD 7591  
S.C.I. Frackville  
1111 Altamont Blvd.  
Frackville, PA 17931

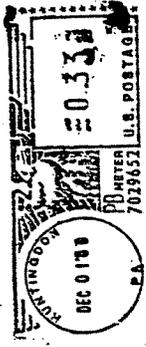
Weiß Macht  
Ron Rocco

CC: EJCC  
REV. R. G. Butler

11-15-00

Name P. Joseph Siko  
Number AS 5384 - PRO-SC  
1100 Pike Street  
Huntingdon, PA 16654-1112

PA DEPT OF CORRECTIONS



To: H. JAMES MAGDOUSO  
ATTORNEY AT LAW  
P.O. Box # 2288  
COEUR D'ALENE, IDAHO 83816-83864

LEGAL / CONFIDENTIAL MAIL  
cc: REV. R.G. BUTLER, LETTER  
SENT TO HIM. WITH CASE  
LAW on HIS ENVELOPE 4/16/88

Inmate Mail - PA. DEPT OF CORRECTIONS

(2)



attorney for Mr. Ford ~~ALASSER~~ COPYE  
You must HOLD your COPY UP to a  
LIGHT TO properly read AND  
SEE WRITING at top of FIRST  
PAGE ON BACK SIDE ~~as more~~  
CLEAR IN INK.

YOU MAY HAVE your SECRETARY  
HOLD UP TO A LIGHT AND TYPE  
my WRITING ~~of SOUTH LEGAL~~  
DOCUMENT 7-PAGES IN RE  
CASE NO. 00-21265? ONLY  
YOU MUST CONFER with ~~Rev.~~ Butler  
AS TO ANY COPY CLAIMS OR  
RIGHTS TO BE ALLOWED TO ANSWER my  
LETTER OF CONCERNS. your CLIENT  
HAS VIOLATED my RIGHTS AS OUTLINED  
AND REVEAL BUTLER'S RIGHT TO  
CONFER RELIGIOUSLY with me  
LAW STATE IT MUST BE CLEAR  
~~AND LEGIBLE CARBON COPIES~~  
LEDGER. YOU ONLY NEED TO SEE  
THE LIGHT TO X-RAY SEE LAWS  
ON X-RAY READINGS 3 CARBON READINGS

You must show Rev. Butler <sup>Respectfully</sup>  
A COPY OF THIS PAGE  
OR YOU VIOLATE my RIGHTS  
under legal document writings  
AND RULES TO DISCLOSE INFORMATION(S)  
U.S. CONST. ART. III, § 2, CL. 1. vs. PENNSYLVANIA

Joseph R. ...  
AS-338  
SCI-HUNTINGDON  
1100 PINE ST  
HUNTINGDON PA 16654

701 PINE ST ...

New' a Correctional Facility  
307 L 60<sup>th</sup> Avenue West  
P.O. Box 218  
Newton, Iowa 50208-0218

Mr. Ford Elvasser,  
Chapter #7 Bankruptcy Trustee  
PO Box # 2220  
Sundpoint, I.O. (33361)

11-21-2020

Dear Mr. Ford Elvasser,

It has been brought to my attention, That you have taken it upon yourself to Seize all the incoming mail being sent to PO Box # 3122. It appears by your name, that you are one of the many enemies of the white Christian's Lord and Saviour, Jesus Christ. In the New Testament scriptures, Jesus Christ; Berats your people for being hypocrites, you do your works in order to be seen by men, that you are fools and blind, and you are full of the bones of the dead and mongrelization according to Mathew: 23:13-22 (AST). Furthermore in mathew: 23:33 (AST) Hes Says of you "Snakes, Vipers! How do you escape from the judgement of Gehenna? To remind you, "You" killed "My" God. To which you shall receive eternal punishment. And those will go into eternal punishments, but the Just, Into eternal life. your people answered after demanding that my god be put to death. "His blood His blood is on us, and on our children, mathew: 27:25 (AST) which it shall be. Beware of the Scribes, Those desiring to walk about in robes and liking greetings in the markets, And chief seats in the Synagogues, And Chief Coaches in the suppers, Those devouring the houses of widows, And pray long under pretense. These will receive a more severe punishment. Jesus Christ tells you in John: 8:12 (AST) where I go you are not able to come" And in John: 8:33 (AST) you are from below; I am from above. You are from this world. I am not from this world. When your people, Acting as authorities, claimed to be children of abraham, Christ Said; If you were children of Abraham, you would do the works of Abraham. But you seek to kill me, A man who has spoken the truth to you, which I heard alongside God. Abraham did not do this. You do the works of your father." Then Jesus said "If God were your father, you would love me, for I went forth and have come from God. For I have not come from myself, But that one sent me. Why do you not understand my speech? Because you were not able to hear my word. You are from your father, The Diabolical One, And the lusts of your father you wish to do. That one, was a murderer from the beginning, and he has not stand in the truth because there is no truth in him. when he speaks a lie,

Newton Correctional Facility  
307 S. 60<sup>th</sup> Avenue West  
P.O. Box 218  
Newton, Iowa 50208-0218

He speaks from his own because he is a liar, and the father of it. And because I speak the truth, you are not persuaded by me. Who of you reproves me concerning failure? But if I speak truth, why are you not persuaded by me? He who is of God, hears the words of God; For this reason you do not hear me, because you are not of God." John 8:39-41 (ASV)

These are just some of many passages said by Jesus Christ that can be found in the new testament.

There are many more that can be cited to describe, and prove without a doubt that you and your people, who claim to be the "chosen people" of God are really wolves in sheeps clothing, who are the twice dead children of Satan.

If its mail you want from the white christian, it is mail you got, only its now by our choice, not yours.

The next time you decide to take it upon yourself and committ a federally criminal act by siecing mail not belonging to you, think twice about what you lead. You are without conscience, so therefore I doubt any of this has meaning to you.

Was it not enough for you that Aryan Nations lost a judgement against them? why do you choose to further punish Pastor Butler by trying to cut him off from fellow white christians?

Thanks to Aryan Nations they have awakened and unbrainwashed, and salvaged many white souls that had been corrupted by the immorality that has been taught and beaten into their heads by Jewish run media, Jewish influenced community schools, usury, forced integration, Race mixing by making people Biblically ignorant with Jewish propaganda and lies, telling christians that since "they" are "Gods chosen people", that "they" are the biblical authorities.

