



# ESM case a boon for receiver

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"The nature of this work is such that you work hard and can lose money," says William Reeves, who recommends receivers to judges in cases brought by the state Department of Banking and Finance. But there is always hope.

In March 1983, Thomas Tew, a partner in the Miami office of Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey, became receiver in the \$300 million ESM Government Securities case, the largest government securities fraud in U.S. history.

Two years later, Tew says, the ESM case has been a boon for him and his law firm. Billings in the case have topped \$700,000 for Tew and \$2 million for Finley Kumble, which Tew hired to handle the receiver's litigation.

"There's no doubt ESM has been very good for Finley Kumble nationally and locally," Tew says. "The case has a life of its own. It brings about its own publicity. It's really put us at bat."

But most receiverships generate no publicity and bring the receiver little revenue.

"A receiver is a fancy name for a lawyer with a pooper scooper," says Miami attorney William Nortman, who preceded Harper as head of the regional SEC office and who has acted as a receiver in several state and federal cases.

"In 90 to 95 percent of receiverships, the corporations have been milked by the corporate officer and directors and there is nothing," says Robert Pearce, of the Fort Lauderdale law firm Lerner, Harris and Pearce, a former SEC lawyer who is now a receiver.

"But you do think, 'Someday maybe I'll get a case like Tom Tew,'" Pearce says.

## A small community of lawyers

Attorneys who are tapped by federal and state regulators and given the nod by state and particularly federal judges to act as receivers seldom say no. They make up an exclusive fraternity of litigators known for their ability to handle complicated and often technical corporate securities cases, cases that can drag on in the courts for years.

"I think it would be presumptive for an attorney in private practice to say no," Tew says. "It's a tremendous investing of confidence and responsibility."

"You see the same people involved in these types of cases," says Gerald Wald,

name partner in the Miami law firm Murali, Wald, Blonda, Matthews & Moreno and receiver for U.S. Oil and Gas, a securities fraud uncovered by the Federal Trade Commission. "It's an honor to be asked, especially when you know that there is a small community of lawyers that can handle complex litigation."

Among these South Florida attorneys most commonly asked to take on receiverships beside Lyons, Farrar, Tew, Pearce and Wald are former SEC lawyer Richard Freeman of Miami's Blackwell Walker Fassel and Hoehli; former SEC regional

little apart from the venue, he says.

"You don't wake up one morning and say 'I want to be a receiver for the SEC or FTC,'" says Tew, who spent nearly 16 years handling securities cases before he took on the ESM receivership. "You get there by litigating. You build up product knowledge and you earn respect."

Says Fort Lauderdale attorney Pearce, who spent three years as an attorney in the New York regional office of the SEC before coming to South Florida: "When I was on the other side, I remember, it was very important to get the right person for the

investigators recovered the company's business records in a garbage dumpster shortly before he took on that receivership.

"Very often, particularly in the boiler-room scams, where individuals are making investments, there is little to go on," Nortman says.

Miami attorney Richard Freeman, receiver in the federal case *SEC v. New Era Oil Development Corp.*, has worked since 1981 to figure out what happened to \$3 million solicited for a boiler-room oil and gas limited partnership. Most of the money was spent or secreted away before federal regulators got on to the scheme, he discovered.

"On the surface everything was correct," says Freeman, who was special counsel for the SEC during its investigation of New York City's finances in the 1970s. "But like a mannequin with a lifelike mask, beneath it all was a lifeless hull. The promoter had directed the money here and there until it was impossible to track. We recovered only \$20,000."

Even so, Freeman enjoys being a receiver.

"You love this kind of work like you would love a crossword puzzle or a good mystery," he says. "That's why you do it."

Recovery in receiverships is highly dependent upon the speed with which federal regulators and the courts act in taking alleged wrongdoers out of control of a company's assets and records.

In the Elliott Enterprises case, for example, Farrar says he got a call from Harper and other SEC attorneys late on a Tuesday afternoon and was appointed receiver early that evening, shortly after the complaint was filed.

Farrar, who with Lyons worked on securities frauds as an assistant U.S. attorney for nine years before going into private practice in 1979, had to move quickly to locate the firm's assets.

"In the first two days of the receivership we contacted every bank in Naples and Fort Myers and filed notices in 27 federal court districts around the country," he says.

The idea is to make sure none of the assets got away, says Lyons.

Miami lawyer Black, receiver in the \$50 million Greenman securities fraud, said he was able to recover a significant percentage of the assets in that case because the SEC moved quickly.

