

An alternative

to bankruptcy

in the '90s

ASSIGNMENT FOR THE BENEFIT OF CREDITORS

Bankruptcy petition filings in the Central District of California have reached a record high. In 1992 filings were up more than 26 percent from 1991, and in 1991 more bankruptcy petitions were filed than in any other previous year.¹ The economic downturn of the past two years continues to create record business failures. For the foreseeable future, as the option of bankruptcy becomes more of a business tool and less of a social embarrassment, exponential increases in bankruptcy filings are certain to occur.

Bankruptcy is, however, not always the best solution for a distressed business that has decided to liquidate. Upon filing, the debtor faces a Bankruptcy Court that is already overburdened with its caseload. Equally overburdened Chapter 7 trustees, serving by appointment, rarely are able to devote the attention needed to tailor the liquidation effort to options other than

auction sales. The process of liquidating the assets is often slow and costly, because Chapter 7 trustees generally must seek Bankruptcy Court approval for each transaction they undertake. Chapter 7 trustee sales often result in lower recoveries due to this bulk sale process, as well as the necessity of following Bankruptcy Court-approved sale procedures. These procedures are calculated to conform to adequate notice concerns of the Bankruptcy Court but frequently fail in realizing the maximum recovery for the assets being sold.

An Assignment for the Benefit of Creditors ("Assignment") is another option that can be utilized to help overcome the problems often incurred in Chapter 7

John Lapinski and Leslie Horowitz are partners at Smith & Smith specializing in Assignments for the Benefit of Creditors, insolvency, bankruptcy, and commercial litigation. Lapinski is a former member of the Association's Board of Trustees.

trustee liquidation sales.

An Assignment is a business liquidation device available as an alternative to bankruptcy.² It is, however, analogous to bankruptcy under the United States Code but, unlike a Chapter 7 bankruptcy, should only be considered if there are assets to liquidate. The significant difference is the ability to avoid following all of the administrative procedures that govern Bankruptcy Court proceedings. Assignments lessen the time required to sell assets, increase the liquidation options, and keep the costs substantially lower, often resulting in a greater return for creditors. There are many reasons for this result, including the flexibility in the method of sale, the ability to act quickly and the greater time the assignee will generally devote to the liquidation effort. The ability to utilize Assignments in California can be traced to Civil Code Section 22.2, which incorporates English common law: "The common law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or the laws of this State, is the rule of decision in all the courts of this State."³ Assignments are favored in the law and are construed so that they may stand rather than fall.⁴

Assignments are recognized in the Code of Civil Procedure, which states that "[n]otwithstanding any other provision of the Code of Civil Procedure, [a] defendant may make a general assignment for the benefit of creditors."⁵ Other statutory provisions in the Civil Code and Code of Civil Procedure have been implemented to assist the assignee. However there is no comprehensive statutory scheme similar to those for attachments or writs of possession.⁶

An Assignment is simply a contract whereby the troubled entity ("assignor") transfers legal and equitable title, as well as custody and control of its property, to a third party ("assignee") in trust, to apply the proceeds to the payment of the assignor's debts.⁷ The assignee liquidates the property and distributes the proceeds among the assignor's creditors in accordance with priorities established by law.⁸

Virtually any transfer to a trustee, by which the debtor seeks to divest itself of both title and control of *all* assets and intends to create an absolute conveyance for the purpose of distributing proceeds among its creditors, is in legal effect an Assignment, no matter what the parties call it.⁹ An Assignment must vest *all* interest in the property transferred to the assignee;¹⁰ however the assignee takes only that property that the assignor may legally convey or assign.¹¹ A surplus of property over the total debts does not render the Assignment invalid and is held in trust by the assignee and returned to the assignor, whether or not expressly stated in the instrument.¹²

An Assignment is most successful when there is cooperation among the debtor, the secured creditors and the assignor. For example, an assignee of a manufacturing business may, with the cooperation of the secured parties and the principals, operate the business for a limited time to complete work in process and to maximize recovery of accounts receivable. An assignee often will be able to employ the principal of the assignor who can be invaluable in clarifying business records and liquidating assets at the highest possible price. A Chapter 7 trustee seldom is in a position to avail the bankruptcy estate of this option, tending instead to liquidate in bulk or mass rather than employ what may otherwise be more rewarding methods.