While you may have succeeded in a few aspects, in a much broader perspective, "you have failed", for by researching the facts, the truth reveals itself.

Since you have got the mail you wanted, I hope you have the decency to respond to the mail you have recieved. Come forward and reveal yourself,

**COWARD !!!**

Patiently Awaiting Your Response,

Shane Bratten  
Shane Bratten

NOV. 30, 2000

FORD ELSAESSER,

I HAVE BEEN NOTIFIED THAT YOU HAVE  
SEIZED MY PERSONAL MAIL AND DONATION  
TO CHURCH OF JESUS CHRIST CHRISTIAN,  
MAILED FROM LUBBOCK, TEXAS ON NOV.  
1, 2000 WITH POST MARK DATE.

I WANT YOU TO REFUND ME THE  
THREE DOLLARS AND NINETY SIX CENTS "\$3.96"  
WHICH WAS ENCLOSED IN THE LETTER.

YOU HAVE NO LEGAL RIGHT TO OPEN MY  
MAIL!

HERE IS MY ADDRESS TO SEND MONEY  
ORDER OR CHECK PAYABLE TO

MR. DENNIS RAY DURHAM  
823116 - 100 AIRPORT RD.  
SPUR, TX, 79370

SINCERELY,

*Dennis Ray Durham*

Joseph L. DRIce  
M.C.I - C-J  
P.O. Box # 100  
SO. Walpole, MA, 02071

11-24-00

RE: Illegal Mail Intrusions.

MR. Ford, Elsaesser,

On October 28<sup>th</sup> 2000, you illegally opened my private correspondence to my Clergyman - pastor Richard Butler at P.O. Box # 362, Haydenlake Id, 83835.

I am legally and Constitutionally Guaranteed The Right to private Consultation, and Communication via The U.S. postal Service to the Clergy, Church or Religion of my Choice.

According to the U.S. District Court in California, and the U.S. Supreme Court, The Court nor its liasions may Deprive a Citizen of his/her Right to worship a Chosen Religion, nor will it Compare the Beliefs, merits, dogmas or practices to THEES - which is not his own. Meaning, you cannot Trampled upon, or Infringe my legal, (and god given Right) to worship and follow that of The Church of Jesus Christ Christian. Which you are Biased against,  
Because you are Anti-Christien,

I Hereby state that any mail from me to my Clergy, Be Unopened and Immedity Returned to me.

cc-file  
Sen. Kennedy

A Chosen one

J. L. Dri

11-22-00

Ford E. Scasser,

I expect that my mail be returned to me along with a money order for \$1. you have NO right to confiscate my mail and 3 stamps that were sent to The Church of Jesus Christ Christian, as a donation for religious material. if I do not receive my \$1 and letter I will file criminal charges against you you have 30 days to reply. Remember Zog, you are not able to do anything you want without repercussions.

In Blood, Honor & Respect  
Jason Eidam

Copy to Attorney Peter J. Johnson

Reply to  
Jason Eidam # 266232  
1790 E. Parnell  
Jackson, MI 49201-7139

Nov. 8, 2000

Dear Elseuser

I'm writing in concern of you stealing mail from  
Church of Jesus Christ Christian / Ar yan Nations.

Just what is it that you are trying to prove?

So far you are only proving that you are a  
bloodsucking communist that enjoys beating up  
an old man. Your day is coming though. Jesus Christ  
will see to that. If you want mail we will give it  
to you buddy. I wrote to all of our members and  
supporters and gave them your address so they  
can all send you mail in the line of protesting you  
being a thief to our church.

Jew loving greers such as yourself will be done  
in the ar meggedin. That is one thing I assure you.  
I guess because you are a Jew, nigger lover, you think  
you can break federal laws. Well don't worry  
you will be getting a protest out of this

Sincerely

Shawn

Winkler

Barry McHugh, ISB #3439  
 Bruce A. Anderson, ISB #3392  
 Taeya Howell, ISB #6858  
 ELSAESSER JARZABEK ANDERSON  
 MARKS ELLIOTT & McHUGH, CHTD.  
 Attorneys at Law  
 1400 Northwood Center Court  
 Coeur d'Alene, Idaho 83814  
 Tel: (208) 667-2900  
 Fax: (208) 667-2150

Attorneys for Trustee

UNITED STATES BANKRUPTCY COURT  
 DISTRICT OF IDAHO

|                                            |   |                       |
|--------------------------------------------|---|-----------------------|
| In Re:                                     | ) |                       |
|                                            | ) |                       |
| GERALD & ONA LINDSEY,                      | ) | Case No. 03-21652     |
|                                            | ) |                       |
| Debtors.                                   | ) |                       |
| _____                                      | ) |                       |
| _____                                      | ) |                       |
| FORD ELSAESSER, Chapter 7 Trustee,         | ) |                       |
|                                            | ) |                       |
| Plaintiff,                                 | ) | AP Case No.           |
| vs.                                        | ) |                       |
|                                            | ) |                       |
| MICHAEL IOANE; GERALD LINDSEY; ONA         | ) |                       |
| LINDSEY; SEARCHLIGHT TRUST, purported      | ) | TRUSTEE'S MOTION FOR  |
| to be an Oregon trust; BOYD HOPKINS; JAMES | ) | TEMPORARY RESTRAINING |
| SPICKELMIRE; JULIE FOWLER; SHANNON         | ) | ORDER AND PRELIMINARY |
| LINDSEY; RAY HOLES; MARIANNE HOLES;        | ) | INJUNCTION            |
| GLEN HALLIDAY; CORNERSTONE RANCH,          | ) |                       |
| LLC, a Nevada limited liability company;   | ) |                       |
| MOUNTAIN PROPERTY MANAGEMENT               | ) |                       |
| AND TRUST COMPANY, purported to be an      | ) |                       |
| Idaho entity; L.T. & L., INC., an Idaho    | ) |                       |
| corporation; NATIONAL HOLDING TRUST,       | ) |                       |
| purported to be an Idaho entity; EQUITABLE | ) |                       |
| FINANCIAL SERVICES, purported to be an     | ) |                       |
| Idaho entity; AMERICAN LENDING             | ) |                       |
| SERVICES; MUD CREEK MINING, INC., an       | ) |                       |
| Alaska corporation; CANDLE MOUNTAIN        | ) |                       |
| MINING COMPANY, INC., an Alaska            | ) |                       |

corporation; NEVAK MINING LLC, a Nevada )  
limited liability company; H.F. LIVESTOCK )  
COMPANY, an Idaho corporation; ACACIA )  
CORPORATE MANAGEMENT, INC., purported )  
to be a Nevada corporation; GOLDEN )  
OPPORTUNITY TRUST; TRUE )  
TECHNOLOGIES, INC. an Idaho corporation; )  
VERN I. BROWN; DARRELL WILLIS; )  
LORAINÉ ROBINET; ALANA LOUISE )  
ATCHISON; RENE DARLENE HOWDEN; THE )  
UNITED STATES OF AMERICA, and its agency, the )  
INTERNAL REVENUE SERVICE, STATE OF )  
IDAHO DEPARTMENT OF REVENUE; and et. al., )  
Defendants. )  
\_\_\_\_\_)