"The FBI found the Greenman fraud incidental to another investigation and reported it to the SEC," Black says. "That enabled us to get there swiftly. We were able to get 35 percent back to the investors within a year. That's more than most receiverships."

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**'A receiver is a fancy name for a lawyer with a pooper scooper,' says Miami lawyer William Nortman, left. Nortman is former head of the regional SEC office and has acted as a receiver in several state and federal cases.**

director Nortman of the Miami law firm Nortman and Bloom; securities lawyer Hugo Black Jr., of the Miami law firm Kelly, Black, Black, Byrne & Beasley; and Robert Hackney Jr. of the West Palm Beach law firm Nason, Gildan, Yeager & Gerson.

"These are all fine people," Harper says. "They are talented and they had a whole hell of a lot to do before the federal and state governments showed up."

Most receivers have a strong background in securities and commodities law, have had experience as trial lawyers or know their way around federal courts, Harper says. State and federal receiverships differ

job, someone who knew what was involved. Someone who could handle the work, had patience and perseverance."

Pearce, now in his third year as the receiver in what he terms a relatively small case, *SEC v. Sunco Resources and Energy*, estimates that defrauded investors number about 150 and investors losses no more than \$3 million.

The size of the fraud, whether the victims were individuals or institutions, can have some effect upon who is appointed receiver.

"Having the bodies to throw at the problem can make a difference," says Nortman, who has generally handled smaller receiverships and thus avoided undue demands on his two-partner law firm.

## ESM sets the standard

The ESM case sets the standard for a large case. SEC regional director Harper says he looked at the attorneys available and chose Finley Kumble's Tew because he thought Tew could pull in other Finley Kumble lawyers in a short period of time.

Tew says the firm used 15 lawyers, working in two teams, on the case. One team handled asset recovery, the other pursued litigation related to the receivership.

"Right up front there is a lot that has got to be done," Harper says. "You've got to go after it right now, the minute the complaint is filed."

"A receiver has two choices," says Nortman. "Run the business or shut it down."

When Nortman took on the Monarch Oil and Gas receivership in 1982, he almost immediately hired a geologist to determine whether he should continue to operate four oil-wells in Marshall, Texas. He did for a month or two, but then sold out when the price of oil began to fall.

"You make sure that everything that you do is done right," attorney Wald says. "You are taking care of the court's business, so you try not to embarrass yourself."

## Identifying assets, liabilities

Once appointed, receivers usually waste no time hiring counsel — often an attorney or attorneys in their own firm — who is charged with legal issues of asset recovery and can litigate receivership-related court cases or settlements. Receivers also waste little time hiring an accounting firm to reconstruct the company's records, identifying assets and liabilities.

In the Elliott Enterprises case and in the ESM case, Farrar and Tew say most of the records were intact. In the Sunco Resources case, Fort Lauderdale lawyer Pearce says,

## THE RECEIVERSHIP BAR

**Hugo Black Jr., 65.** Born in Birmingham, Ala. A 1949 graduate of Yale Law School. Partner in the Miami law firm Kelly, Black, Black, Byrne & Beasley. A specialist in securities law. Appointed receiver in the federal *SEC v. Barclay Financial Group, Dennis Greenman* case in 1981.

**Charles Farrar Jr., 44.** Born in Evanston, Ill. A 1969 graduate of Tulane Law School. Partner in the Miami law firm Lyons and Farrar. Former chief of the criminal fraud division of the U.S. attorney's Miami office. Appointed receiver in the federal *SEC v. Elliott Securities* case in 1987.

**Richard Freeman, 44.** Born in New York City. A 1969 graduate of New York University law school. Member of the Miami law firm Blackwell Walker Fassel and Hoehli. A corporate, securities and international law specialist. Appointed receiver in the federal *SEC v. New Era Oil Development Corp.* case in 1981.

**Robert Hackney, 36.** Born in Philadelphia. A 1977 Stetson University College of Law graduate. A member of the West Palm Beach law firm Nason, Gildan, Yeager & Gerson. Former assistant general counsel, Florida Division of Securities, Department of Banking and Finance. Acts as receiver in state securities fraud cases.

**Marsha Lyons, 40.** Born in Chicago. A 1970 graduate of Florida State University law school. Partner in the Miami law firm Lyons and Farrar. Former chief of the fraud division in U.S. attorney's Miami office. Appointed receiver in the federal *SEC v. Colorado Development Corp.* case in 1983.