PARTIES WHO MAY ASSIGN

A debtor is any individual, partnership or corporation that owes anything to anyone. Any debtor owning property has, as an incident of ownership, the inherent common law right to make an Assignment. The general rule is that any insolvent debtor may make an Assignment.¹³

An Assignment is not feasible (and thus discouraged) for individuals, because individuals do not receive discharges as they would in a Chapter 7 Bankruptcy. Although a creditor may not pursue *assets* assigned to the assignee, a creditor may continue to pursue the assignor's *post-assignment assets* in the absence of a discharge. In most instances, it would be very difficult to determine at what point an individual assignor's liability ends. However, an individual assignor does have the right to claim property as exempt for debts under California law.¹⁴

Partnership property may be assigned by a partner.¹⁵ The partner needs the express consent and authorization of other partners to make an Assignment. An Assignment is not within the contemplation of an ordinary partnership or the usual course of business and therefore is beyond the scope of agency arising from the partnership.¹⁶ The consent need not be in writing¹⁷ and is not necessary if other partners have abandoned the partnership business.¹⁸ An Assignment of both partnership property and an individual partner's property will be construed to give partnership creditors priority on partnership assets and an individual partner's creditors priority on the individual's assets.¹⁹

Corporations may make Assignments unless restricted by their articles or some statutory provisions.²⁰ A corporate resolution is required since an Assignment is a disposition of all of the corporation's assets.²¹

ASSIGNABLE PROPERTY

Any non-exempt property that the debtor can sell or convey or would be subject to execution may be assigned. Real,

personal, and general intangible property are assignable. When a corporation makes an Assignment, all corporate property, tangible and intangible, is transferred to the assignee,²² including choses in actions, customer lists, book accounts, and rights and credits of all kinds, both in law and equity.²³ A cause of action in tort, such as a business tort, that survives to a personal representative can be enforced in the name of an assignee.²⁴

An Assignment of real property that purports to pass all interest of the assignor is a conveyance²⁵ and is subject to all the provisions of the Civil Code relating to transfers of real property.²⁶ The failure to record a transfer does not render the conveyance invalid against subsequently attaching creditors, since an unrecorded deed or Assignment is sufficient to pass title against such a creditor.²⁷

The goodwill of a business (even one closed and in liquidation) is an asset that an assignee will not only recognize but attempt to utilize when liquidating the assets of business. Goodwill is seldom of any value in a Chapter 7 trustee's liquidation sale. Goodwill may be a significant asset whose value can be realized through a turn-key sale to someone interested in the assignor's business. While going-concern value seldom is obtained, an assignee could keep the assignor's assets in place for a period while seeking to find a purchaser. An assignee thus may try to operate a business in order to sell it as a going concern in order to realize the goodwill value. A Chapter 7 trustee has no incentive to undertake that extra work or spend the time and money required to seek the necessary court approval.

A trademark or trade name that is not personal but is connected with tangibles such as location, leasehold or goods, constitutes a part of the assets of the estate. The right to use a trademark or trade name will pass in an Assignment even though it is not specifically mentioned.²⁸

The interest of an insured in a life insurance policy having a cash surrender value may be included in an Assignment, but where the interest of the insured is merely a right to exercise an option to surrender the policy for the cash surrender value, and the interests of innocent third persons named as beneficiaries would be affected, an Assignment has been held not to carry with it the insured's interest.²⁹ The assignee is the equivalent of a loss payee and makes notification to the insurer.

DISCHARGE OF DEBTOR AND CONSENT OF CREDITORS

Assignments *do not* discharge a debtor, except to the extent of the actual amount of any payments made by the assignee.³⁰

A conditional sale vendor, lessor or secured creditor elects whether to retake

its property or collateral or utilize the assignee for purposes of liquidation procedures. Such creditors, in fact, are often the greatest beneficiaries of the Assignment and usually consent to the proceeding since this procedure generally realizes more on their collateral or property than from a Chapter 7 bankruptcy. These obligations nearly always are personally guaranteed by the company's principals who benefit from the better liquidation results.