COMES NOW, Ford Elsaesser, Chapter 7 Trustee in the above-entitled action, by and through his attorney of record, Barry McHugh of ELSAESSER JARZABEK ANDERSON MARKS ELLIOTT & MCHUGH, CHTD., and respectfully moves the Court pursuant to Rule 65, Federal Rules of Civil Procedure, for a temporary restraining order and a preliminary injunction to enjoin the Defendants named below (hereinafter “TRO Defendants”), and their representatives and agents, from transferring, spending, investing, loaning, or in any way moving assets of the TRO Defendants without prior approval of the Trustee or the Court:

- Searchlight Trust
- Cornerstone Ranch, LLC
- Mountain Property Management and Trust Company,
- L.T. & L., Inc.
- National Holding Trust
- Equitable Financial Services
- American Lending Services
- Mud Creek Mining, Inc.
- Candle Mountain Mining Company, Inc.
- Nevak Mining LLC
- H.F. Livestock Company
- Acacia Corporate Management, Inc.
- Golden Opportunity Trust
- True Technologies, Inc.

Further, the Trustee requests that the TRO Defendants place into storage all vehicles and equipment owned by the entities named above. The temporary restraining order and preliminary injunction is sought against all assets of the TRO Defendants, including:

1999 Lincoln Town Car, Serial No. 1LNHM83WXXY691499  
1993 Ford F150, Serial No. 1FTEX14N8PKA91661  
1994 Toyota, Serial No. JT4RN13P2R6061626  
1996 GMC, Serial No. 1GKEK13R6TJ736900  
1994 Nashua Mobile Home, Serial No. NCID32763  
1983 Vogue Mobile Home, Serial No. 350403534  
1984 Skyline Mobile Home, Serial No. 22960261T  
Brother Fax Machine MFC4350, Serial No. U56360E8984775  
Tiger Computer System, Serial No. 003054072  
HP Scan Jet, 6200C, Serial No. SG95J171V6  
HP Desk Jet 895CSE, Serial NO. SG91T1W1Z  
Desk  
Misc. Items

A temporary restraining order and a preliminary injunction are necessary to immediately prevent the dissipation of assets which are property of the bankruptcy estate. The Trustee asserts that the assets of the TRO Defendants come substantially or entirely from Gerald and Ona Lindsey, or their wholly owned corporation, L.T.&L., Inc., which assets were transferred without any consideration, and over which the Lindseys exercised exclusive control until the involvement of Mike Ioane with the Searchlight Trust. The Trustee alleges, among other things, that the named TRO Defendants are sham trusts, or entities controlled by sham trusts, and that in fact all of the assets of the entities are assets of the bankruptcy estate. Therefore, the temporary injunction and preliminary injunction are designed to prevent the dissipation of assets available for creditors of the bankruptcy estate.

The grounds for this motion are set forth more fully in the Affidavit of Ford Elsaesser and the memorandum in support filed contemporaneously herewith, and other affidavits filed in this matter.

WHEREFORE, the Trustee hereby requests that the Court preliminarily enjoin and restrain the TRO Defendants named above from transferring, spending, investing, loaning, or in any way moving assets of the TRO Defendants without prior approval of the Chapter 7 Trustee or the Court, and that the Court require no bond in connection with the injunction. Further, the Trustee requests a hearing on his motion for a preliminary injunction, if necessary, be scheduled for May 4, 2004, and that if the hearing is not scheduled within ten (10) days of the issuance of the temporary restraining order, that the Court enter an order extending the temporary restraining order until a decision can be made on the Trustee's Motion for Preliminary Injunction so that the parties are not required to incur the additional financial burden and inconvenience of traveling to Boise for a hearing.

DATED this \_\_\_\_\_ day of April, 2004.

ELSAESSER JARZABEK ANDERSON  
MARKS ELLIOTT & MCHUGH, CHTD.

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Barry McHugh  
Attorney for Chapter 7 Trustee

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COLUMBIA LEGAL SERVICES

Nancy L. Isserlis  
1704 W. Broadway  
Spokane, WA 99201  
(509) 324-2789

Griselda Vega  
510 Larson Building  
6 South Second Street  
Yakima, WA 98901

Attorneys for Isidro Jiminez and Panfilo Silva  
Abogada para Isidro Jiminez y Panfilo Silva

NORTHWEST JUSTICE PROJECT

Kathy Tierney  
304 Larson Building  
6 South Second Street  
Yakima, WA 98901

Attorney for Amador Barajas  
Abogada para Amador Barajas

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON

TRIBUNAL DE QUIEBRAS DE LOS ESTADOS UNIDOS  
DISTRITO ORIENTAL DE WASHINGTON

In RE:  
ASUNTO:

**JERRIE VANDER HOUWEN,**

Debtor.  
Deudor.

No. **03-01244-R11**

SUMMARY OF PLAN OF REORGANIZATION –  
ENGLISH AND SPANISH VERSIONS

RESUMEN DEL PLAN DE  
REORGANIZACIÓN –  
VERSIONES DE INGLÉS Y ESPAÑOL

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Isidro Jiminez and Panfilo Silva (the “Worker Proponents”) and U.S. Bank National Association (“U.S. Bank”) have filed a Joint Plan of Reorganization (the “Plan”) and a Disclosure Statement in this bankruptcy case involving Jerrie Vander Houwen and his orchards. Worker proponents requested that a brief summary of the Plan be approved by the Court and then translated into Spanish so that workers with limited English proficiency could have more meaningful access to these proceedings involving their unpaid wages. Each creditor, including each Farmworker, should carefully review the entire Plan and Disclosure Statement before deciding how to vote on the Plan. A copy of the Disclosure Statement and Joint Plan of Reorganization is being mailed to each creditor in addition to this Summary. This summary of the Plan has been prepared by the attorneys for the Worker Proponents, and the attorney for Amador Barajas to enable Farmworkers to better understand how they are treated in the Plan and how they are to be paid. This summary has been prepared in both English and Spanish.

