

Pursuing a Career Path in Commercial Fraud / Litigation

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Kathy Bazoian Phelps

- Partner at Raines Feldman LLP in Los Angeles
- Extensive litigation experience representing both plaintiffs and defendants in large-scale complex Ponzi scheme cases, including representation of bankruptcy trustees and regulatory receivers
- Author of *The Ponzi Book, A Legal Resource for Unraveling Ponzi Schemes*, published by LexisNexis®. www.theponzibook.com
- Author of *Ponzi-Proof Your Investments: An Investor's Guide to Avoiding Ponzi Schemes and Other Fraudulent Scams*. www.Ponzi-Proof.com
- Author of The Ponzi Scheme Blog. www.ThePonziSchemeBlog.com

Joel E. Cohen

- Managing Director at [Stout](#) in New York, NY
- Almost two decades of experience in the dispute, forensic, and insolvency practice areas, most specifically focused in the financial services and asset management industries.
- Significant cross-border insolvency and litigation matters
 - Served as financial advisor and consulting expert to fiduciaries, offshore liquidators, receivers, bankruptcy, and litigation trustees
- Asset tracing, fraud, Ponzi schemes, industry custom and practice for investment managers, and forensic analysis
- Written extensively and presented on these related topics

Martin Trott

- Partner at Rawlinson & Hunter in the Cayman Islands
- Qualified accountant and insolvency practitioner with 26 years' experience (18 years in the UK (London) and 8 years in the Caribbean region)
- Appointed liquidator (equiv. bankruptcy trustee) and receiver to multiple situations (funds and corporations), mostly with cross-border element, to investigate, recover assets and bring claims
- Several appointments recognised under Chapter 15 and significant experience of bringing litigation claims (and acting as 30(b)(6) witness) alongside bankruptcy professionals in the US
- Investigated multiple frauds and traced money across multiple borders to recover assets for the victims of fraud
- Fellow of the ACCA and member of both INSOL and the ABI

Fraud Proceedings

- Types of Fraud Proceedings
 - Bankruptcy
 - Receivership
 - Regulatory inquiries
 - Complex commercial litigation
 - SIPA Proceeding
 - Securities actions
- Types of Fiduciaries
 - Bankruptcy Trustee
 - Receiver / Liquidator
 - SIPA Trustee
 - Independent Director (special assignment)
 - Liquidating Trustee
 - Litigation Trustee



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Bankruptcy Code: Duties of the Trustee

- 11 U.S.C. § 704
- Collect and reduce to money property of estate
- Be accountable for all property received
- Investigate financial affairs of debtor
- Examine proofs of claim and object if necessary
- File appropriate status, operating and final reports

Liquidator Duties (Common Law Countries/Offshore)

- Very similar duties to US bankruptcy trustee (but more creditor friendly)
- Governed by statute and the “common law”
- Duties to creditors (if insolvent) and shareholders (if solvent)
- Acting as a fiduciary with duties to recover assets, bring and defend claims, adjudicate claims and pay out distributions
- As cross-border, recognition in foreign countries very important (such as C15 in the US or s426 in the UK) to get powers in those countries
- Investigate and report on “reasons for failure” and on “wrongdoing”

Receivership: Duties of Receiver

- Federal Rule of Civil Procedure 66
- Collect, take possession of and marshal property of estate
- Prevent dissipation of assets
- Investigate financial affairs to locate assets
- Obtain all books and records
- File appropriate status, operating and final reports

SIPA Proceeding: Duties of Trustee

- 15 U.S.C. § 78fff(b)
- Conducted under Chapter 7, unless inconsistent SIPA provision
- General estate of debtor
- Fund of “customer property”
- Duties essentially same as Chapter 7 trustee
- SIPA trustee power to review records and claims
- SIPA can advance funds to trustee for valid “customer” claims
- Customer has burden to proof customer status



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Types of Fraud

- Ponzi schemes
- Ponzi-like schemes
- Fraudulent transfers
- Misappropriation of Assets
- Embezzlement
- Cash Larceny
- Skimming
- Billing Fraud
- Fraudulent submission of expense reports
- Commingling of personal and corporate funds

Uncovering the Fraud

- Books and records of the business
- Bank records v. Accounting records
- Financials and tax returns
- Vendor files
- Email review
- Tracing of the cash through the bank accounts
- Evaluation of proofs of claim
- Interviews
- Preference and fraudulent transfer analysis

The Fraud Team

- The Fiduciary
- General Counsel
- Forensic Accountant
- Noticing Agent
- Computer Forensics
- Special Litigation Counsel



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Questions

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