While not required to consent to an Assignment, secured creditors often must agree in advance of the Assignment since their cooperation frequently affects the liquidation of the assets.³¹

The acceptance of an Assignment by unsecured creditors is not necessary since under common law the proceedings are deemed to benefit them through equality of treatment.

Creditors who file claims under an Assignment waive all objections to any Assignment form irregularity, title of the assignee to the assets, or validity of the Assignment.³²

An Assignment is not a fraudulent transfer if there is immediate delivery and change of possession of all personal property of the assignor.³³ The funds realized on liquidation by an assignee cannot be claimed by a single creditor or jointly by all creditors since the assignee holds the funds in trust.³⁴

SELECTION AND PERSONAL LIABILITY OF ASSIGNEE

The assignee generally is selected by the assignor, although a court may remove an assignee for violations of the Assignment contract or nonfeasance. The assignee may not give up his duties under the Assignment without liability or a superior court order until creditors receive distribution.³⁵

The assignee is entitled to compensation either as stated in the contract of Assignment or as negotiated with creditors. Even if the contract is silent on the assignee's fees, the superior court has equitable power to grant reasonable compensation to the assignee.³⁶ The compensation issue thus should be resolved in advance and in the contract.

The standard of care for an assignee is an ordinary prudent person who would make the same decisions in his or her own affairs under like circumstances.³⁷ The assignee may be liable for losses occasioned if the standard is not met or for failure to observe statutory priority given debts owed to the U.S.³⁸

POWERS AND DUTIES OF ASSIGNEE

The assignee's duties include protecting the assets of the estate, administering them fairly and representing the estate. The exact duties depend on the type of case.

The assignee is the representative of

the assignor and not a bona fide creditor,³⁹ and so acquires no greater right in the property assigned than the assignor had at the time of the Assignment. In this respect, although the assignee may be a trustee and the creditors may be considered the beneficiaries of the Assignment, the assignee is no more than a representative of the assignor and does not technically represent the creditors.⁴⁰

Prior law held that an assignee may not maintain an action to set aside a fraudulent conveyance made by the assignor, since such a conveyance was binding on the assignor;⁴¹ however this changed with the enactment of Civil Code Section 3439.07(d). Section 3439.07(d) holds that a creditor who is an assignee may exercise any and all of the rights and remedies specified under the section, if they are available to the creditors, 1) only to the extent the rights or remedies are so available and 2) only for the benefit of those creditors whose rights are asserted by the assignee.

A transfer of assets to the assignee does not violate the requirements of bulk sale transfers;⁴² the assignee becomes a lien creditor who takes ahead of all other creditors. If a secured creditor's lien has not been perfected the Assignment cuts off such an interest.⁴³

The assignee can file a quiet title action against a grantee of real property that is alleged to have been fraudulently conveyed.⁴⁴

An assignee may recover any preferential transfer of property but must commence the action within one year of taking the Assignment.⁴⁵ To be preferential and thus avoidable, the transfer must be made within 90 days of the Assignment, or one year if the creditor is an insider, and the transfer must have been made while the assignor was insolvent.⁴⁶

An assignee is often able to pursue causes of action where a Chapter 7 trustee could not or would not. The assignee is free to enter into contracts to recover assets or liquidated claims. Thus, an assignee may hire an attorney on a contingent fee basis to pursue claims that may be theoretically possible but impractical for a Chapter 7 trustee to pursue in a bankruptcy. The assignee has the flexibility to contract with one or more creditors or even shareholders to fund expenses to pursue a valuable cause of action without the need to seek court approval.

Notwithstanding any provision in a lease for its termination upon the making of the Assignment, the insolvency of the lessee, or other provision relating to the financial condition of the lessee, for a period of up to 90 days after the date of the Assignment, the assignee may occupy any business premises held under a lease by the assignor upon payment when due of the monthly rental reserve in the lease for the period of the occupancy.⁴⁷

New procedures effective this year require the assignee to give written notice to the assignor's creditors, equity holders and other interested parties within 30 days of acceptance of the Assignment. In addition, the assignee must establish a date between 150 and 180 days after publication by which claims against the estate must be filed.⁴⁸ These procedures benefit the assignee and the creditors by establishing deadlines and safe harbors.