The plan must first be voted upon by the creditors that are entitled to vote and then must be approved by the Bankruptcy Court at a hearing. The ballots will be sent out to voting creditors on December 5, 2003 and must be returned by January 5, 2004. The Joint Plan of Reorganization is currently scheduled for a Confirmation Hearing on February 9, 2004 at 1:30 PM at the Bankruptcy Court in Yakima at 402 E. Yakima Avenue, Suite 200.

SUMMARY OF PLAN

Isidro Jiminez y Panfilo Silva (los “Trabajadores Proponentes”) y U.S. Bank National Association (“U.S. Bank”) han presentado un Plan Conjunto de Reorganización (el “Plan”) y una Declaración de Revelamiento en esta causa de quiebra que implica a Jerrie Vander Houwen y las huertas de él. Los Trabajadores Proponentes pidieron que el Tribunal apruebe un breve resumen del Plan y que sea traducido al español para que los trabajadores con capacidad limitada de inglés pueden tener un acceso más comprensible a estos procedimientos que afectan sus sueldos no retribuidos. Cada acreedor, inclusive cada Trabajador Agrícola, debe repasar cuidadosamente el Plan y la Declaración de Revelamiento en su totalidad antes de decidir cómo votará con respecto al Plan. Además de este Resumen, a cada acreedor se le envía una copia de la Declaración de Revelamiento y el Plan Conjunto de Reorganización. Este resumen del Plan ha sido preparado por las abogadas de los Trabajadores Proponentes y por la abogada para Amador Barajas para habilitar a los Trabajadores Agrícolas con mejor conocimiento de causa en cuanto a cómo se les trata bajo el Plan y cómo se les pagará. Este resumen ha sido preparado tanto en inglés como en español.

El plan tiene que pasar primero por votación por los acreedores con derechos de votar y después ser aprobado por el Tribunal de quiebras en una audiencia jurídica. Se enviarán las papeletas para votar a los acreedores votantes el 5 de diciembre de 2003 y deben regresarlas a más tardar el 5 de enero de 2004. Actualmente está programada una

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A bankruptcy trustee is a person who has control over the property of the debtor in bankruptcy. In this case, the debtor in bankruptcy is Jerrie Vander Houwen, and the trustee is Ford Elsaesser. The Plan proposes that the trustee sell all of Vander Houwen's property (except the property that is exempted by law from creditors' claims), including Vander Houwen's real estate and equipment, before November 2004. The trustee would use money received from the sale of the property first to pay creditors with lien claims against the property, including U.S. Bank and the Internal Revenue Service. The trustee would pay all costs of the sale, and 2 percent of the proceeds of each sale would be set aside in an Unsecured Creditor's Fund. Unsecured creditors are creditors without liens or priority to whom Vander Houwen owes money.

Under the Plan, money in the Unsecured Creditor's Fund would be used to pay ongoing expenses of the bankruptcy estate and then to pay debts owed to unsecured creditors in accordance with the legal priorities set forth in the bankruptcy law. Because the price at which the property will be sold cannot be determined and is not certain, there is no assurance that sufficient proceeds will remain to pay all of Vander Houwen's creditors.

All the orchard property was leased for the 2003 crop season to Washington Agri-Management, L.L.C., and the trustee will receive a portion of the proceeds of the 2003 crop for the estate. It is unknown exactly how much that will be.

From February through August 2002, Vander Houwen's property was under the control of a receiver, a person appointed by a

Audiencia de Confirmación referente al Plan  
Conjunto de Reorganización el 9 de febrero de  
2004 a la 1.30 PM en el Tribunal de quiebras

en Yakima en el 402 E. Yakima Avenue, Suite 200.

RESUMEN DEL PLAN

Un fideicomisario de quiebras es una persona que tiene control de la propiedad de un deudor que se ha presentado en quiebra. En esta causa, el deudor que se ha presentado en quiebra es Jerrie Vander Houwen, y el fideicomisario es Ford Elsaesser. El Plan propone que el fideicomisario venda toda la propiedad de Vander Houwen (excepto la propiedad que por ley es exenta de algún reclamo por un acreedor), incluyendo los bienes raíces y el equipo de Vander Houwen, antes de noviembre de 2004. El fideicomisario usará el dinero que reciba de la venta de la propiedad para pagar primero a los acreedores que tienen reclamos de embargo contra la propiedad, incluyendo a U.S. Bank y el *Internal Revenue Service* (Servicio de Impuestos Internos). El fideicomisario pagará todos los costos de venta y, dos por ciento de los beneficios de cada venta se apartará en un Fondo para acreedores no garantizados. Los acreedores no garantizados son los acreedores libres de algún embargo o prioridad con quienes Vander Houwen está endeudado.

Bajo el Plan, el dinero en el Fondo para acreedores no garantizados será usado para pagar los gastos continuos del patrimonio insolvente y después, para pagar las deudas que se les debe a los acreedores no garantizados en conformidad con las prioridades jurídicas que se establecen en la

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4 Washington state court. That period of time is  
5 called the "Receivership." The receiver holds  
6 \$55,000 from proceeds of crops the receiver  
7 sold. The Plan refers to that money as the  
8 "Reserve Fund." Under the Plan, after U.S.  
9 Bank's claim is paid in full, the money in the  
10 Reserve Fund would be used to pay debts  
11 owed to Farmworkers for work performed  
12 during the Receivership. If the bankruptcy  
13 court determines that the Farmworkers' have a  
14 claim to the money in the Reserve Fund that is  
15 greater than U.S. Bank's claim, then the  
16 Farmworkers' claims would be paid from the  
17 Reserve Fund before U.S. Bank's claim is paid  
18 in full. The total amount of the Farmworkers'  
19 unpaid wages totals approximately \$63,238  
20 and exceeds the amount in the Reserve Fund,  
21 so Farmworkers' debts would not be paid in  
22 full unless the trustee receives excess funds  
23 from his sale of property. If there is not  
enough money in the Reserve Fund to pay  
Farmworkers' claims in full, the money would  
be divided among the claims on a pro rata  
basis.

