

# MICHIGAN LAWYERS WEEKLY

Vol. 19, No. 22

April 11, 2005

\$7.00 per copy

## Receivership attorney champions cause of creditors

### Practice Profile

He's part sleuth, part accountant, and part banker. Put it all together and you've got one savvy solicitor.

Nearly a dozen years ago, Grand Rapids attorney Phillip S. Stenger got hooked and has since earned himself a national — and international — reputation running receiverships for the Securities and Exchange Commission, as well as the courts. He has helped un-puzzle Ponzi schemes and ferret out millions of dollars for unwitting investors in cases both here and in the Cayman Islands.

Upon graduating from Wayne State University Law School, Stenger began his career at the now-dismantled Grand Rapids firm of Clary, Nantz, Wood, Hoffius, Rankin & Cooper in 1988.

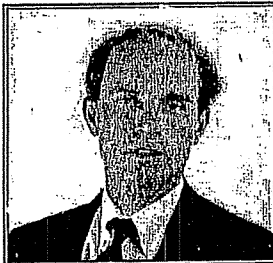
After a brief sojourn in a two-

man shop, he and his wife, Suzanne, founded Stenger & Stenger, P.C., in 1994. Since the birth of their fifth child six months ago, his wife no longer practices, but Stenger continues to fight for creditors' rights and has even started a side business as a class action claims administrator.

As if that weren't enough, he has also authored the first receivership resource book to be published in the last quarter century and plans to complete a sequel this year.

While his work is certainly rewarding, it isn't always easy. For example, his self-titled "Cash for Title" case — which aired on CBS News' "60 Minutes" — pretty well sums up what his practice is all about.

"We had to figure out what people invested and what they got back," he recalled, noting that not everyone was exactly forthcoming



PHILLIP S. STENGER Receiverships offer creative, flexible resolutions

about what had been returned to them.

"They figured, 'how's this guy ever going to know?'" he recounted. "That's where all the forensic accounting work I've done paid off. I could usually figure out what they got back."

**Q.** Can you explain what a receivership is?

**A.** It's quite similar to what happens in bankruptcy, where the court selects a person to take over an estate. However, it often comes about as the result of a business not being profitable and the investors wanting a change of regime so they can get their money back.

**Q.** When you enter a case in the role of receiver, what exactly do you do?

**A.** Once I'm appointed by the court, I start off by trying to stabilize the business. I physically go to the business where I size up the employees to get an idea of who's part of the problem and who's part of the solution. I want to know as soon as possible whom

Continued on page 8

Continued from page 1

I should keep and whom I can trust.

Next, I want to secure the records because, if there's future litigation, the records often become the most important estate asset. During the first few weeks, it's usually a full-blown crisis because the checkbook is frequently overdrawn and I've got to figure out how I'm going to make payroll, how I'm going to pay the rent.

What's difficult is coming up with the cash to keep the business running long enough to evaluate the business' potential. In some cases, I'll report to the court that there was nothing to save and that the business should be liquidated because it was not operating at a profit. In other cases, I report to the court that we've had success in stabilizing the business and turning it around and we recommend it will be sold. You've got to figure all this out pretty quickly, because once a receiver is in, it's hard for any business to be profitable.

**Q.** Sounds like there's a lot going on.

**A.** That's not all. At the same time you're trying to do all these things you're doing what I call marshalling your assets. There might be non-business assets that you must track down and identify for the benefit of the estate. You're looking for real estate, personal property, cars, bank accounts and things that have been purchased with the business' assets. Maybe someone took the money and put it in the names of other people or relatives. You need to identify that and either try to voluntarily get it back from people or other businesses or sue them to get it back. In some of these cases you have to do a fair amount of litigation. A lot of times, you bring in as much or more in litigation than you do by selling assets.

**Q.** Are we talking about situations where someone has done something criminal or just when a business has gone belly up?

**A.** Both really. You'll see receiverships where it's a situation very similar to a bankruptcy where it's just a business gone bad. It's almost like a spectrum. On the one end, there is definitely a criminal act and on the other end is just poor management, clearly no criminal or evil intent. And somewhere in between, there could be a situation where there may not be sufficient evidence to show criminality, but if you ask the creditors they'll tell you the business owners are crooks.

**Q.** How do you go about tracking down hidden assets?

rupty trustee will have. For example, you can get a corollary to an automatic stay in a receivership and you can take discovery. You have all of those arrows in your quiver that you have in bankruptcy court. But the difference is it's not nearly as procedurally intensive as a bankruptcy.

