

**F**raudsters anticipate and gear their asset concealment strategies and tactics to frustrate and impede the widely used and predictable methods of claim enforcement employed by the fraudster's victims. Traditionally, a victim hires a local lawyer to 'get a judgment.' The lawyer goes through the normal proceedings and, after many delays, often measured in years, obtains a judgment for the victim. The victim during this stall time incurs legal expenses, as the lawyer deals with all of the fraudster's stalls and. During this time the fraudster has enjoyed both the use of the assets and by now, hidden them even further from view and farther from recovery.

Now the victim hires a local investigator, who often comes up with more questions than answers. Using this traditional strategy, a fraudster can rarely be defeated, and they will enjoy the fruits of their illicit activity for years to come. To recover misappropriated value, one must have an excellent team and invert the fraud paradigm.

*The team*

An effective civil recovery plan requires the employment of multi-national financial investigative professionals, financial forensic experts, multi-jurisdictional pre-emptive remedy lawyers, information technology experts and fraud experts. These people should possess demonstrable knowledge and understanding of the fraudsters, their traits, modus operandi and weaknesses.

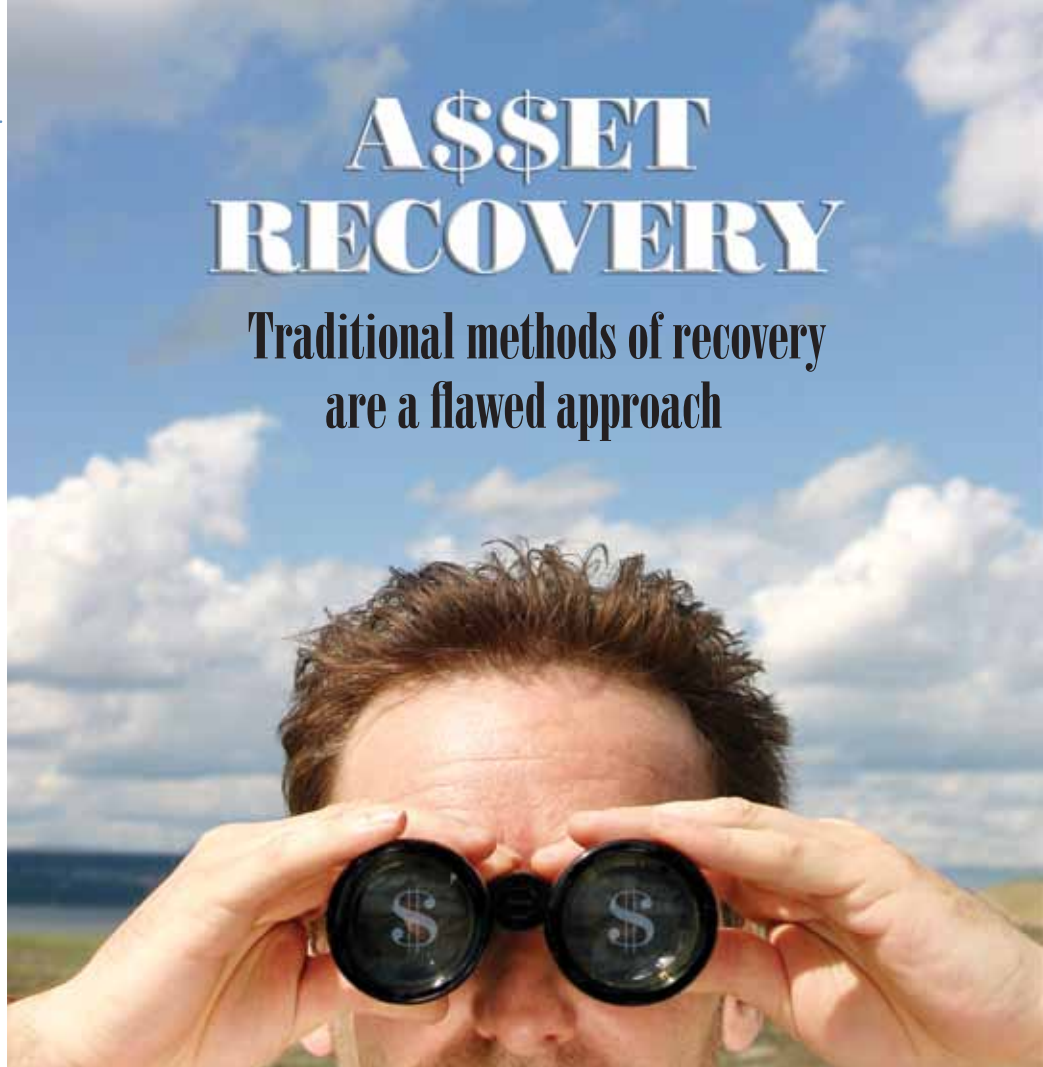
*Inverting the fraud paradigm*

A plan of recovery must be developed to move around the fraudster's strengths. Concealed asset recovery can and should be conceptually as simple as the term suggests, provided the correct approach is both adopted and followed. The collection team must overcome the victim's predisposition toward a retreat to the conventional. The fraudster is prepared for the victim's response of traditional recovery effort. It is in fact part of the fraudster's plan.

