

Restructuring Insights

Fair and square

By Bob Handler, Managing Partner, Commercial Recovery Associates, LLC

When Commercial Recovery Associates begins working with a troubled business, my goal is to find a restructuring solution that treats all parties fairly under the law. As the court-appointed receiver in the U.S. Securities and Exchange Commission (SEC) case against Hyatt Johnson, we're working to make sure each of the company's defrauded investors receives equal treatment, despite a number of obstacles.

Hyatt Johnson solicited \$22 million from investors to fund commercial jet aircraft transactions before the SEC launched proceedings against the company in 2008. Commercial Recovery Associates was responsible for managing investors' interests in six commercial jet aircraft leased to several airlines. We successfully sold one of the jets and have used money from the jet sale and leases to pay back investors.

To date, Commercial Recovery Associates has distributed over \$8 million to the company's investors. While we can't predict how much we'll be able to recover, I would like not only to refund investors' initial investments, but also to match the return expectations investors had when they signed up for the deal.

To recoup a fair return for each investor, Commercial Recovery Associates has worked to correct disparities between the amounts investors have received so far. We discovered that Hyatt Johnson paid one group of investors in full before the company went into receivership, leaving the remaining investors stuck with the planes and a small amount of cash. We've filed clawback litigation to recover \$2 million from those investors. Some investors also took settlements in the case, and we're allowing them to pay back those settlements and receive distributions, potentially increasing the amount they recover as we make additional distributions.

In addition, we had to convince the court to approve a plan that paid back defrauded investors before repaying creditors, an unusual move. In traditional bankruptcy cases, shareholders are the last in line to receive any proceeds from the company. In securities cases, however, receivers have more discretion to decide who should receive payment based on the circumstances.

Commercial Recovery Associates argued that unlike typical shareholders, who get to vote on company operations and management, these investors were innocent victims of a fraud and had no say in the company's decisions. The court agreed, allowing us to make investor distributions over the objections of two creditors owed nearly \$1 million. Part of the SEC's mission is to set things right for defrauded investors, and we're glad we've been able to help the SEC toward realizing that goal.

Particularly in securities cases, where receivers have wide latitude to develop a fair plan of action, it's essential to have a receiver with the expertise and creativity to find a successful solution. As the Hyatt Johnson case progresses, I will continue to resolve issues proactively and seek the best results for all stakeholders.