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# turnarounds & workouts

News for People Tracking Distressed Businesses

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Volume 10, Number 10

## States' Immunity in Federal Court Seminole Case - The Implications?

by Debra Brennan

Can the bankruptcy courts, enforcing federal law, exert any authority over a state's claims against a debtor without the state's voluntary consent to jurisdiction? It is this question, raised in *Seminole Tribe of Florida v. Florida et al.*, which has fomented the debate over the practical effects of the case. The Supreme Court of the United States, in overruling *Union Gas Co.*, held unequivocally that Congress has no authority under Article 1 to limit or abrogate states' retained immunity from suit in federal court.

While *Seminole* is not a bankruptcy case, it is bankruptcy law that may face the most serious fallout from the decision. The extent to which this decision will change every day bankruptcy practice is not clear, but the fact that bankruptcy attorneys must now carve out a niche from the holdings in *Seminole* is evident.

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## BBK Principal Indicted Partners Disavow Any Connection

by Nina Novak

Kenneth C. Kazerski, a principal and co-founder of Bahadur, Balan & Kazerski, a turnaround management firm based in Southfield, Michigan, has been indicted on numerous counts alleging his involvement in a scheme to defraud two banks out of millions of dollars worth of loans. The indictment describes an elaborate network of real and shell companies that supposedly were engaged in multi-million dollar clothing transactions with a worldwide clothing cartel.

At the center of the network was a now defunct Michigan corporation, SMS, Inc., which at one time manufactured and sold women's clothing in Detroit, but lost money in the 1980's and eventually closed. Mr. Kazerski served as the Chief Financial Officer of SMS, Inc. during the early 1980's, and as a financial consultant to its majority owner and

*continued on page 2*

## Judge Announces Acceptable Guidelines Cash Collateral and Financing Stipulations

by Debra Brennan

Usually, the only way you can find out what is acceptable to a particular judge, is to appear before him or her. If you are really curious, you could research old cases that were determined in his or her court room, or talk to attorneys who have been in the same court room. But it seems that Judge Samuel J. Steiner, U.S. Bankruptcy Judge in the Western District of Washington (Seattle) is doing things differently. The "Guidelines for Cash Collateral and Financing Stipulations" used by Judge Steiner state that the court is often requested to approve, usually on an emergency basis or in a shortened time, cash collateral and financing stipulations. The guidelines list 14 provisions which Judge Steiner will not ordinarily approve. Also listed are seven provisions which Judge Steiner normally will approve.

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**Seminole**, from page 1

On a very personal level, the *Seminole* case may have a highly disruptive effect on the functioning of bankruptcy courts if federal bankruptcy courts cannot discharge claims against debtors, including claims for taxes or child support without an explicit waiver by the state.

According to Francis Dicello, an attorney with Reed, Smith, Shaw & McClay of Washington, D.C., "the Supreme Court clearly was not thinking about bankruptcy when it ruled in *Seminole*." Dicello, together with Ann Schmitt of the same firm have quickly become the experts in this new area of "post *Seminole*" bankruptcy practice.

They currently represent NVR L.P. (Northern Virginia Realty) in what is the first test case of *Seminole's* effect on the bankruptcy court's powers. In the NVR bankruptcy, the confirmed plan provided in part, that pursuant to section 1146(c) of the Bankruptcy Code, property of the debtor would not be subject to any real estate transfer tax, recordation tax, or similar tax. As part of the confirmation order, the bankruptcy court retained jurisdiction regarding interpretation or enforcement of the plan. Various local and state taxing authorities in Maryland and Pennsylvania refused NVR's requests for refunds of real property transfer and recordation taxes, relying on *Seminole*. The attorneys for NVR have emphasized in their brief opposing the states' refusal that the court in *Seminole* held that "the Eleventh Amendment prohibits Congress from making the State of Florida capable of being sued in federal court." In the instant case, NVR asked the court to interpret the existing plan and confirmation order, there being no suit against a state within the meaning of the Eleventh Amendment. The NVR case further argues that the Bankruptcy Court, in issuing and interpreting its confirmation orders exercised its in rem powers over the bankruptcy estate, thus further removing the bankruptcy from the purposes of the Eleventh Amendment. Dicello and Schmitt persuasively argue that "Congress' constitutional authority under Article I to enact uniform bankruptcy laws would be rendered meaningless if the courts were to allow the doctrine of State immunity to eviscerate that authority."

Hopefully, courts will react to the significant deviations from *Seminole* that will be necessary for bankruptcy courts to effectively function.