EFFECT OF BANKRUPTCY

If a creditor or creditors file an involuntary bankruptcy petition, the Bankruptcy Court will enter an order for relief only if the court finds the requirements of Section 303 have been met and no abstention motion has been filed by the assignee.⁴⁹

The Bankruptcy Court may abstain from accepting jurisdiction if the Assignment essentially treats creditors in a manner similar to a Chapter 7 bankruptcy and acceptance of jurisdiction brings no additional benefits to creditors.⁵⁰ Where Bankruptcy Court jurisdiction may be beneficial to prevent fraud or injustice, an Assignment may be avoided by a bankruptcy trustee, even if the Assignment occurred more than 120 days before the involuntary bankruptcy petition was brought.⁵¹

PROPERTY UNDER ATTACHMENT OR SUBJECT TO OTHER LIENS

At common law, the attachment provisions provided that a defendant may also make an Assignment notwithstanding any remedies available to a plaintiff contained in the provisions.⁵²

If an Assignment is created within 90 days of a creditor being awarded a temporary protective order or writ of attachment, the lien created by the attachment is terminated.⁵³ The lien may be reinstated under certain circumstances.⁵⁴ By subrogating the assignee to the rights of the plaintiff whose lien is terminated, the priority of the lien may be preserved for the benefit of the estate.⁵⁵ The assignee has priority over subsequent attaching creditors.⁵⁶

A judgment lien obtained before the Assignment may be a lien on assigned property but may be subject to preference attack; however, a judgment lien obtained after Assignment creates no lien since title already passed to an assignee.⁵⁷ Therefore, prior valid liens or mortgages on property are unaffected by an Assignment. A conditional sale agreement, valid and enforceable against the assignor (vendee), is enforceable against the assignee.⁵⁸ On the other hand, the assignee does not take property as a bona fide purchaser for value; the assignee takes subject to every equity

(Continued on page 45)

BANKRUPTCY ASSIGNMENTS

(Continued from page 23)

that might have been enforced against the assignor.⁵⁹

DISTRIBUTION PRIORITIES

Secured creditors retain their collateral, or its value, generally as a lien on the proceeds. The costs and expenses of the Assignment, including the assignee's fees, legal expenses and costs of administration, are paid first, just as in a Chapter 7 bankruptcy. Accordingly, in situations where the assets are overencumbered it is necessary to obtain the subordination of the secured creditor(s) to such expenses, which generally is resolved by agreement prior to acceptance of the Assignment. Thereafter, distribution is generally made in accordance with the following priorities established by law:

- 1) Obligations owing to the U.S. (interest and penalties stop as of the date of the Assignment).⁶⁰
- 2) Labor wages and benefits.⁶¹
- 3) Sales and use taxes (interest and penalties continue after the Assignment.⁶²
- 4) Income taxes (interest and penalties continue after the Assignment).⁶³
- 5) Bank and corporate taxes.⁶⁴
- 6) Employment insurance contributions.⁶⁵
- 7) Unsecured creditors arising from deposits for specified purposes.⁶⁶
- 8) General unsecured claims.

Interest is paid only after the principal is paid for all claims filed. Interest rates are computed according to the original agreement between the vendor and the assignor. Thereafter, interest claims are computed and prorated if necessary.⁶⁷ Surplus is returned to the assignor after nonparticipating creditors have had an opportunity to reach surplus.⁶⁸

An assignee must render an accounting to creditors within a reasonable time and generally does so when the estate is closed. In many instances periodic bulletins are sent to creditors.⁶⁹

An Assignment for the Benefit of Creditors is an old common law tool that is not utilized as often as it should as an alternative to bankruptcy. It can save time and expenses and is often beneficial to principals who have personally guaranteed company obligations or have personal liability on tax claims. It may be of substantial benefit to secured creditors by relieving them of the costs and risks of liquidation where the creditor is not readily able to comply with the requirements of Commercial Code Section 9504⁷⁰ or wishes to avoid foreclosing on its collateral for other reasons.⁷¹ ♦

¹ ANNUAL REPORT OF THE U.S. DIST. CT., REPORT ON THE BUS. OF THE CT., MANUEL REAL, CHIEF JUDGE (Jan. 1993).

