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# Enforcing and Collecting Judgments: Strategies for Locating and Recovering Corporate Assets

Alter Ego Liability, Piercing the Corporate Veil, Reverse Piercing, and Fraudulent Conveyance Theories

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TUESDAY, FEBRUARY 4, 2020

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

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Today's faculty features:

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# I. Locating Debtor Assets

**JMBM**  
Jeffer Mangels  
Butler & Mitchell LLP

# Sources of Information

## *Sub Rosa:*

- Internal Materials
- Informal Discovery

## *Formal Discovery:*

- Third Party
- Debtor

# Internal Materials

- Credit Applications
- Financial Statements
- Cancelled Checks
- Invoices
- Tax Reporting Materials

*Use for internal analysis and to determine third-party information sources -- sub rosa*

# Informal Discovery

- Private Investigators
- Witness Interviews
- Online Searches (social media)
- UCC Filings
- Send funds and trace

*Use for internal analysis and to determine third-party information sources -- sub rosa*

# Third Party Discovery

- Subpoena practice
- Banks, business affiliates, employers
  - Documents vs. testimony/Third-Party Examination
  - Centralized location for service -- Department of Business Oversight
- Witness Interviews
- Federal vs. State Notice Requirements
- CCP 1985.3 Issues
- Out of State Subpoena Practice
- Follow-up Subpoenas

# Discovery From Debtor

- OEX
  - 1 year lien created by service
  - 1x every 4 months
- Written Discovery
- Reliability Issues
- Strategic Aspects
  - Lose surprise, might intimidate into payment or force into Bankruptcy

# Best Practices

- Move quickly
- Check own files
- Be precise in requests
- Use element of surprise
- Create liens by service of OEX
- Follow up discovery
- Focus on info from third-parties who lack an interest in dispute

# II. Executing a Judgment



# Execution Methods

- Levy writ of execution
- Receiver
- Charging Orders
- Lien Creation

# Writ of Execution

- Levy on standard banks
- Levy receivables
  - Keeper/Till-Tap
- Real property interests
  - Stock cooperatives
- Personal property
- Items in Third Party possession
- Wage garnishment – special procedures
- Combine service with subpoenas – follow money

# Receivership

- Collect funds (*e.g.*, rents)
- Marshall assets
- Parked funds (IRS, bonds etc.)
- Expensive – better for larger/difficult situations

# Other Execution Issues

- Charging Orders (partnership/LLC)
  - Lien created by service of motion
  - Foreclose partnership/LLC interest
- Create liens
  - JL-1; Abstract of Judgment, Pending Action
- Assert leverage
  - CADL suspension; Contractor's license
- Wary of Bankruptcy
- Third-Party Claims for Transfers
  - UFTA, Successor liability, Alter-Ego

# III. Piercing the Corporate Veil

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# Alter-Ego Liability

**Must show:** (1) such a unity of interest that the separate personalities of the corporations no longer exist; and (2) fraud, injustice, or an otherwise inequitable result will follow if the corporate separateness is respected.

**Factors considered:**

- Commingling of funds or assets
- failure to segregate funds of the separate entities
- the unauthorized diversion of corporate funds or assets
- The treatment by the third party of corporate assets as their own
- holding out of personal liability for the debts of the corporation
- The failure to maintain minutes or adequate corporate records
- The identical equitable ownership or control in the two entities
- The use of the same office or business location
- The failure to adequately capitalize a corporation
- The use of a corporation as instrumentality for a single venture
- The concealment of the identity of the responsible ownership
- The disregard of legal formalities
- The failure to maintain arm's length relationships among related entities
- The diversion of assets
- The concentration of assets in one entity and the liabilities in another

# Alter Ego Liability (continued)

## **Amendment of Judgment to name alter ego:**

- the alleged alter ego(s) were "virtually represented" in the lawsuit, and "conduct[ed] the litigation with a diligence corresponding to the risk of personal liability involved."
- Actions taken by the third parties during the litigation, which ignored the corporate formalities and removed assets from the defendant

*CASE EXAMPLE:* in *Greenspan v. LADT, LLC* (2010) 191 Cal.App.4th 486, during the course of the arbitration, \$47 million in property sales proceeds were received by the defendant but, by the end of the arbitration, that "\$47 million had dwindled to less than \$13,000."

# Successor Liability

**Any one of the following four factors and inadequate consideration given for assets:**

- The purchaser expressly or impliedly agrees to assume such debts
- The transaction amounts to a consolidation or merger of the corporations
- The purchasing corporation is merely a continuation of the selling corporation
- The transaction is entered into fraudulently to escape liability for such debts

# Fraudulent Transfers

## Actual Fraudulent Transfer

- Actual intent to hinder, delay or defraud a creditor
- **Badges of fraud:** transfer to insider, debtor retains control of transferred asset, transfer was concealed, transfer was made after threat of suit, transfer was substantially all of debtor's assets, debtor absconded, debtor concealed assets

## Constructive Fraudulent Transfer

- Without receiving reasonably equivalent value:
  - a. transferred an asset or incurred a debt while insolvent
  - b. transferred an asset or incurred a debt which rendered the debtor insolvent

## Defense

- Receiving reasonably equivalent value for the transferred asset

## Remedy:

- Set aside transfer/monetary judgment against transferee

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