**Kazerski**, from page 1

president, Ilene Moses. The two are named as key defendants in an indictment that includes allegations of wire fraud, mail fraud, bank fraud, and money laundering. Moses is also charged with bankruptcy fraud.

The alleged fraudulent activities span the period from September 1982 through March 1991. Among the allegations against Kazerski, the indictment charges that he helped create the false appearance that SMS, Inc. had income from European and Asian clothing sales; that he and the other defendants deceived accountants, lawyers, and others into believing that SMS, Inc. and several of the shell companies were engaged in real and substantial business; that they obtained fraudulent certified financial statements; and that through their false representations, they obtained loans totaling about \$26 million from the Michigan National Bank and Swiss Cantobank International that were never repaid. In addition, between the years 1984 and 1988, Kazerski and others are accused of having obtained insurance for the accounts receivable of several of the companies knowing that the receivables did not exist, in order to convince the auditors of these companies to include the receivables as a valuable listed asset.

Days after the indictment was unsealed, B.N. Bahadur, Chairman, and Jerry N. Balan, Principal, BBK, Ltd., sent a letter to all of the firm's clients announcing that, effective immediately, Kazerski had resigned as an employee, director, and shareholder of the firm in order to devote his full attention to the criminal accusations. The letter disavows any relationship between the allegations against Kazerski and any work done by BBK. While BBK, Ltd. was founded in 1986, the letter emphasizes that the activities referenced in the indictment relate only to Kazerski's employment with SMS, Inc. prior to the formation of BBK. Inasmuch as the indictment covers activities by Kazerski extending into 1991, a spokesman for the firm explained that it is not uncommon for members of firms such as BBK to perform independent consulting, and that any overlap would relate only to time and not to the substance of Kazerski's work.

At present, the firm has no plans to replace Kazerski, whose banking background complemented the accounting experience of the other two founding partners.

**Steiner**, from page 1

The last paragraph of the guidelines states, "In all applications for court approval of a cash collateral or financing agreement, counsel for the debtor must certify whether the agreement contains any provision that the court will not normally approve, identify any such provision and explain its justification." By now, older practitioners are rolling their eyes.

Well, the ordinary way that courts make law is by legal precedent. And while court decisions are not always consistent, that is the evolutionary process of American law. Or is it? Is this judge making business decisions? Or is the predictability of the court's approval an asset to debtors' attorneys?

According to Judge Steiner, the use of the guidelines has "worked pretty good" in his court room, although the other judges in his district do not use the guidelines. Judge Steiner stated that at the beginning of a case, upon an emergency basis, and before the court or a trustee really understands the case, and prior to the formation of a creditors' committee, the debtor and secured creditor come into court like "two happy newlyweds," and the debtor says "OK, anything you want." In Judge Steiner's opinion these guidelines provide a reasonable framework for the parties.

While Judge Steiner did not author these guidelines, he slightly revised a set of guidelines that he received from a court in the Northern District of California, where the guidelines are also used. Prior to his use of the written guidelines, Judge Steiner stated the same provisions orally in court. The certification of the debtor's attorney has indeed saved time according to Judge Steiner. He also shared a willingness to resolve any problem with the provisions at a hearing. The only problem which has surfaced thus far has related to carve-out provisions for professional fees.

According to one Seattle attorney, the use of the guidelines in terms of predictability of the court's rulings is helpful and so long as Judge Steiner, or any other court adopting the guidelines remains reasonable and open minded to deviations from the guidelines at a hearing, any problems can be solved. But rules become rigid in their continued application, and that is when idiosyncratic legal issues become problems, and their recourse can become dependent on one court's personality.

# Research Report

## Who's Who In Harrah's Jazz Co.

by Nancy L. Wolfe

One of the largest bankruptcies of 1995, Harrah's Jazz Company filed for Chapter 11 protection first on November 22, 1995, in the United States Bankruptcy Court for the District of Delaware, and then refiled on November 30, 1995, in the Eastern District of Louisiana after one of its partners --New Orleans/Louisiana Development Corp.--also filed for Chapter 11. Harrah's other partners include the New Orleans Investment Company and Grand Palais Casino, Inc. Harrah's Entertainment, the casino entertainment giant based in Memphis, owns 47 percent of Harrah's Jazz. Harrah's Entertainment, Inc. was also named in several federal securities lawsuits related to the Harrah's Jazz case. On December 22, 1995, Harrah's New Orleans Investment Co., an indirect wholly owned unit of Harrah's Entertainment, also filed for Chapter 11 protection.