*A traditional recovery effort is just like a standing army fighting a guerrilla war. Guerrilla warriors never fight in the open; rather they melt into the terrain. They consciously deny the large standing army any attempt at a single decisive battle. Instead, they attack from the front, the rear never forming a front, slowly demoralizing the standing army. Further, the standing army has to pay for all of its massive troops, armaments, and support infrastructure. By contrast, the guerrillas have few needs and with only limited financial resources can forestall the large army in perpetuity. As we know no country has the budget or the political will to sustain an army in the field forever. There must be results and an end.*

# ASSET RECOVERY

## Traditional methods of recovery are a flawed approach



The fraudster is at the end. The fraudster is using the victim's money or resources. All the fraudster needs is to raise enough issues to forestall the effort of collection. The fraudster will put up false fronts, argue jurisdiction, postpone court appearances for various reasons and will even attempt to place spies in the victim's camp. For the money it costs, this is a great investment for the fraudster — the cost of doing business. The fraudster does not have to win on facts or law; only outlast the victim's ability to continue the fight.

The fraudster has access to information and professionals for obscuring and legitimizing ill-gotten gains. Often the techniques and devices used by the fraudster are similar to those used by wealthy, law abiding citizens for reduction of tax liability or estate planning.

*For example, when a \$300 million fraud began to unravel, the fraudster gathered the investors (victims) and wove a fascinating tale on how a trader for the fraudster disappeared with \$70 million. The trader was in Thailand with the stolen funds, and the other \$230 million was tied up in the trading program and would not be accessible for nine months, as stipulated in the agreements everyone had signed. The fraudster, outraged at this theft, retained an 'expert fraud recovery firm'. The expert worked diligently, met with all of the victims, and*

*gathered all of the original documents needed for court. The expert would send e-mails with tremendous tales of international financial intrigue, outlining the extensive efforts undertaken to recover the funds. It was excellent fiscal theatre. The fraudster bought another 18 months to operate for a fee of \$325,000 to the recovery firm. The fake recovery specialist was an excellent investment.*

*When the investors realized, yet again, they had been duped, fatigue began to set in and many investors just gave up. Victim fatigue is part of the plan. When a real team of experts was hired for the recovery, the fraudster began by contesting the foundation of the case. The fraudster claimed that all of the documents were forgeries and that since no originals had been produced the case could not go forward...*

Guerrilla techniques are effective for the unprepared. We, the honest public, are schooled in the routine of gathering facts and attacking them with force. Thus, we miss the guerilla technique and we attack and strike voids.

The only effective strategy is to attack the fraudster's strengths, namely resources (the money to do battle), the advance preparation by their professionals, their freedom of international movement, and freedom to attack — with no moral or factual impediments. The victims must begin any attack by debasing any or all of these strengths.

By inverting the fraud paradigm, the recovery team, must work in secret to gather intelligence on the fraudster's empire without the reverse occurring. The team must work to isolate the fraudster, physically, socially, and morally. The team must not respond to the fraudster bit by bit. They must maneuver in such a way that each time they strike they achieve an overwhelming victory. The team also needs to attack and isolate the professional(s) involved in laundering these funds, and isolate them from the fraudster, often with the choice for those involved to cooperate or face liabilities for their actions.

Part of the preparation is to take an inventory of assets, known and suspected. You should also prepare a set of hypothetical income statements and balance sheets to estimate the amount of missing or compromised assets. A map should be drawn showing the location of known and suspected assets, identifying emerging patterns. After all, the common ways to hide assets are comprised in a fairly finite set of actions, and professional advisors, particularly within the asset protection world, usually employ recognized processes.

You must be creative in your approach. The "crises of imagination" has doomed more asset recovery efforts than any other single event. Put yourself in the shoes of the fraudster. *How would you pull it off?*

A significant amount of valuable information is generated by the investigation of the fraud. Locating concealed assets requires knowledge and understanding of the techniques fraudsters use to conceal. In more sophisticated cases, assets may be concealed in, or at least laundered through, offshore jurisdictions. Discovering where funds or assets may have been hidden requires substantial investigative know-how. Ignorance in the investigative arena is a risk to be avoided at all costs.