There are two pending legal issues  
related to this case that might affect how much  
the trustee will receive for the properties and,  
therefore, how much creditors will receive.  
First, the Nursery Licensing Association  
(N.L.A.) has filed a lawsuit alleging that  
Vander Houwen and U.S. Bank have violated  
certain trademark and licensing agreements for  
some trees in the orchards. The trustee is  
attempting to settle this suit, but the N.L.A.  
may have a claim for damages that must be  
paid. Second, the Washington Department of  
Ecology has been involved in lengthy litigation  
with Vander Houwen regarding water well  
permits on the portion of the orchards called  
the "Wenas block." The trustee is attempting

ley sobre la quiebra. Debido a que el precio de  
venta de la propiedad no se puede determinar y  
es algo que no se sabe con seguridad, no se  
asegura que quedarán suficientes beneficios de  
las ventas para pagar a todos los acreedores de  
Vander Houwen.

Toda la propiedad de la huerta fue  
arrendada durante la temporada de cosecha de  
2003 a Washington Agri-Management, L.L.C.,  
y el fideicomisario recibirá una parte de los  
beneficios de la cosecha de 2003 que será  
incluida en el patrimonio. No se sabe con  
exactitud cuanto será eso.

Desde febrero hasta agosto de 2002, la  
propiedad de Vander Houwen estuvo bajo el  
control de un administrador judicial, una  
persona nombrada por el tribunal del Estado de  
Washington. Se conoce ese plazo como la  
"administración judicial". El administrador  
judicial tiene \$55,000 de los beneficios de la  
cosecha que vendió el administrador judicial.  
En el Plan, se hace referencia a ese dinero  
como un "Fondo de Reserva". Bajo el Plan,  
después de que quede totalmente saldada la  
reclamación de U.S. Bank, se usará el dinero  
en el Fondo de Reserva para pagar las deudas  
que se les debe a los Trabajadores Agrícolas  
por el trabajo que hicieron durante la  
Administración Judicial. Si el Tribunal de  
quiebras determina que los Trabajadores  
Agrícolas tienen una reclamación al dinero en  
el Fondo de Reserva que es mayor que la  
reclamación de U.S. Bank, entonces se pagarán  
las reclamaciones de los Trabajadores  
Agrícolas del Fondo de Reserva antes de que  
se salde la reclamación de U.S. Bank. La  
cantidad total de sueldos no retribuidos a los  
Trabajadores Agrícolas asciende a  
aproximadamente \$63,238 y excede la

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4 to mitigate the effect of this litigation, but it  
5 may affect the sales price.

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7 The Plan will not take effect unless it is  
8 approved by the bankruptcy court. To be  
9 approved by the bankruptcy court, the Plan  
10 must meet several requirements. One of those  
11 requirements is that the Plan must pay  
12 creditors at least as much as they would  
13 receive if Vander Houwen's assets were  
14 liquidated in a chapter 7 liquidation bankruptcy  
15 case. Because under the Plan the trustee would  
16 sell the property in an orderly fashion, much as  
17 a Chapter 7 liquidation trustee would, the Plan  
18 proponents believe that all creditors in the  
19 estate will receive as much as, or more than,  
20 they would receive in a liquidation.

21 A creditor (Columbia Basin Nursery –  
22 “Nursery”)) does not think the Plan can be  
23 approved by the court because it believes that  
parts of the Plan do not comply with the  
priorities of the Bankruptcy Code. The  
Proponents of the Plan disagree with Nursery  
and believe its objection will not be allowed by  
the Bankruptcy Court. The specifics of  
Nursery's objections are in the Plan in more  
detail.

Creditors, including Farmworkers, have  
the right to vote for or against the Plan. The  
Plan might not be approved if creditors do not  
vote for it. A ballot for voting for or against  
the Plan, as well as a copy of the Plan and the  
Disclosure Statement, has been sent to you  
with this summary. For your vote to count,  
you must complete and sign the ballot and  
return it by mail in accordance with the  
instructions on the ballot. Your ballot must be  
mailed soon enough to arrive by January 5,  
2004. The Worker Proponents ask that you

cantidad en el Fondo de Reserva, por eso la  
deuda que se les debe a los Trabajadores  
Agrícolas no será saldada a menos que el  
fideicomisario reciba un exceso de fondos de  
la venta de la propiedad. Si no hay suficiente  
dinero en el Fondo de Reserva para pagar en  
total las reclamaciones de los Trabajadores  
Agrícolas, el dinero será dividido  
proporcionalmente entre las reclamaciones.

Hay dos asuntos legales pendientes  
relacionados a esta causa que pudieran afectar  
cuánto reciba el fideicomisario por las  
propiedades y, sucesivamente cuánto recibirán  
los acreedores. Primero, la *Nursery Licensing  
Association* (Asociación que regula las  
licencias a viveros, N.L.A., por sus siglas en  
inglés) ha entablado una demanda judicial que  
alega que Vander Houwen y U.S. Bank han  
infringido ciertos derechos sobre marcas  
registradas y licencias para algunos árboles en  
las huertas. El fideicomisario está tratando de  
solucionar esta demanda judicial, pero la  
N.L.A. podrá tener una reclamación por daños  
y perjuicios que tendrá que pagarse. Segundo,  
el Departamento de Ecología del Estado de  
Washington ha estado participando en un  
litigio prolongado con Vander Houwen sobre  
el permiso para unos pozos de agua en la  
sección de las huertas conocidas como “Wenas  
block.” El fideicomisario está tratando de  
mitigar el efecto de este litigio, pero hay la  
posibilidad que afecte el precio de venta.

El Plan no será vigente a menos que  
reciba la aprobación del Tribunal de quiebras.  
Para recibir la aprobación del Tribunal de  
quiebras, el Plan debe reunir varios requisitos.  
Uno de esos requisitos es que el Plan debe  
pagar a los acreedores por lo menos la cantidad  
que recibirían si se liquidaran los activos de

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support the Plan and vote "Yes". A hearing to consider approval of the Plan is currently set for February 9, 2004, at 1:30 PM, in the bankruptcy court in Yakima, at 402 E. Yakima Avenue, Suite 200.