The partnership was formed in 1993 to build and operate a land-based casino in New Orleans. During construction of the casino, Harrah's was to operate a temporary casino in another location. Harrah's filed for Chapter 11 after its largest unsecured creditor, Bankers Trust Co., withheld \$175 million in funding, claiming that revenue from Harrah's temporary casino was weak.

In February, 1996, Harrah's Entertainment reported that its 1995 earnings were up 22.8 percent over 1994. Earnings before interest, taxes, depreciation and amortization amounted to \$450.1 million. Harrah's Jazz reported a net loss of \$1.53 million on net revenue of \$62,832 for the month of January.

After the bankruptcy filing, the ITT Corp., Caesar's World and the Hilton Hotels expressed interest in taking over the casino project. Then, on April 3, 1996, Harrah's Jazz Co. and its partners filed a joint reorganization plan for the \$820 million project with the Bankruptcy Court in New Orleans.

The plan addresses the issues of revised payments and schedules for the

creditors, restructuring of the debtor partnership, lease and operating proposals for the city of New Orleans and the proposed size and scope of the project.

Harrah's Entertainment will provide financial support, including a completion guarantee for the casino as well as \$12.5 million in DIP financing. The plan calls for a partial opening of the casino by January 1, 1997, with further development phased in by 1998. No separate temporary site would be required. However, that schedule is now placed in doubt by recent state legislation mandating citizens' referendums on gambling throughout the state in November, 1996, which could significantly affect the future of the casino.

### The Debtor

**Philip G. Satre** is President and Chief Executive Officer of Harrah's Entertainment. **Colin Reed** is Executive Vice President of Harrah's Entertainment and principal representative of the Harrah's Jazz casino project.

The firm of **Jenner & Block** in Chicago is counsel to the debtor. Partners **Ronald R. Peterson** and **Daniel Murray** lead its efforts in the case. They are assisted by associate **Vincent E. Lazar**. Other bankruptcy cases include the creditors' committees in Handy Andy and Pic N' Pay, and the trustee in Stotler.

Local counsel for the debtor is **William H. Patrick, III**, a Professional Corporation, of Baton Rouge. Other bankruptcy cases include the creditors' committee in Grand Palais Riverboat, Inc. and petitioning creditors in Wichita River Oil Co., Inc.

**Price Waterhouse LLP** in Dallas is the debtor's accountant and financial advisor. **Jennifer Friedman** handles the case for the firm.

**Arthur Andersen LLP** in Miami has been hired for certain limited work for Harrah's Entertainment and Harrah's Jazz regarding the casino. **James Feldman** handles the case for the company.

**Jefferies & Co.** in New Orleans is investment banker for the debtor. **Steven Croxton** is in charge.

### The Official Committee of Unsecured Creditors

The creditors' committee includes **Angelica Uniform Group, Broadmoor, Centex Landis Construction Co.** (Chairman), **Culinary Design & Fixture, Inc., HJV, A Joint Venture, Michael Demling Associates** and **The Elwyn Gee Group, Inc.**

Counsel to the committee is **Breazeale, Sachse & Wilson, L.L.P.** in New Orleans. Partners **Joseph E. Friend** handles the case along with **Stephen Chiccarelli** in Baton Rouge. Other cases include Cajun Electric Cooperative for the creditors' committee and, for the debtor, **W.S. Associates** and **Washington St. Tammany Electric Cooperative.**

**The Blackstone Group** in New York City is financial advisor to the committee. Managing Director **Timothy Coleman** and Vice President **Paul Huffard** head the case. Other bankruptcy cases include **Dow Corning Corp., R.H. Macy & Co.** and **Plaid Clothing Group.**

### Official Bondholders' Committee

Members of the bondholders' committee are: **Fidelity Management & Research Co., Merrill Lynch Asset Management, Greenwich Fine Arts Pension Plan, Harris Associates, L.P.,** and **Standard Mortgage Company.**

Counsel to the committee is **Weil, Gotshal & Manges.** Partner **Bruce R. Zirinsky** and associate **John K. Cunningham** are handling the case.

**McGlinchey, Stafford & Lang** in New Orleans is local counsel for the bondholders' committee. Partners **Rudy J. Cerone, B. Franklin Martin, III** and **David S. Willenzik** are in charge of the case.

### The Judge

The presiding judge in the Harrah's Jazz case is **The Honorable Thomas M. Brahney, III.**

### The Trustee

In Region V, Judicial Districts of Louisiana and Mississippi, **Diana L. Rachal** is involved in the case.

