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The Essential Resource for Today's Busy Insolvency Professional

Suggested Reading

REVIEWED BY THOMAS J. SALERNO

The Ponzi Book: A Legal Resource for Unraveling Ponzi Schemes

There are only a few absolute certainties in life: death, taxes and, in today's economy, untold otherwise-hidden Ponzi schemes, which will surface as new investors dry up and the race for payment by old investors begins like a feeding frenzy. Charles Ponzi is undoubtedly beaming in whatever afterlife he inhabits. His relatively modest scheme (started with a mere \$150 in capital) of creating millions of dollars in cash flow by duping ever-present new investors to repay old investors (and pocketing healthy sums himself) has become a cottage industry, with modern-day fraudsters perpetrating schemes to the tune of billions of dollars!

Another certainty is that these schemes can never last indefinitely. Such crashes occur most frequently (and spectacularly) when there is a widespread economic downturn. The financial landscape of the world changed dramatically in the fall of 2008, of course. When these schemes crash and burn, bankruptcies inevitably follow in their wake, leaving the job of unraveling what occurred, how to recoup some of the cash that was paid out and how to equitably distribute this recovered cash to the scheme's victims. Here is where authors **Kathy Bazoian Phelps** (Diamond McCarthy LLP; Los Angeles) and Hon. **Steven Rhodes** (U.S. Bankruptcy Court for the Eastern District of Michigan) have come to the rescue!

This book is incorrectly titled, perhaps out of modesty. *The Ponzi Book: A Legal Resource for Unraveling Ponzi Schemes* is not a legal resource at all: It is the essential legal resource in this area. The authors have not only put together comprehensive economic, factual, legal and strategic analyses into one easy-to-read book, but they have done so in a coherent, detailed and user-friendly fashion. This book is destined to become the Bible in this area of the law. Drawing on their years of experi-

ence, the book is an invaluable tool whether you are investigating, prosecuting, defending, structuring settlements and distribution schemes or adjudicating the disputes that arise when these schemes are discovered.

The treatise examines, with ample and exhaustive citation to legal authority, the myriad and complex issues that arise in Ponzi scheme cases. It starts with the legal definition and a brief historical perspective of such schemes, then delves into the areas of the statutory and common law bases for the administration of Ponzi cases, not only in bankruptcy courts, but also in SIPA proceedings and federal and state court receivership proceedings. The book then examines both personal jurisdiction over those involved, as well as bankruptcy court jurisdiction over those cases (especially the complexities of such jurisdiction in light of *Stern v. Marshall*).

The book dissects fraudulent conveyance law, preference law, equitable subordination, tort and equitable claims (such as unjust enrichment, breach of fiduciary duty, conversion, tortious interference, conspiracy and misrepresentation), securities and RICO legal theories, and analysis with particular attention on each and every element needed to prove up a case, which becomes essential to the prosecution of such actions. Defenses are also explored in depth (such as economic loss defense, legitimate business operations and return of investments or loans), as well as the oft-asserted—but as frequently misunderstood—in *pari delicto* defense raised by defendants as a matter of course. The treatise also examines the complex tax issues that arise in Ponzi scheme cases, an often-overlooked but critical aspect of such cases for both prosecution and defense alike.

In addition, the book's treatment of “nuts and bolts” litigation issues is exemplary and is a veri-



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table “how-to” manual for one tasked with the prosecution or defense of these contentious matters. The analysis of collecting evidence, the extent and nature of privileges, the Fifth Amendment hurdles and obtaining evidence from governmental and other sources provide a road map, complete with legal authority, for gathering the evidentiary building blocks of a case. Evidentiary issues that arise in such cases involving criminal pleas or convictions are also analyzed.

As the economy is undeniably global in nature, such fraudulent schemes also cross international borders. The treatise explores foreign proceedings and discovery abroad with equal depth and sharp analysis. The authors have left no legal theory or defense unexamined in this comprehensive treatise.

Perhaps the most extraordinary feature of the book is its analysis of the structuring of distribution protocols that have been used in actual cases, providing an invaluable roadmap to resolving cases where the only tangible asset is the recovery of monies paid out to the pre-collapse investors. The book provides a step-by-step method of distribution used in large, noteworthy cases: This resource is worth the price of the book in itself!

This book is the essential resource and is one-stop shopping for a complex and contentious legal area. I only wish I had written it. **abi**

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