² 15 CAL. LAW REVISION COM. ANN. REP. 2212 (1979);

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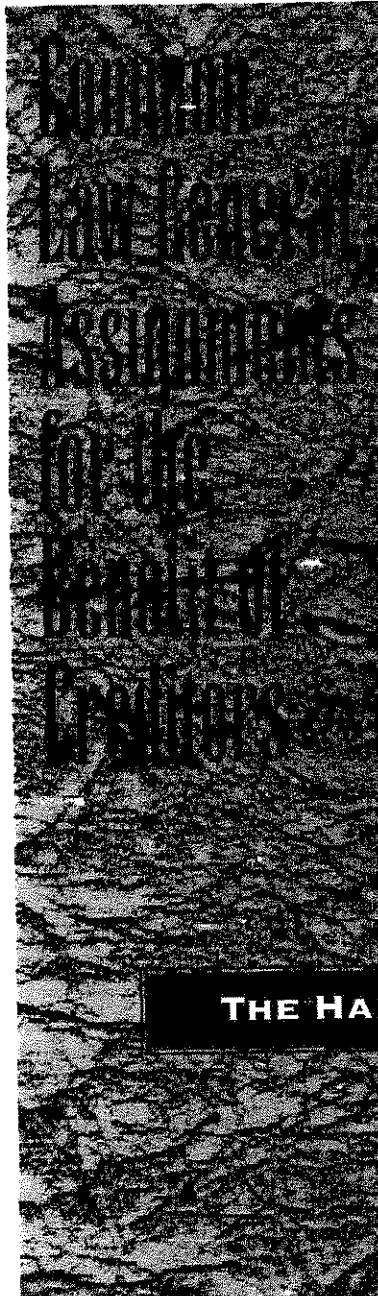
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Credit Managers Association v. National Independent Business Alliance, 162 Cal.App.3d 1166 (1984). For a review of Chapter 7 liquidation procedures, see COLLIER BANKRUPTCY MANUAL (3d ed. 1992) and COLLIER BANKRUPTCY PRACTICE GUIDE (1992) both multi-volume looseleaf services. For insights into the requirements of the Central District, see FENNING & GOULD, LOCAL BANKRUPTCY PRACTICE MANUAL (1991).

³ Added by Stats. 1951, ch. 655 §1, at 1833 -- derived from Stats. 1850, ch. 95, Pol. C. 4488, at 219. The Mexican legal system was superseded by the adoption of the common law on Apr. 13, 1880. People ex rel. Vantine v. Senter, 28 Cal. 502, 505 (1865) gives an especially good history of the takeover of the Mexican legal system in 1850. See Credit Managers, 162 Cal.App.3d at 1169-70; Bumb v. Bennett, 51 Cal.2d 294 (1958).

⁴ Muller v. Norton, 132 U.S. 501 (1889). California formerly had statutory provisions that provided for Assignments but CIV. CODE §§3449 to 3473, inclusive, were repealed in 1980. Statutory assignments were complicated, more expensive and rarely in use. The legislature recognized this as a problem, and now only common law assignments are utilized.

⁵ CODE CIV. PROC. §493.020. CODE CIV. PROC. §493.010 *et seq.* (1979) codifies the leading case on Assignments, Brainard v. Fitzgerald, 3 Cal.2d 157 (1935).

⁶ CODE CIV. PROC. §482.010 *et seq.* sets up a detailed scheme for prejudgment attachments. Within the Ninth Circuit, the states of California, Hawaii, Idaho, Alaska, Nevada and Oregon are governed by common law authority authorizing Assignments. Arizona, Washington and Montana are governed by statutory authority creating the right to make an Assignment.

⁷ Brainard, 3 Cal.2d at 162-63; Fenton v. Edwards & Johnson, 126 Cal. 43, 46, 47 (1899).

⁸ Bumb, 51 Cal.2d at 298-99; Mechanics Bank v. Rosenberg, 201 Cal.App.2d 419, 421-24 (1962).

⁹ Sabichi v. Chase, 108 Cal. 81 (1895).

¹⁰ Brainard, 3 Cal.2d at 163; Mechanics Bank, 201 Cal. App.2d at 424.