## Tracking

### Kmart

While Kmart's first quarter results are encouraging, the long-term financial prospects of the business are not yet determinable. Kmart reported a loss from continuing operations of \$38 million, or eight cents per share, compared with a loss from continuing operations of \$109 million, or twenty four cents per share in the first quarter of 1995, before taking into account the discontinued operations and non-recurring activities in 1996 and 1995, respectively. Kmart's net loss for the first quarter of 1996 was \$99 million, or twenty one cents per share. Total sales in the first quarter were \$7.580 billion, an increase of 1.8 percent from \$7.443 billion for the first quarter of 1995. Sales levels were adversely affected by lower numbers of operating stores and colder weather during the period.

Sales in U.S. Kmart stores increased 4.5 percent on a comparable store basis in the first quarter, despite weather-related softness around the Easter holiday. Floyd Hall, Chairman, President and Chief Executive Officer of Kmart Corporation said that he is pleased with the company's progress and that Kmart is taking actions to become a "fierce competitor" in the growing discount retail channel. Hall said major improvements were made in the area of cost reduction. The company is planning to keep its in-store pharmacy operations. Over half of Kmart's 33 corporate officers have joined the company in the past 18 months, and during 1995, Kmart closed 214 under-performing stores. The company reportedly still has a lot of stale merchandise to liquidate.

### Rockefeller Center

Rockefeller Center Properties, Inc. announced a net loss in the first quarter of 1996 of \$28.58 million or 75 cents per share as compared to a net loss of \$7.48 million or 20 cents per share for the same period in 1995. The losses are primarily a result of legal fees, investor relations related expenses and financial advisory fees incurred as a result of the Chapter 11 filing. Currently, RCPI has been extended a credit facility from Goldman Sachs Mortgage Company which is expected to provide sufficient liquidity for RCPI until the earlier of the consummation of the merger or May 31, 1996.

If the transactions contemplated by the merger agreement are not consummated, RCPI will not be able to meet its financial obligations in June. Both RCPI and the

group of investors who are party to the merger have the right to terminate the Merger Agreement if it is not consummated by May 31. In addition to interest payments totaling \$8.1 million due in June and 14 percent debentures due on June 3, 1996, RCPI could also face a \$2.5 million termination penalty if the merger is not consummated. The merger agreement provides that a group of investors including Exor Group S.A., David Rockefeller, Rockprop L.L.C., Troutlet Investments Corporation and Whitehall Street Real Estate Limited Partnership V will merge into RCPI, and the stockholders of RCPI will receive eight dollars in cash for each of their shares of RCPI's common stock. Members of the investment group or their designated affiliates would then own 100 percent of the surviving company's common stock.

### Federated

Federated Department Stores Inc. reported a net loss of \$37.9 million or 18 cents a share for the first quarter of 1996, attributable primarily to expenses related to the business integration of Broadway Stores, Inc. into Federated. These pre-tax expenses totaled \$77.7 million, or 22 cents a share for the period ending May 4, 1996. Excluding these expenses, Federated would have posted net income of \$9.3 million or 4 cents a share, reflecting a solid operating performance in the quarter. Last year Federated showed a net loss of \$6.4 million for the period ending April 29, 1995. Expenses in the first quarter last year were primarily related to the integration of Macy's into Federated and a divisional consolidation.

Allen Questrom, Chairman and Chief Executive Officer said, "We are very pleased with our performance in the quarter. We are especially pleased with our continuing ability to reduce expenses, as well as with the progress being made in the ongoing Broadway business integration." Questrom also said that the company's efforts to gradually reduce the amount of promotional activity, particularly in its home-related businesses also impacted the first quarter.

With annual sales of more than \$15 billion, Federated is in the process of opening several Bloomingdale's stores in California, marking the first outlets for the chain in the West. In addition, Federated is converting many of the Broadway stores to Macy's formats.