**Q.** How so?

**A.** In a bankruptcy you have the bankruptcy code and an immense amount of rules that are set up to cover every situation. All of those rules take, in many cases, extra work — and extra work creates more fees for the estate. With a receivership, I think there is much more flexibility to tailor the procedural aspects of the receivership to the case at hand. You are going to end up with lower administrative costs than in a similar bankruptcy.

**A.** The records are just critical — bank records, accounting records, cash receipts and disbursements — and you look at where the money went. Follow the money.

We also do public record searches to find what the principles received to purchase assets and try to figure out how they could have done that. Could they have gotten that money on their own or was it likely from assets of the estate? The most important thing is to look for suspicious transactions.

**Q.** What are some important things to know about this line of legal work?

**A.** In my view it's a very viable alternative to bankruptcy. If a client is a creditor of a business and they don't believe the business is doing right by them they'll immediately run into bankruptcy court, but they should consider receivership. I think there would be very few times that a receivership couldn't work as well or better than a bankruptcy.

**Q.** Why is it better?

**A.** It's not going to be better in all instances, but a receiver will have almost all of the legal tools that a bank-

**Q.** How does a receiver get paid? Do you get a percentage of what you recover?

**A.** No. I get paid out of the assets of the estate and I get paid on an hourly basis. It's straight across the board.

**Q.** What would you say is your biggest case?

**A.** I'll call it the "Cash for Title" case. The principles raised about \$300 million from investors promising them a 4 percent return. People thought they were investing in a chain of stores called Car Title Lending, where customers can pawn their car title and get a high interest, short term loan. The pawn shop keeps the title and you get to keep driving your car. That was the underlying business and that's where they raised \$300 million.

The problem was that very little of the money actually went into the business. A Securities and Exchange Commission investigation concluded the business — with 28 stores in seven states and 50 employees — was nothing more than a Ponzi scheme. Moreover, these criminals were also partners in an airport and an airplane charter business in Atlanta, Ga.

We filed a lawsuit against the main perpetrators and I was appointed receiver.

**"Receiverships are a spectrum. On the one end, there is definitely a criminal act and on the other end is just poor management, clearly no criminal or evil intent."**

— Grand Rapids attorney Phillip S. Stenger

**Q.** What do you like best about this type of work?

**A.** I like the variety. Every receivership essentially requires me to first act as a general business law attorney and as a businessman in trying to assess the business, turn it around, or sell it, or all of the above. I like the asset tracing and marshalling part of it. You are acting like a detective, trying to find out where it all went. And I like the litigation aspect — once you've done the forensic part there's getting it back. This part requires a huge amount of creativity figuring out who you have claims against, how to bring those claims, what court you bring them in, and your litigation strategy.

Then, of course, there's the claims administration part. You've got a big pot of money and you've got to figure out who it belongs to and the fairest way to distribute it. That's the part when you really feel you've done some good for people.

**Q.** How did you decide on this particular field?

**A.** It was a coincidence or a play on a lot of different things, and my background prepared me well for the field. My undergraduate degree was in accounting and receivership work revolves around accounting. Early on in my practice, my time was divided between handling creditor's rights cases — which essentially boils down to trying the recover assets from other parties — and business.

In 1994, a gentleman named Lewis Mosburg, who is now a principal at our firm, got involved in an SEC case in Detroit because they needed a receiver for an oil and gas company. He brought me in as his chief counsel. That was a fairly significant case, which led to others and it went from there.

— BY DENISE G. CALLAHAN

### PHILLIP S. STENGER

#### Education

Grand Valley State University; Master's in Taxation (1992); Wayne State University Law School (1988); University of Notre Dame (1985)

#### Experience

Stenger & Stenger, P.C. (1994-present); Clary, Nantz, Wood, Hoffius, Rankin & Cooper (1988-92)

#### Professional Affiliations

Grand Rapids Bar Association; Federal Bar Association; National Association of Retail Collection Attorneys

We traced nearly \$12 million to approximately 50 companies they had set up offshore in the Cayman Islands. The court there appointed me and the partner in charge at Ernst & Young in the Cayman Islands as liquidator or receiver for these companies.

We had our work cut out for us. After becoming receiver, we literally had no money in the bank and, thus, couldn't make payroll for either the airport or the car title business. We had to trace assets, find bank accounts, and secure real estate all over the country and around the world. We filed a whole bunch of lawsuits.

At the end of the day, we're going to make distributions of close to \$80 million to investors. We're proud of that because in most Ponzi schemes investors get back little more than pennies on the dollar back. In our case, investors will get close to 50 percent of their money.