¹¹ Peterson v. Ball, 211 Cal. 461 (1931); 16 CAL.JUR. 3d *Creditors' Rights and Remedies* §44.

¹² Heath v. Wilson, 139 Cal. 362, 369 (1903).

¹³ It is not clear whether or not a solvent debtor has the right to make such an assignment. See CODE CIV. PROC. §1800 for a definition of insolvency.

¹⁴ See CODE CIV. PROC. §§493.010 and 493.020 (1979). In any Assignment, the assignor, if an individual, may choose to retain as exempt property either the property that is otherwise exempt in CODE CIV. PROC. §703.010 (1987) or, in the alternative, the exemptions as provided for in CODE CIV. PROC. §1801 (1982). The assignee would have difficulty determining exempt property and undoubtedly would require a state court ruling on any exemption claimed.

¹⁵ Brainard, 3 Cal.2d 157 (1935); Richlin v. Union Bank & Trust Co., 197 Cal. 296 (1925).

¹⁶ CORP. CODE §15009(2) and (3) (1991); Bumb, 51 Cal.2d 294 (1958).

¹⁷ Bumb, 51 Cal.2d at 301.

¹⁸ CORP. CODE §15009(3) (1991); Forbes v. Scannell, 13 Cal. 242 (1859).

¹⁹ Forbes, 13 Cal. at 287.

²⁰ Bank of Visalia v. Dillonwood Lumber Co., 148 Cal. 18 (1905); First National Bank of Stockton v. Pomona Tile Mfg. Co., 82 Cal.App.2d 592 (1947); 16 CAL. JUR. 3d *Creditors' Rights and Remedies* §31.

²¹ CORP. CODE §1001 (1990).

²² Bumb, 51 Cal.2d at 299.

²³ Fenton, 126 Cal. 43 (1899).

²⁴ 6 AM. JUR. 2d *Assignments for the Benefit of Creditors* §24 (1963).

²⁵ CIV. CODE §1215 (1982).

²⁶ Moore v. Schneider, 196 Cal. 380 (1925); and Bumb, 51 Cal.2d at 299-300.

²⁷ Bumb, 51 Cal.2d at 299, 300.

²⁸ 6 AM. JUR. 2D *Assignments for the Benefit of Creditors* §25.

²⁹ *Id.* at §26.

³⁰ Boteler v. Robinson, 105 Cal.App. 611 (1930).

³¹ Lacy v. Gunn, 144 Cal. 511, 517 (1904); CODE CIV. PROC. §493.020 (1979).

³² Lacy, 144 Cal. at 516, 517.

³⁴ Civ. CODE §3440.01 (1970). Creditors would voice their objection by refusing to participate in an assignment and instead bringing an action in the superior court. *Rapp v. Whitten*, 113 Cal. 429 (1896).

³⁵ *Dunsmoor v. Furstenfeldt*, 88 Cal. 522 (1891).

³⁶ *Handley v. Pfister*, 39 Cal. 283, 287 (1870).

³⁷ *Menke v. Miller*, 56 Cal. 628 (1880).

³⁸ *Sweet v. Markwart*, 158 Cal. App. 2d 700, 707 (1958).

³⁹ 31 U.S.C. §3713 (1983); *Holywell Corporation v. Fred Stanton Smith*, ___ U.S. ___, 112 S. Ct. 1021 (1992).

⁴⁰ *First National Bank of Stockton*, 82 Cal. App. 2d at 608; *Moore*, 196 Cal. at 385-86. A similar standard is used for trustees. PROB. CODE §16040.

⁴¹ *Mechanics Bank*, 201 Cal. App. 2d at 424-25.

⁴² *Moore*, 196 Cal. at 385-87.

⁴³ COM. CODE §6103(c)(6) (1964).

⁴⁴ COM. CODE §§9301(d)(3); 9302(1)(f) (1990).

⁴⁵ *Moore*, 196 Cal. at 388.

⁴⁶ CODE CIV. PROC. §§1800 and 1800(9) (1982).

⁴⁷ CODE CIV. PROC. §1800(b)(4) (1982).

⁴⁸ CODE CIV. PROC. §1954.1 (1985). This is similar to the preference provisions under the Bankruptcy Code, 11 U.S.C. §547.