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# Calendar

### Commercial Loan Workouts

June 10-11, 1996

The Westin Hotel, Chicago, Illinois

June 17-18, 1996

World Trade Institute, New York

Sponsor: Executive Enterprises

Contact: (800) 831-8333

### 14th Annual Pacific Bankruptcy Law Institute

Sheraton Palace Hotel, San Francisco

June 13-14, 1996

Sponsor: Norton Institutes

Contact: (770) 535-7722

### Western Mountains Bankruptcy Law Institute

June 27-30, 1996

Jackson Lake Lodge

Jackson Hole, Wyoming

Sponsor: Norton Institutes

Contact: (800) 628-9988

### Northeast Bankruptcy Conference

July 25-28, 1996

Mt. Washington Resort

Bretton Woods, New Hampshire

Sponsor: American Bankruptcy Institute

Contact: (703) 739-0800

### American Bar Association Annual Convention

August 2-6, 1996

Disney Contemporary Resort

Orlando, Florida

Contact: American Bar Association

Diane Maytum

(312) 988-5587

Fax (312) 988-5578

### Workshop on Bankruptcy & Business Reorganization (Basic and Advanced)

August 27-29, 1996

New York University School of Law

40 Washington Square South, New York

Contact: (212) 998-6415 or 6417

### Southeast Bankruptcy Conference

September 19-21, 1996

Westin Resort

Hilton Head Island, South Carolina

Sponsor: American Bankruptcy Institute

Contact: (703) 739-0800

# Special Report

## Profile: County of Orange, California

by Susan R. Heylman

Case No. SA 94-22272; SIC 9199

Filed: December 6, 1994

Plan Confirmed: May 15, 1996

U.S. Bankruptcy Court for the Central District of  
California, Santa Ana

The Honorable John E. Ryan, presiding

**Bankruptcy Filing:** Staggering losses of the Orange County Investment Pool led to the Chapter 9 bankruptcy filing of the County of Orange, California, on December 6, 1994. The losses, estimated at more than \$1.6 billion, made the County's filing the largest municipal bankruptcy in the history of the United States. The Orange County Investment Pool consisted of operating and capital funds of about 244 California school systems, cities and agencies, including all 27 Orange County school districts and 31 cities, as well as water and sanitation special districts. Former County Treasurer Robert Citron managed the investment pool to maximize yield, but did so at the expense of liquidity and capital preservation. The pool was leveraged over three times to a total value in excess of \$21 billion with over 60 percent of the holdings in risky derivative-related securities. A significant rise in interest rates in the second half of 1994 resulted in the loss of more than \$1.6 billion in equity value. Citron was forced to resign on December 4, 1994, and he subsequently pleaded guilty to six counts of felony fraud in state court.

In the weeks following the filing, Salomon Brothers valued the investment pool to assess the loss and proceeded to liquidate the pool's remaining \$9 billion of complex derivative securities. The liquidation process represented one of the largest and most publicized securities auctions in Wall Street history. The sale proceeds exceeded initial estimates and unwound the web of leverage and derivatives that had exposed the county to potential further losses. In June 1995, the County's advisors modified a Chapter 11 debtor-in-possession technique to fit the unique aspects of the municipal bankruptcy, arranging \$279 million in post-petition financing to provide funds to Orange County school districts, thereby averting further bankruptcy filings.

**Plan Information:** Orange County's bankruptcy escape plan received judicial approval on May 15, 1996, less than 18 months after the filing. Finalizing the plan came more swiftly than most experts had predicted, in light of the 6,836 claims, 3,000 filings and 477 judicial orders involved in the case. Bankruptcy Judge John E. Ryan expressed astonishment at how well the proceedings had gone and praised the lawyers, creditors, the court staff and the media. Bruce Bennett of Hennigan, Mercer & Bennett of Los Angeles, the County's lead bankruptcy attorney, called the quick financial recovery "nothing short of miraculous," when compared to the time frame usually required for a multi-billion dollar corporate workout. He attributed the rapid confirmation to the dedication of the recovery team that worked extremely hard for a year and a half to solve a wide range of problems. Mr. Bennett also cited Judge Ryan's decisive handling of the complexities of the case.

The plan had been approved overwhelmingly by the creditors, who had to be persuaded to drop their claims for full repayment of losses on the funds they had invested in the pool. Schools, cities and local agencies will count on lawsuits to recover the final 10 to 20 cents of every \$1 lost. The County, however, will fully repay bondholders, suppliers and employees by issuing more than \$900 million in Recovery Certificates of Participation before emerging from bankruptcy this month. These bonds will be backed with funds diverted from existing streams of tax revenues and will be insured, so officials are confident that they will sell.