**William Nortman, 44.** Born in New York City. A 1967 graduate of the George Washington University School of Law. Partner in the Miami law firm Nortman and Bloom. Headed the Miami office of the SEC from 1975 to 1980. Appointed receiver in the federal *SEC v. Monarch Oil and Gas Corp.* case in 1982.

**Robert Pearce, 35.** Born in Freeport, N.Y. A 1980 MBA-law school graduate of Hofstra University. Partner in the Fort Lauderdale law firm Lerner, Harris and Pearce. Securities and commodities litigation specialist. Appointed receiver in the federal *SEC v. Sunco Resources and Energy Ltd.* case in 1984.

**Thomas Tew, 46.** Born in Gainesville. A 1966 graduate of the University of Miami law school. Partner in the Miami office of Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey. Securities and tax specialist. Appointed receiver in the federal *SEC v. ESM Group Inc.* case in 1985.

**Gerald Wald, 43.** Born in New York City. A 1969 New York University law school graduate. Partner in the Miami law firm Murali, Wald, Blonda, Matthews & Moreno. A trial lawyer with interest in arbitration and antitrust law. Appointed receiver in the *Federal Trade Commission v. U.S. Oil and Gas Corp.* case in 1983.

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# Receiver on pay: 'I couldn't make a living'

CONTINUED FROM PAGE 4

ers are ever able to recover in these kinds of disasters."

Delay, on the other hand, can be costly. Attorney Noriman, receiver in the Fort Lauderdale-based Universal Precious Metals case launched in late 1982, says accountants he hired shortly after he was appointed found that a three-month delay in the court's appointment may have cost investors as much as \$1.4 million in recoveries.

"You have a chance if you come on the scene when the business is still operating in some fashion," Noriman says. "If you get there and the horse is five miles from the barn, all you're going to get is the straw left on the floor."

The Universal Metals receivership, which followed on investigation by the FBI and the federal Commodity Futures Trading Commission, resulted in a six cents on the dollar return for investors, many of whom said they had poured their life savings into what they thought was a sure thing.

Noriman says a sometime CFTC and SEC practice of asking the court to get the defendants' consent before appointing a receiver hurt investors in the Universal Metals case.

Receivers usually have the best chance of large recoveries when the schemes are perpetrated by individuals associated with large, insured institutions.

Recoveries for Greenman securities receivership could top 90 cents on the dollar when closed out later this year after nearly seven years of litigation. The ESM recovery could come to 100 percent for

public investors taken in that scam. In those cases large securities brokers, accounting firms and law firms were found culpable.

"Of course, no one pays interest on the lost use of the money," says lawyer Gerald Wald, who is trying to recover \$50 million lost by as many as 8,000 investors in the U.S. Oil and Gas fraud.

And for investors involved in fraudulent deals that don't have deep-pocket defendants, the prospects for recovery are grim.

Says Blackwell Walker attorney Freeman, receiver in the New Era Oil Development case: "In these cases there are layers of deal like there are layers of onion. And at the center, just like at the center of an onion, you usually find nothing. The scheme is usually the scam. That's all there is."

If a receiver finds nothing, investors, who often have put up thousands of dollars thinking they will make big money, get nothing.

"Some of these people face the loss of their life's savings," Harper says, looking over a list of the SEC's active receiverships. "In the Elliott Securities fraud, most investors are in their 60s and 70s."

Lyons says some of those investors have actually stopped by the Elliott offices.

"There is a lot of community interest because so many of the investors were retired people nearby," she says. "You try to assure them as best you can, but your real job is to recover their money. You have to recover money first, and sit and talk later."

In another receivership, *SEC v. Colo-*



Marsha Lyons: 'Investors want explanations and answers now. It's, I think, exhausting.'

rado Development Corp., Lyons recalls getting letters and telephone calls from farmers, teachers and even doctors and lawyers from around the country.

"You get pathetic letters and calls from investors," she says. "You need a special patience for this kind of work."

### Discount billings

Receiverships don't always pay well, for investors or for the receiver, his attorneys or his accountants.

"I couldn't make a living doing receivership work," says Noriman, who usually bills his receivership work at \$125 per hour, about \$50 less than his usual rate. Most receivers say their receivership work adds up to less than 10 percent of their practice.

For work in the U.S. Oil and Gas receivership, Miami lawyer Wald has billed at \$125, down from his usual \$175 per hour rate. Black, receiver in the Greenman securities case, has billed most hours in that case at \$125, a few at \$200.

"Up to date, I haven't broken even," says Black, who usually bills at between \$250 and \$300 an hour, "but I haven't made what an ordinary man would call a sacrifice either."