#### *Defining the manner of holding concealed and laundered wealth*

Once concealed wealth has been located, the 'fruits of the fraud' must be linked to the fraudster. Sophisticated methods must be used to give the victim confidence that all assets held by or under the control of the fraudster have properly been identified. The objective is to obtain valuable clues regarding the use and the location of the misappropriated funds. Experienced fraudsters have many methods to conceal assets and keep a step ahead of their victims. Absent proper investigation, a straightforward asset concealment strategy can effectively prevent or delay recovery efforts.

#### *Attribution of control over, or enjoyment of, assets to a fraudster*

Linking control over, or enjoyment of, concealed assets to a fraudster is the most difficult part of asset recovery. Most

fraudsters understand the large task of proving a concrete case against them. In order for the court to reach a conclusion favorable to the victim, evidence must be clear and convincing and the 'trail of proof' needs to be substantially unbroken. The initial investigative stages must be carried out with the utmost attention to detail. All evidence must be clear, correct and convincing, as the evidence gathered by investigators is often the crucial missing link in successful asset recovery.

Where extraordinary civil search and seizure or secret documents disclosure orders have been obtained, all procedures related to their execution must be complied with to the letter. The fraudster must be denied any opportunity to attack the methods used to obtain evidence. Facts are the fraudster's enemy. Shortcomings on technical issues are the fraudster's his lynch pin to discredit and derail recovery efforts and many asset recovery exercises have fallen upon such technicalities.

Immediate consideration should be given to the anticipation of what initial freeze tactics will be employed and the size and form of the ultimate recovery. Any investigation should remain confidential as long as possible. If the target becomes aware of the investigation, assets may be moved and recovery efforts may take longer. The elements of surprise and prompt action cannot be underestimated.

#### *Pre-emptive strikes to preserve wealth pending final outcome*

Once a clear and convincing picture of asset concealment is drawn by the victims' team, a case may be taken to court for a basket of extraordinary relief actions. Such relief may have the effect of maintaining the status quo pending a final determination in the case. It is important to remember that the utmost care and accuracy of disclosure are demanded in this type of request.

All of these applications ought to be made *ex parte*, that is without the involvement of the defendant. Pre-emptive strikes to preserve wealth should be carried out swiftly and simultaneously, with strikes in different jurisdictions being as closely aligned as possible. Each order should be sealed and accompanied by a gag order, so that the fraudster will not be made aware of what is happening, which would encourage further movement of the concealed assets. The key elements are speed and surprise.

When a picture of the assets and how they are held and controlled is in place, and a pre-emptive freeze on those assets is executed, the fraudster will then act to check their assets. This effort to check upon secreted assets often reveals additional assets for possible recovery. Further, with pre-emptive remedies, the fraudster is deprived of the fuel necessary to drive

the defense to protect the fraudster's assets and frustrate your recovery efforts. Cash is the raw material fraudsters use to battle the victim. The value of investigation prior to litigation and pre-emptive remedies cannot be understated. You do not want to encounter fully funded fraudsters and their attorney.

While there are no guarantees that victims will regain their assets, there are many success stories in asset recovery cases. The key to success lies in the ingenuity and experience of the recovery team used, and the determination and persistence of the victim.

Once the wealth is secured by means of one or more *ex parte* asset freezing orders, it will be necessary to inform the defendant(s), within a defined period of time (if they do not already know). The victim can expect fierce litigation in an attempt to thaw such freeze orders, prior to any hearing on merit of such orders. One of the tactical consequences of preemptively freezing assets is that fraudsters are placed in a position, which may induce a proper settlement. Remember that while the victim may not have access to the frozen funds, neither does the fraudster.

Care should be exercised in policing the asset freezing relief. Fraudsters are ordinarily allowed a certain stipend for 'reasonable' living and legal expenses. With the pre-emptive freeze in place, the victim is now in a stronger position to consider their options. At this stage, the victim's team must focus upon building its case in advance of the final hearings.

#### *Success through inversion*

The objective of asset recovery is *recovery*. It's not a 'make wrong' exercise. Asset recovery is all about taking as much of the money and other assets as possible away from the fraudsters. It is unwise to involve law enforcement until this has been accomplished, as civil cases often will be delayed until criminal proceedings are completed. Thus, the fraudsters are left with the funds to pay for their criminal attorneys and launder remaining funds through deeper, more elaborate structures. All the while, the victim's discovery and litigation is stalled, often for several years. It is best to turn over a destitute fraudster to authorities for prosecution whenever possible.

Asset Recovery is about *find & freeze*, not *litigate & lose*. **A**

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