⁴⁹ 11 U.S.C. §303(h)(2) (1979). See the general abstention provision for the best interests of the creditors, pursuant to 11 U.S.C. §305 (1979).

⁵⁰ Bankruptcy Court judges generally will abstain from accepting jurisdiction on involuntary bankruptcy petitions filed after a valid Assignment is made.

⁵¹ 11 U.S.C. §543(d)(2) (1979).

⁵² *Brainard*, 3 Cal. 2d at 159, 163.

⁵³ CODE CIV. PROC. §493.030 *et seq.* (1979).

⁵⁴ CODE CIV. PROC. §493.050 (1979).

⁵⁵ CODE CIV. PROC. §493.060(a) (1979).

⁵⁶ *Handley*, 39 Cal. 283 (1870); *Fenton*, 126 Cal. 43 (1889).

⁵⁷ *Lacy*, 144 Cal. 511 (1904).

⁵⁸ *Southern California Hardware & Mfg. Co. v. Borton Pipe & Welding Co.*, 20 Cal. App. 2d 580 (1937).

⁵⁹ *Ferger v. Allen*, 35 Cal. App. 738 (1917).

⁶⁰ 31 U.S.C. §3713 (1983). *United States v. Harold Bloom*, General Assignee for the Benefit of Creditors of *Pavone Textile Corp.* No. 100, 97 N.E.2d 755 (1950), *aff'd*, 342 U.S. 912 (1952); *Lapadula & Villani, Inc. v. United States*, 563 F. Supp. 82 (S.D.N.Y. 1983).

⁶¹ CODE CIV. PROC. §1204 (1982).

⁶² REV. & TAX CODE §6756 (1987).

⁶³ REV. & TAX CODE §18933 (1983).

⁶⁴ REV. & TAX CODE §26312 (1992).

⁶⁵ UNEMP. INS. CODE §1701 (1986).

⁶⁶ CODE CIV. PROC. §1204.5 (1982). The claim for Unfunded Vested Pensions Liability (UVL) under ERISA statutes and MEPPA Amendments of 1980 should be treated as general unsecured claims. There will be a subordination of 50 percent of a UVL claim if distribution to unsecured creditors is not 100 percent.

⁶⁷ *McDougal v. Fuller*, 148 Cal. 521 (1906).

⁶⁸ *Heath*, 139 Cal. 362 (1903).

⁶⁹ *Schneider v. Moncur*, 30 Cal. App. 734 (1916).

⁷⁰ Assignees are experienced in liquidations and are required to comply with commercially reasonable standards in such efforts. *Sweet*, 158 Cal. App. 2d at 707; see also *Security Pacific National Bank v. Geernaert*, 199 Cal. App. 3d 1425 (1988).

⁷¹ See Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. §9601-75; EPA Rule 40 C.F.R. §300.1100 (199).

COMMON LAW ASSIGNMENTS FOR THE BENEFIT OF CREDITORS

"An Assignment for Benefit of Creditors is a business liquidation device available to an insolvent debtor as an alternative to formal bankruptcy proceedings." (162 Cal. App. 3d 1166)

THE LEGAL RAMIFICATIONS SURROUNDING AN
ASSIGNMENT FOR BENEFIT OF CREDITORS MAKES IT
IMPERATIVE THAT THE ASSIGNEE BE A LAWYER, FAMILIAR
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- Recover Preferential Transfers (Code of Civil Procedure, § 1800 *et seq.*)
- Recover Fraudulent Transfers (Civil Code, § 3439 *et seq.*)
- Set Aside Security Interests which are unperfected or defective (Uniform Commercial Code, § 9301)
- Terminate an Attachment levied on the Debtor's property within 90 days of the date of the Assignment (Code of Civil Procedure, § 493.010 *et seq.*)
- Enjoin a Landlord from evicting an Assignee, even though the Debtor may be in default on its lease (Civil Code, § 1954.1)
- Establish a date by which creditors must file their claims to be able to share in any distribution made in the Assignment Estate. (Code of Civil Procedure, § 1802—enacted January 1, 1993)
- Terminate a Judgement Lien on the Debtor's property created by a noticed filing with the Secretary of State. (Code of Civil Procedure, § 697.620 (c))

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