**Pending Litigation:** The County has sued Merrill Lynch & Co., its former chief investment house and underwriter, for \$2 billion. The County argues that Merrill Lynch encouraged former Treasurer Citron to take on huge debt loads in order to make financial bets on falling or stable interest rates, a strategy the County claims violated the state Constitution, state statutes, and Citron's own investment policies. Attorneys for Merrill Lynch have strongly denied any wrongdoing. They have argued that the bankruptcy was unnecessary and that most of the County's losses could have been prevented had it negotiated with creditors. In his confirmation ruling, however, Judge Ryan found that the County was insolvent when it filed for bankruptcy, that it acted in good faith in filing under Chapter 9, and that it would have been impractical for the County to negotiate with creditors.

In addition, the County has sued KPMG Peat Marwick LLP, its former outside auditor, for \$3 billion, alleging that KPMG failed to detect and warn the County of the risks of Citron's investment gambles. KPMG had completed audits for 1992 and 1993 and had nearly completed its 1994 review of County books when the County filed for bankruptcy protection. KPMG denies the allegations, arguing that the County's losses were the result of its own failed investment strategy, not accounting lapses.

Some prominent Wall Street investment firms have agreed to settle a major class action lawsuit brought by holders of County securities. The firms will pay a combined total of about \$4.4 million but did not admit to any wrongdoing. Numerous other suits against former financial advisers and bond law firms are expected to be filed around mid-June, before the County emerges from bankruptcy. Under the reorganization plan, a \$50 million litigation fund will be established. The litigation could continue for years.

# Worth Reading

## This Indecision is Final

**32 Management Secrets of Albert Einstein, Billie Holiday, and a Bunch of Other People Who Never Worked 9 to 5**

**Author: Barry Gibbons**

**Publisher: Irwin Professional Publishing**

**Price: \$21.95**

**To order: (800) 634-3966**

*by Debra Brennan*

Barry Gibbons, an Englishman, came to the United States in the late 1980's as head of the Florida-based Burger King Corporation. After five years, during which he was named one of *Fortune* magazine's "Turnaround Champs" in 1991, he pierced his ears, quit his position as Chairman and CEO of his own accord and left big business completely. His book, which he claims can be read and digested either while your plane is waiting for take off or during a working lunch, aims to simplify the complexities of the workplace.

Gibbons commences his book with a foreword listing extraordinarily famous people. He includes Michael Jackson, Paul McCartney, Gandhi, Mao Ze-Dong, Margaret Thatcher, Boutros Boutros Ghali, Cat Stevens, Emma Thompson, and Nelson Mandela. He claims in his foreword that the essays in this book cover the various dimensions of his relationships with all of the people on the list. He then states that all of the people on the list have one thing in common: he has never met or spoken to any of them.

Gibbons is incredibly sure of himself, he is handsome and loves his achievements; and so he writes with a certain fun and abandon that is entertaining and most unlike a big business corporate leader. He understandably has a real cult-like following because he writes in such a speedy off beat way, yet beneath his silliness he offers some very sound advice. And this advice is based on solid ground, as Gibbons has truly been involved in a mega turnaround.

This book is not the story of Gibbons' five years at Burger King. Among the wide ranging topics he covers, he stresses the importance of branding and the significant impact of a consistently trustworthy brand. He defines leadership as a condition and management as a profession. He believes in creating a genuine cadre of professional technology users to create a modern information system in a successful business. He suggests that you wait out one new generation of technological advances, and then spend a lot and get the next advanced system with the works. He is not a big advocate of teams, strategic, tactical or otherwise, although he acknowledges their usefulness and concludes that five people are enough on any business team. Nor does he believe that office space, its evolution or design has much to do with business needs.

Gibbons does believe that a modern company must look dramatically different at the end of each decade if it is to survive, although notably Burger King does not. And, he believes strongly that when change is needed, it is the lifeblood and success of a business. He is leery of change, however, for its own sake.

Gibbons claims that this book is "...the equivalent of a Swiss army knife. A compendium of useful tools in a single unit, designed to fit in your pocket." It is a short, fun read. In an unusual way, Gibbons provides insight into successful management. This book is a helpful tool for the operation of any business. It is a simple truth. Gibbons is a very singular personality who had the courage to walk away from a premier executive position while he was still reigning, and his listeners always seem awe inspired by his advice and his frank, comical style.

*Barry Gibbons runs his own company, Festina, for his speaking, writing and consultancy work, which includes an offbeat newspaper column on business.*

## Tracking, from page 4

### Anacomp

A bankruptcy court has approved the reorganization plan of Anacomp, an Atlanta-based provider of micrographics for data storage that has been in Chapter 11 since January 5, 1996. The company is expected to emerge from Chapter 11 in about two weeks. Anacomp expects to trade its newly issued stock on the Nasdaq with its former stock swapped for warrants to buy the new stock. P. Lang Lowrey III, President and Chief Executive Officer said, "We've worked long and hard to put into place a new financial structure that will allow the company to prosper going forward."