"The smaller cases are losers," says Blackwell Walker attorney Freeman. "In



Gerald Wald: 'You are taking care of the court's business, so you try not to embarrass yourself.'

New Era Oil Development, our law firm expended about \$60,000 and got a return of \$15,000."

"A receiver looks for the lowdown. Uncovering the intelligence of a con man is what you do. No con man wants you to know how he did it or where the money went," Freeman says. "You hope it won't be a loser, but you don't do it for the money."

Court records show that receivers and their attorneys most commonly bill at \$125 to \$150 per hour, generally \$50 to \$100 below their normal hourly rate.

ESM is again the exception. Miami attorney Tew billed his work on that case at \$250 an hour, within his normal billing range of \$250 to \$300 an hour. Finley Kumble billed at a blended rate of \$135 an hour — a combination of the rates of all the attorneys working on the case.

But SEC regional chief Harper considers those fees a good deal. He points to the prosecution of Marvin Warner in Ohio — an ESM-related proceeding — which cost prosecutors in that state \$6 million.

Noting that all receivership-related billings are approved by a judge before any money is paid, Harper says, "I'd say the \$2.8 million we've paid Tew and his law firm for a 90 percent, possibly a 100 percent recovery, is a bargain."

## Humana cuts off talks with IMC

BY STEVE ALBERT  
REVIEW STAFF WRITER

Humana Inc., the national hospital corporation, said Wednesday that it had ceased negotiations for the purchase of Miami-based International Medical Centers.

The announcement put into doubt whether or not IMC could meet a federal deadline today for the infusion of \$8 million into the company. Without additional capital, federal Health Care Financing Administration officials have said they may cancel the company's federal contract to treat Medicare patients.

IMC, a health maintenance organization with 130,000 patients mostly in South Florida, has been the target of state and federal probes over the past two years.

The cessation of negotiations came after nearly 10 months of takeover talks between the two companies and just a week after

IMC's owner, Miguel Recarray, Jr., was charged in a federal indictment with bribery in a union-related kickback conspiracy.

The indictment of Recarray had nothing to do with Humana's decision to stop negotiations, a Humana spokesman said.

IMC officials said no IMC patients would be hurt by the recent events and that the company planned to meet federal standards of care.

"We are trying everything in our power to make sure we comply with the federal deadline," said Peter Bernal, vice president of IMC Wednesday. "We are still talking to Humana."

But Humana officials said they only would honor an agreement signed in February providing hospital services to IMC patients at Humana's 18 hospitals in Florida, and would no longer consider the purchase of IMC.

## BRIEFS

### Bankruptcy judge OKs Arrow Air plan

A bankruptcy judge Wednesday approved Arrow Air's reorganization plan after creditors voted overwhelmingly in favor of the proposal to pay creditors about 30 cents on the dollar.

Arrow's bankruptcy attorney, Timothy Norris, said 1,758 creditors, who claim they are owed \$18.1 million, voted for the plan. He said 150 creditors, who claim they are owed \$92,000, voted against it.

Judge Jay Cristol's order, allowing Arrow to emerge from Chapter 11, takes effect in 20 days.

Attorneys said Arrow will pay off the claims within about six months.

Miami-based Arrow filed for Chapter 11 bankruptcy protection in February 1986, two months after one of its military charters crashed, killing 256 in Gander, Newfoundland.

### Devcon subsidiary signs \$13.5 million deal

Devcon International Corp. of Pompano Beach said today that its subsidiary, Antigua Masonry Products Ltd., has received a \$13.5 million contract from the

government of Antigua, West Indies, for harbor dredging and construction of a deepwater pier at St. John's, the island nation's capital city.

### Miami company opens on American Exchange

The American Stock Exchange announced that 3,961,938 common shares of American Land Cruisers Inc., a company that rents and markets recreational vehicles, began trading on Wednesday. Trading under the ticker symbol RVR, the common opened on 100 shares at 11. The company, based in Miami, previously traded in the NASDAQ National Market System under the symbol ALCR.

### Capital Bancorp's net income drops

Miami-based Capital Bancorp had net income of \$1,740,000 for the first quarter of 1987, or 39 cents per share, an 18.3-percent drop from the \$2,131,000, or 49 cents per share, it earned in the first quarter of 1986.

Chairman and president Abel Holtz said the decline was caused by the bank's taking an increased provision for credit losses at the company's Capital Bank and its Capital Factors Inc. subsidiary.

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