

Issues in International Receiverships or, "Good morning Mr. Phelps. Your mission should you decide to accept it..."

written by:
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In July 1995, Drew McManigle, President of The McManigle Company, was appointed Receiver over two British Virgin Islands ("BVI") corporations, World Manufacturing Limited ("World") and Manufacturera del Bravo, Ltd. ("Bravo") by Courts in *both* the United States and the BVI.¹ World and Bravo were manufacturing and trading companies headquartered in El Paso, Texas on the U.S./Mexican border. The appointments were made after Banco Mexicano, S.A. (the "Bank"), the fourth largest bank in Mexico, obtained Judgments against World and Bravo for over \$22 million each. This highly unusual dual appointment provided the standing necessary to investigate the financial affairs and assets of the Judgment debtors. Not surprisingly, during the early stages of the investigation, aspects of this complex engagement

resembled segments from "Mission Impossible".

Background Facts

In 1994, the Bank filed a collection suit in the U.S. against four Mexican corporations, three Texas companys, World, Bravo and certain principals. The Bank's sued to recover export loan proceeds that were alleged to have been obtained fraudulently.

The U.S. Receivership

By 1995, the efforts of World and Bravo to avoid appearing in the Bank's suit, thereby submitting to the Texas Court's jurisdiction were, Machiavellian. Finally, the Texas Court entered the \$22 million Judgments against World and Bravo and found that these companies had conspired and committed fraud. Subsequently, the Bank sought appointment of a Receiver over World and Bravo. The Texas Receiver, McManigle, first had to overcome international jurisdiction and venue issues.

Numerous transactions had

occurred in the U.S., Mexico, the BVI, Germany, Switzerland and Spain.

THE BVI RECEIVERSHIP

Based upon the Texas Judgments and the Bank's application to the BVI Court, in August 1995, Drew McManigle was also appointed Interim Receiver under BVI statute. The Order was drafted to provide the Receiver with maximum authority and displaced the authority of the existing shareholders and directors of World and Bravo. This allowed the Receiver to wield powers as both a director and as a Receiver.

This dual appointment also resolved jurisdictional issues. The Texas Court's Order established jurisdiction domestically while the BVI Order extended the powers of Mr. McManigle to be recognized in foreign jurisdictions. In most instances, the Texas and BVI Orders together with the director's powers, facilitated intelligence

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gathering, document review and asset recovery.

SIGNIFICANT ACTIONS

One of the most important pursuits was to pierce the BVI corporate confidentiality laws and obtain the original corporate books and records of World and Bravo. The review of these documents allowed the Receiver to begin unravelling the pattern of corporate manipulation and fraudulent transfer within *fifteen days* of appointment. As an example, the Receiver was able to obtain access to critical World banking records and wire transfer instructions in Germany without resorting to German legal remedies or proceedings.

OFFSHORE LITIGATION

Of note was the fraudulent transfer litigation filed in the Cayman Islands, British West Indies. This litigation sought to overturn the transfer of bearer shares representing the majority ownership of a Texas company which had, prior to this transfer, been a wholly-owned subsidiary of World. This company had maintained and possessed hard assets with significant

value which were under the control of management insiders adverse to the Receiver. The dynamics of asset preservation and the time sensitivity of this litigation were crucial. To assure a high probability of success in this suit, the Receiver and his U.S. and Caribbean counsel were required to mesh the common and statutory laws in three separate jurisdictions. A unique twist arose when substantive BVI case law could not establish the Receiver's authority to initiate litigation in foreign jurisdictions without first gaining approval from the BVI Court. This required the Receiver to present the merits of the Cayman suit to the BVI Court. Subsequently, at trial in the Cayman Islands at which the Receiver testified, the Cayman Court entered a Final Judgement voiding the transfer and returning the shares of the Texas company to the Receivership. The Cayman Judgment also pierced the Cayman corporate confidentiality laws which allowed the Receiver to review the Cayman corporation's records establishing it as a sham.

CONCLUSION

The efforts of the Receiver

and his counsel in seven different jurisdictions, have resulted in the successful investigation and recovery of numerous assets, including the sale of the Texas company's assets for cash and the filing of a number of fraudulent transfer recovery cases. In order to achieve the Receiver's primary objective of protecting and recovering assets, there must be an aggressive commitment to act with decisiveness. This must include the creative exploitation of all available legal and investigative resources.

The McManigle Company ("MacCo.") is a Houston, Texas based business reorganization and management consulting company. MacCo. provides cost effective and responsive crisis management and business restructuring services. MacCo.'s phone and fax numbers are: (713) 667-0403 and (713) 667-7601. MacCo. can be reached via Email at: MacCo.@ix.netcom.com