Vander Houwen mediante un acto concursal de liquidación tipo capítulo 7. Debido a que bajo el Plan, el fideicomisario vendería la propiedad de manera ordenada, muy similar a como lo haría un fideicomisario de un acto concursal de liquidación tipo capítulo 7, los proponentes del Plan creen que todos los acreedores de este patrimonio recibirán tanto como recibirían, o más de lo que recibirían, mediante una liquidación.

Un acreedor (Columbia Basin Nursery – "Vivero") no cree que el Plan podrá ser aprobado por el Tribunal debido a que cree que secciones del Plan no cumplen con las prioridades del Código de quiebra. Los Proponentes del Plan no concuerdan con el Vivero y creen que el Tribunal de quiebras no sostendrá su protesta. Los pormenores de la protesta del Vivero se especifican en el Plan.

Los acreedores, incluyendo los Trabajadores Agrícolas, tienen el derecho de votar a favor o en contra del Plan. El Plan no pudiera ser aprobado si los acreedores no lo aceptan por votación. Se le ha enviado junto con este resumen, tanto una papeleta para votar a favor o en contra del Plan como una copia del Plan y la Declaración de Revelamiento. Para que se pueda tomar en consideración su voto, deberá rellenar y firmar la papeleta y regresarla por correo conforme a las instrucciones que se encuentran en la papeleta. Deberá enviar su papeleta con suficiente tiempo para que llegue a más tardar el 5 de enero de 2004. Los Trabajadores Proponentes piden que usted apoye el Plan y que vote "Sí". Actualmente está programada una audiencia judicial el 9 de febrero de 2004 a la 1.30 PM para considerar la aprobación del Plan en el Tribunal de quiebras en Yakima, en el 402 E.

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| Yakima Avenue, Suite 200.

COLUMBIA LEGAL SERVICES

COLUMBIA LEGAL SERVICES

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Nancy L. Isserlis  
1704 West Broadway  
Spokane, WA 99201  
(509) 324-2789

---

Griselda Vega  
510 Larson Building  
6 South Second Street  
Yakima, WA 98901

Attorneys for Isidro Jiminez and Panfilo Silva/Abogadas para Isidro Jiminez y Panfilo Silva

NORTHWEST JUSTICE PROJECT

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Kathy Tierney  
304 Larson Building  
6 South Second Street  
Yakima, WA 98901

Attorney for Amador Barajas/Abogada para Amador Barajas

# Restructuring officers: the new corporate troubleshooters

**Turnaround specialists have taken over the finance function at WorldCom as the stricken telco tries to get back on its feet. Meanwhile some of Europe's biggest corporates have appointed interim CEOs. *Eleni Chalkidou* and *Angus Foote* chart the rise of the restructuring officer and the growth of the interim market.**

**R**estructuring is painful. Overseeing a corporate restructuring is not always an attractive option. If a corporate runs into the kind of difficulty that requires a major financial restructuring, the CFO is often the person who carries the can. As a result, the CFO position can become vacant. But high-quality candidates will not necessarily rush to join a corporate that finds itself in this kind of predicament.

So what to do? One answer to the problem is the appointment of an interim CFO. Such an appointment allows someone who is effectively an outside adviser to take the tough decisions that long-standing employees might shy away from. It also means the corporate can wait until it looks financially healthy again before starting the search for a permanent CFO. And then of course, it always helps to have a ready-made scapegoat if the process does not go according to plan – no-one expects the interim executive to be around for very long anyway – so in one sense there is less risk involved in the appointment.

Of course, the appointment of specialists to help steer troubled corporates through their difficulties is nothing new. And there are also ambitious CFOs who are looking for challenging roles and are prepared to take on positions that others might consider too risky.

But with a wave of restructurings sweeping across the corporate sector, the trend has become marked in recent months. Of course, it is important to draw a clear line between a financial restructuring and a wholesale restructuring of a company's operations. In the latter situation the appointment of outside advisers has long been a recognized method of tackling deep-seated problems – management consultants have never shied away from the kind of drastic pruning the established management might be reluctant to set in train.

## High profile CROs

Last year troubled Norwegian shipping and construction group Kvaerner followed a well-trodden path and appointed account-

ant Finn Berg Jacobsen as acting CFO while the debt-ridden company undertook a radical overhaul of its business. The crisis eventually led to the appointment of a new board.

Looking at the other side of the picture, Qwest Communications and Tyco International have both appointed long-term CFOs in recent months. For the two newcomers joining these companies is a bold career move, as both recruits face major challenges in turning round these troubled former stockmarket stars.

Qwest's new CFO, Oren Shaffer, took on a formidable task. His role involves renegotiating the company's debt while at the same time negotiating with the SEC and the Department of Justice over accounting issues, not to mention the possible sale of some of Qwest's business units.

At Tyco, new CFO David FitzPatrick must try and restore some stability to the management team and rebuild the confidence of investors – no mean feat in the light of the damaging blows Tyco has suffered to its reputation.

Struggling US corporates can, of course, enter the Chapter 11 process, a process which lends itself to the involvement of specialist advisers. But in Europe there are now several high profile examples of interim executives serving at the highest level. Vivendi Universal CEO Jean-René Fourtou is an interim appointment, as is Helmut Sihler at Deutsche Telekom.

Now we are also seeing the rise of the restructuring officer. And with recruitment consultants reporting a surge in interim appointments at the senior end of the market, what are the implications for the role of the CFO?

## First hand experience

John LaMacchia is well-placed to form an opinion. The former CEO of CellNet Data Systems (CDS), LaMacchia has now moved on to become the CEO of Tellme Networks, a smaller internet-powered telecommunications company. But during his time with CDS LaMacchia witnessed at first hand how the concept of the restructuring officer worked in practice. CDS went through a period of restructuring from November 1999 through to May 2000.

The problems started when the company ran out of cash and could no longer service its debt, as LaMacchia explains. "Towards the end of 1999 we were unable to borrow any more money.

"That's what led to the hiring of John Dubel on the strong insistence of our lenders. The main thing was for him to help us borrow money from a new lender who was willing to step in, given the stress the company was in. John Dubel had to build their confidence that their loan will be repaid with some preference.

"That gave us enough cash to continue paying salaries and serving customers while we prepared for bankruptcy filing." The company filed for bankruptcy around February 2000, and it was at this time the restructuring adviser helped the company identify areas where it could – and should – cut expenses.

