

From the receiver's corner

A Question of Priorities

By Robert Handler, Managing Partner, Commercial Recovery Associates, LLC

As a restructuring professional, I often act as a fiduciary to resolve questions over a troubled business' assets. Depending on whether or not the company is in bankruptcy or other litigation, a number of fiduciaries can be involved in these court and out-of-court proceedings, including bankruptcy trustees, court-appointed receivers and assignees for the benefit of creditors.

These three roles have several powers and duties in common; in general, their administrative claims for fees and costs involved in managing or liquidating the troubled company take priority over those of other general creditors. According to the terms of their appointment, they can sell the business to the highest bidder, distribute the sales proceeds to creditors, and allow or reject creditor and shareholder claims. Generally, they're required to follow liquidation priorities under state and federal law regarding taxes, secured claims, general unsecured claims, equity claims and other matters. The laws and rules that govern priority can change depending on the type of fiduciary involved and the nature of the proceeding, however, as a current U.S. Securities and Exchange Commission (SEC) case I am involved in shows.

This Chicago federal court case, United States Securities and Exchange Commission v. Jason R. Hyatt et al, Case No. 08-2224, involves approximately \$22 million that was solicited from individuals for investment in a series of commercial jet aircraft transactions. After the SEC determined the investors' funds had been misused, the commission asked me to act as the court-appointed receiver and manage the investors' interests in six commercial jet aircraft leased to Alitalia, British Airways and US Airways. I successfully sold one of the planes, a Boeing 737 leased to British Airways, and am continuing to manage the remaining aircraft.

Under most priority rules, investors or shareholders in any business are the last to be repaid (if at all) once the business is in liquidation or receivership. Nevertheless, Commercial Recovery Associates developed and implemented a court-approved plan that used the aircraft sale and lease proceeds to repay the defrauded investors before the repaying the creditors. As I explained to the court, a securities receiver's distribution plan may be authorized so long as it is reasonable and fair. In this case, the defrauded investors, unlike shareholders of most companies, were more like innocent crime victims than active participants who were managing the company. The court agreed with our plan, and allowed us to make the investor distributions over the objections of two creditors who were owed nearly \$1 million.

This case demonstrates that even widely accepted rules regarding restructuring and distribution of assets are not set in stone. My partner, Alan Friedman, and I have enough turnaround management expertise in a wide variety of industries to find a successful solution for our clients in almost any situation. During each of our receivership engagements, we assess the stakeholders' distinctive priorities, take a proactive approach and develop a unique plan of action to ensure results.