### Barney's

Barney's, Inc. announced that it has received court approval to implement an employee retention program. The plan, which received the support of the official committee of unsecured creditors, formalizes the company's existing severance policies and enhances its bonus incentive plan. John P. Brincko, senior restructuring officer and a member of Barney's executive committee said, "We believe the plan is both a prudent and cost efficient way to maintain desired employment levels, reduce attrition and encourage employee loyalty. The retention program furthers these ends by alleviating the apprehension and insecurity that employees may experience in connection with the Chapter 11 restructuring."

### Herman's

Herman's Sporting Goods Inc. was granted permission to liquidate all of the company's 117 locations. The company filed for Chapter 11 protection in April and listed total assets of almost \$128 million, with liabilities of more than \$160 million. The "going out of business" sales have already begun, with the promise of fifty percent savings.

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*<http://bankrupt.com>*

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*[listserv@bankrupt.com](mailto:listserv@bankrupt.com)*

*Both services are free.*

# Special Report

## Bankruptcy Tax Specialists in the Nation's Major Accounting Firms

Firm (Head Office)	Senior Bankruptcy Tax Specialists	Office Location	Telephone
Arthur Andersen LLP Chicago, IL Tel. (312) 580-0069 Fax (312) 507-2548	P. Michael Baldasaro	New York, NY	(212) 708-4326
	John O'Neil	New York, NY	(212) 708-4003
	Paul Sheahen	New York, NY	(212) 708-4420
	Stan Jozefiak	Chicago, IL	(312) 507-6853
	Ross Friedman	Washington, DC	(202) 862-3190
	William T. Carman	Denver, CO	(303) 291-9121
	Lawrence Varellas	San Francisco, CA	(415) 546-8637
BDO Seidman, LLP New York, NY Tel. (212) 885-8000 Fax (212) 697-4840	Steven Golden	New York, NY	(212) 885-8362
Coopers & Lybrand, LLP New York, NY Tel. (212) 259-3501 Fax (212) 259-4588	Jonathan S. Brenner	New York, NY	(212) 259-3515
	Kenneth P. Hagen	Philadelphia, PA	(215) 963-8630
	Keith D. Levingston	Atlanta, GA	(404) 870-1154
	David E. Rossi	Chicago, IL	(312) 701-5672
	Michael G. Frankel	Dallas, TX	(214) 754-5205
	William D. Flora	San Francisco, CA	(415) 957-3204
	William J. Amon	Los Angeles, CA	(213) 356-6174
	Philip B. Strauss	Phoenix, AZ	(602) 280-1807
Deloitte & Touche, LLP New York, NY Tel. (212) 436-2000 Fax (212) 436-5000	Howard Sniderman	Pittsburgh, PA	(412) 338-7837
	Richard Boysen	Los Angeles, CA	(213) 688-5382
	Alan Alpert	New York, NY	(212) 436-3469
	Molly Gallagher	San Francisco, CA	(415) 247-4279
	Gary Curtis	Los Angeles, CA	(213) 688-4102
Ernst & Young LLP New York, NY Tel. (212) 773-3000 Fax (212) 773-1996	Jacob Blank	New York, NY	(212) 773-3000
	Kenneth Malek	Chicago, IL	(312) 879-2000
	Ronald Friedman	Washington, DC	(202) 327-6000
	Mark Yecies	Washington, DC	(202) 327-6000
	Stephen Sacks	New York, NY	(212) 773-3000
	Steven Friedman	Century City, CA	(310) 551-5500
	Denis Conlon	Chicago, IL	(312) 879-2000
	Robert J. Mason	Washington, DC	(202) 327-6000
	Richard Stern	New York, NY	(212) 773-3000
	Lawrence Kaplan	New York, NY	(212) 773-3000
Grant Thornton, LLP New York, NY Tel. (212) 599-0100 Fax (212) 286-1842	Steven Touger	New York, NY	(212) 599-0100, ext. 545
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# Gnome de Plume

## Sucking On Lemons

by Christopher Beard

It's cookie time. Big problems. Big case. Big fees. Bennett Funding should be worth between \$2 million and \$3 million per year in billings for the trustee.