"We were then successful in finding a buyer for the company itself, the assets of the company and the employees," relates LaMacchia.

Not everyone likes the idea of the restructuring officer. George Lawton, CFO of leading animations company Mainframe Entertainment, believes there are clear disadvantages.

"The person who is driving the restructuring is often seen as the bad guy," he points out. "Bringing someone in especially for that tends to defer the blame from the management team to the person who is there for a limited time. Personally I find it destructive to the organization's culture and I think companies benefit more from having someone from inside the company who understands the business."

But LaMacchia, having been through the process, is much more positive about the concept.

"As soon as reality struck home that all funding sources had collapsed we went to a law firm which specializes in restructuring, Simpson Thatcher, and the head of their bankruptcy practice gave us the name of a couple of financial advisers," he recalls. "We interviewed them the next day and one was from Blackstone, who specialize in financial distress and that process went on for a couple of weeks."

What becomes clear from LaMacchia's story is that CDS's creditors were initially the driving force behind the hiring of specialist help. "The

**"The fact is that a normal CFO is unlikely to have had the kind of negotiating experience that a restructuring officer would have. You are dealing with lenders in a state of distress, shareholders are angry, employees are nervous."**

lenders insisted we needed more help and then our CFO in late August saw the handwriting on the wall and quit the company, discouraged by the lack of financing. Plus he had a better offer. The bankers urged us to get some financial help." At this point, having received a recommendation from Blackstone, the CDS team interviewed Dubel.

Along with his colleague Gregory Rayburn, John Dubel has become one of the best known of the new breed of restructuring officer. The two men are principals at the specialist restructuring firm AlixPartners.

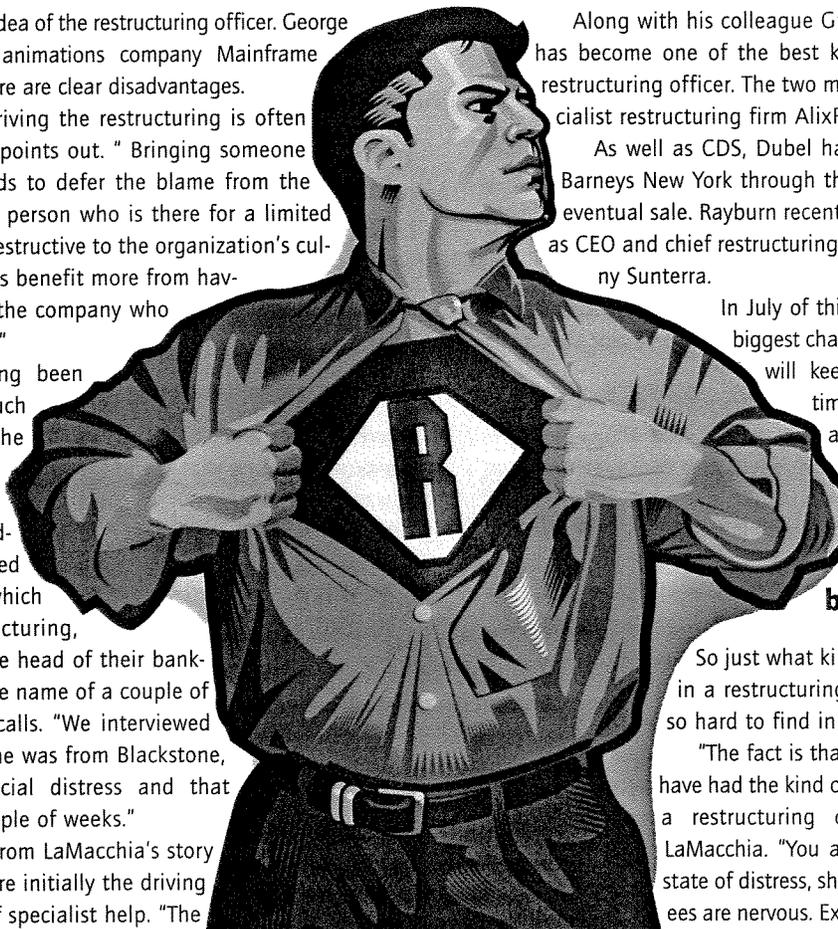
As well as CDS, Dubel has also assisted retail group Barneys New York through the Chapter 11 process to an eventual sale. Rayburn recently completed an assignment as CEO and chief restructuring officer at timeshare company Sunterra.

In July of this year the pair took on their biggest challenge to date – and one that will keep them occupied for some time yet. Dubel became CFO and Rayburn became chief restructuring officer at the bankrupt telco WorldCom.

### Reaping the benefits

So just what kind of qualities are necessary in a restructuring officer and are they really so hard to find in a conventional CFO?

"The fact is that a normal CFO is unlikely to have had the kind of negotiating experience that a restructuring officer would have," says LaMacchia. "You are dealing with lenders in a state of distress, shareholders are angry, employees are nervous. Experience is a big help. I think



## Headhunters see growth in interim market

Restructuring officer and interim CFO are clearly different roles, but both are examples of a growing trend. Matthew Jaquiss of recruitment consultancy Imprint Tax & Treasury says there has been strong growth

in the interim market. "At the end of the day the interim market is definitely out there," he confirms. Further down the management ladder a lot of companies have traditionally used interim appointments to get round head-count freezes.

But Jaquiss reports there are currently a lot of candidates in the market for short-term positions – especially at the senior

end of the market.

But while a corporate may feel there are benefits in a short-term appointment, there are also extra costs to take into consideration.

"There's usually a premium to be paid for people who work on the short term," warns Jaquiss. That premium is generally in the region of 40-50%."

it was reassuring and comforting knowing I have someone who has dealt with these issues before."

"The single most important feature is someone who has the trust of the lender and is known to be highly reliable and of high integrity. The restructuring officer has to be able to deal with nervous lenders and keep them patient. They need someone they can trust. It was very important to John to know what he said to whom and deliver on those promises. It was like having someone around who at all times had the interest of the company in mind and at the same time was able to keep lenders happy.

Trust, integrity, experience and credibility are all extremely important."

Greg Rayburn of AlixPartners, currently serving as chief restructuring officer at WorldCom, is quite clear about the skills he brings to that situation.