Bennett Funding was the scam that underwrote the comings and goings of the locally prominent Bennett family of Syracuse, New York. They were big deals. The Bennetts sponsored everything from local politicians to charity balls. All that costs a lot of dough, even in Syracuse. To bankroll their activities Bennett Funding wrote equipment leases with government agencies that they then sold to investors. When the margins proved to be a little thin, they sold the leases again. And again. It worked great for a while. Now, of course, it's a horrible mess.

Who is going to clean it up? The local Assistant U.S. Trustee Michael Collins held a beauty contest for the job of Chapter 11 trustee and selected James P. Hassett.

Hassett would be on anybody's short list for the assignment. He was hired in 1973 as CEO of Diebold Computer Leasing to work out over \$100 million in defaulted debt. Since then he has spent substantially all his time shepherding failed leasing companies with significant fraud problems through bankruptcy. He has served as CEO and Chapter 11 trustee in most of the major cases including O.P.M. Leasing, untangling \$900 million of computer leases, ICS Cybernetics with \$200 million in leased computers, and Continental Information Systems disbursing over a billion dollars to creditors.

Done deal? Nope.

A couple of days later Collins announced that, upon further reflection, he was going to appoint Richard Breeden as the Chapter 11 trustee. Who's Breeden? Breeden was Chairman of the Securities and Exchange Commission. He went to Coopers & Lybrand as chairman of international financial services. I guess that was a bust, or he wouldn't be going to Syracuse.

Breeden's point man in the quest for the job was Richard Walker, General Counsel of the SEC. They're old buddies. In fact Breeden was the guy who originally brought Walker to the SEC. Loyalty's a fine quality. However, Breeden was not merely Walker's preference, but he became the SEC candidate. And Walker led the charge.

The SEC supported Breeden because of his background in enforcement. Huh? What's collaring bad guys got to do with sorting out millions in assets and liabilities? The SEC thinks Breeden has experience in cases involving financial service firms with complex problems. He was Chairman at the SEC when the Drexel case was pending. And I was in Washington, DC, when the Redskins won the Super Bowl.

Jerry Patchan, what gives? Why are you carrying water for those guys? Big mistake. You're going to have a line of supplicants at the U.S. Trustee's Office. Now everybody's going to be putting the squeeze on you. If there's any Member of Congress you don't know, you can now look forward to meeting him.

Where's Walker? He'll be no help. He's higher than Johnnie Cochran. He won't be able to tell the story enough times. He made it happen for Breeden. He resurrected and then nailed a \$6 million or \$7 million professional services deal. And you're the guy he stuffed. Talk about sucking on lemons.

But you're lucky about one thing. Maybe Richard Breeden is learning on this job, but Coopers can get the work done. You'd sure hate to have to revisit the case if somebody drops the ball.

*Christopher Beard is the publisher of Turnarounds & Workouts*

### Future Issues:

- *Color Tile - Franchisees Question Professional Fees*
- *Bankruptcy Tax Specialists in the Nation's Largest Law Firms*
- *Who's Who in Hamburger Hamlet*

### Recent Filings

**Kitchen Bazaar, Inc.** filed for Chapter 11 protection in the District of Maryland on April 22, 1996. The company owns and operates a chain of kitchen and cookware stores. Attorney for the debtor is Gary R. Greenblatt of Schwarz and Greenblatt of Baltimore. The company, which is filing for the second time, said it will liquidate. The company is privately held.

**Pacific Linen, Inc.** filed for Chapter 11 in the Western District of Washington on April 18, 1996. The company owns retail linen stores. Accounting services are provided by Deloitte & Touche. Attorney for the debtor is Mark Charles Paben of Bogle & Gates, Seattle, Washington. The company is privately held.

**Westcap Corp. and Westcap Enterprises Inc.**, its wholly owned subsidiary, filed for Chapter 11 on April 12, 1996 in the Southern District of Texas. Westcap Corp. is a holding company and Westcap Enterprises is a real estate investment trust. Accounting services are provided by KPMG Peat Marwick LLP. Attorneys for the debtor are Zack A. Clement (Westcap Corp.) and Mitchell A. Seider (Enterprises). The company is a privately held subsidiary of National Western Life Insurance Co.

**Basic Living Products, Inc.** filed for Chapter 11 protection on April 24, 1996 in the Northern District of California. The company operates a retail chain under the name Whole Earth Access. The company is privately held.

**Herman's Sporting Goods, Inc.** filed for Chapter 11 bankruptcy protection on April 26, 1996 in the District of New Jersey. The company is a sporting goods retailer. Attorney for the debtor is Paul R. De Filippo of Newark, New Jersey.