"In general, most senior management teams have not experienced a crisis on the order of magnitude of corporate insolvency or large scale out of court restructuring," he says. "CROs are experienced in dealing with such crises and the associated business problems which tend to repeat over time. In other words, while Worldcom is the largest filing ever, the problems associated with fraud, fast rollup without an integrated business model, severe industry contraction, etc., are the types we deal with all the time as CROs."

At WorldCom Dubel and Rayburn will face a task that many would have balked at. And if LaMacchia's view is anything to go by, the finance team would find it very difficult to cope without the expertise of the restructuring specialist to call on.

"I don't even think I would have known where to start if I had not gone through this experience. Even with good legal advice and good financial advice, dealing in that chaotic environment would have been extremely difficult without knowing even what the solutions might be," he says.

Rayburn believes reports suggesting that WorldCom will prove the longest restructuring in history are erroneous.

"Worldcom is, in fact, the largest bankruptcy filing in history, but I sincerely doubt it will be the longest in terms of time to restructure and exit," he says. "There are a number of factors that will serve to ultimately allow the company to emerge more quickly than normal.

"They include the fact that we are the dominant company in the global managed network business and the number two long distance carrier. We have a very high quality customer base, both business and consumer and our customer retention since our filing has been excellent. We are receiving normal vendor terms since our filing and as such have had no need to borrow under our DIP financing and have close to \$1 billion in cash on hand at this time," he says.

"Most importantly, we do not plan to break up the company, but to optimize our operations around our core products and services. Lastly, our creditors support our efforts to reorganize on an extremely rapid timetable. Challenging yes, but achievable."

**"Worldcom is, in fact, the largest bankruptcy filing in history, but I sincerely doubt it will be the longest in terms of time to restructure and exit. There are a number of factors that will serve to ultimately allow the company to emerge more quickly than normal."**

Taking on such a central role in the WorldCom situation will thrust Dubel and Rayburn into the spotlight. But when LaMacchia first came up against the idea, the restructuring officer was a little-known concept.

"I did not even know such a person existed until the bankers insisted I get one," says LaMacchia. "So to say

that some people would bring in the restructuring officer too late would be right in my opinion. I was not aware of what role he plays. If I had a CFO at the time I would have been even more reluctant to get one. I would never have known of their importance but having been through it I would certainly think it is easy to be too late. John's assistance might have been more helpful even before we got into our crisis."

## Timing the appointment

This tendency to act too late when it comes to bringing in the restructuring advisers was a recurring theme in the *Corporate Finance Guide to Corporate Restructuring*, published in April this year. But back then it was bankers and advisers who made this point – LaMacchia, of course, represents the corporate voice.

Established executives tend to have set priorities and in a restructuring situation it can be hard to let go of those habits. "The first thing you would do is run around to find investors and money and CFOs do that quite well usually," LaMacchia says. "At that time, though, Cds had gone through several years without strong operating controls and a person of John's experience could have been helpful in cutting costs. There were a lot of things where I could have used some help and the company was very slim with regards to management capability."

Greg Rayburn believes that corporate management teams are now switched on to the idea of bringing in outside turnaround expertise:

"Today's smart managers are no longer waiting to be pushed into hiring a CRO; rather, they are seeking outside expertise in developing and implementing performance improvement initiatives as soon as they recognize potential trouble on the horizon," he says.

AlixPartners has a significant number of clients who reacted early to signs of underperformance. "These companies have the benefit of more alternatives because they haven't burned through critical resources – cash, borrowing availability, vendor support, credibility with constituents, employee morale – and can use these resources to implement realistic and effective action plans to stop their performance slide," Rayburn says. "And they recognize the benefits of teaming up with consultants experienced in creating a sense of urgency within the organization to get the right things done."

"In other cases, managers remain in denial until they are in deep distress, ignoring the internal warning signs – revenue dropping faster than costs, failed integration of acquisitions, insufficient liquidity, financial reporting mis-statements, etc. – and external warning signs – debt downgrades, fundamental

changes in market, loan gets moved to the bank's workout group, etc," he says.

"In these instances, the company is left with fewer alternatives because they have damaged credibility and less resources to fall back on, requiring more drastic action – the breaking up and selling of the company, bankruptcy, liquidation."

LaMacchia points out that while bankruptcies are nothing new, the whole idea of Fortune 500 companies going bust would have been seen as ludicrous a couple of years ago.

"The last couple of years have changed the attitude towards debt, telecoms in the US have run up enormous debt and CEOs and boards were betting on the endless growth of the market, broadband and other wonderful services that were to generate cash flows," he says. "The respect for the downside of leverage seemed to have been neglected in recent years and now the reality is kicking in."

In the past telecoms companies were conservatively and cautiously run and leveraged for a good reason, LaMacchia points out. "Those lessons were forgotten in the late 90s and people thought there was only growth. The John Dubels of the world are going to be very busy for years to come and hopefully everyone will learn the lesson and be more prudent about debt."

Looking back on his experience at CDS, and despite initial reservations, LaMacchia now seems to have been entirely won over to the benefits of hiring a restructuring officer.

"It seemed out of the norm to me," he acknowledges. "My first impression was this is a legal process, the lawyers will take care of this, that's their job, they will file the papers, develop the plan, they will work with our bankers.

"In hindsight I can say even if I had a CFO at the time it would have been a great idea to have a restructuring officer. Then his role might have been different – focusing entirely on dealing with the bankruptcy related issues and developing the plans for the reorganization."

In future companies will, LaMacchia believes, opt for the

## Special skills of the CRO

Greg Rayburn of AlixPartners highlights the following key attributes a good chief restructuring officer can bring to a turnaround situation:

- the ability to develop and drive the implementation of key business improvement initiatives, i.e. cash management / liquidity creation, cost reductions, financial projections, operating improvements;
- the ability to build credibility around a company's turnaround plan with critical constituents, such as senior management team, lending group, vendors, employees and customers;
- a willingness to challenge management on business plans that appear unrealistic; and
- the ability to manage the many demands and information requests from outside constituents (banks, bondholders, vendors and their financial advisors and/or lawyers).

restructuring officer rather than an experienced CFO. "I think this may well be one of the lessons of these times we are in. Bankruptcy is becoming a serious risk for even well established telecoms companies who would never have thought of such things in the past.

"The risk and threat of bankruptcy is going to call for a depth of understanding only restructuring officers can deliver. When times get really tough you need that extra intellectual horsepower and the intellectual resolve to make harder decisions." ■

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