

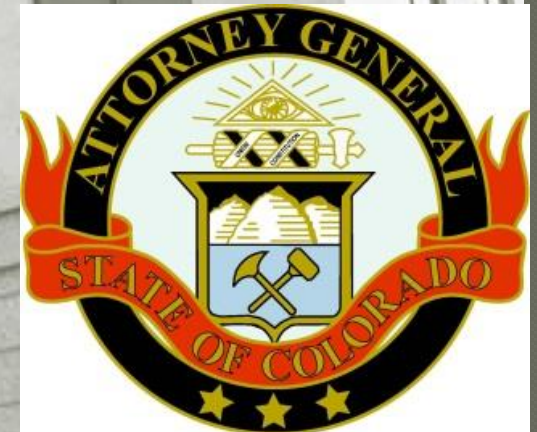
Anatomy of a Telemarketing Scam

**And the Aftermath: A Primer on
the Colorado Uniform
Fraudulent Transfer Act**

Colorado Attorney General's Office Consumer Fraud Unit

Colorado Consumer Protection Act
(CCPA)
C.R.S. 6-1-105 et seq.

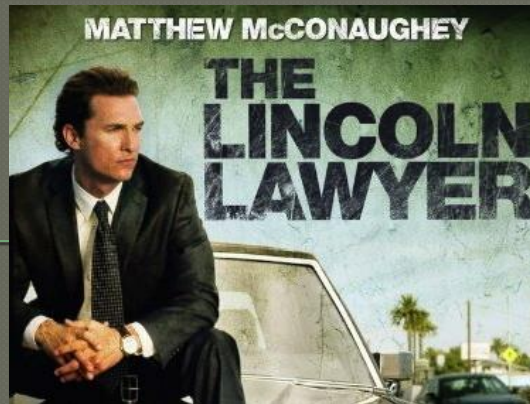
“Don't lie in your advertisements.”



Introductions

Investigator Ken King





Mark T. Bailey, Esq.



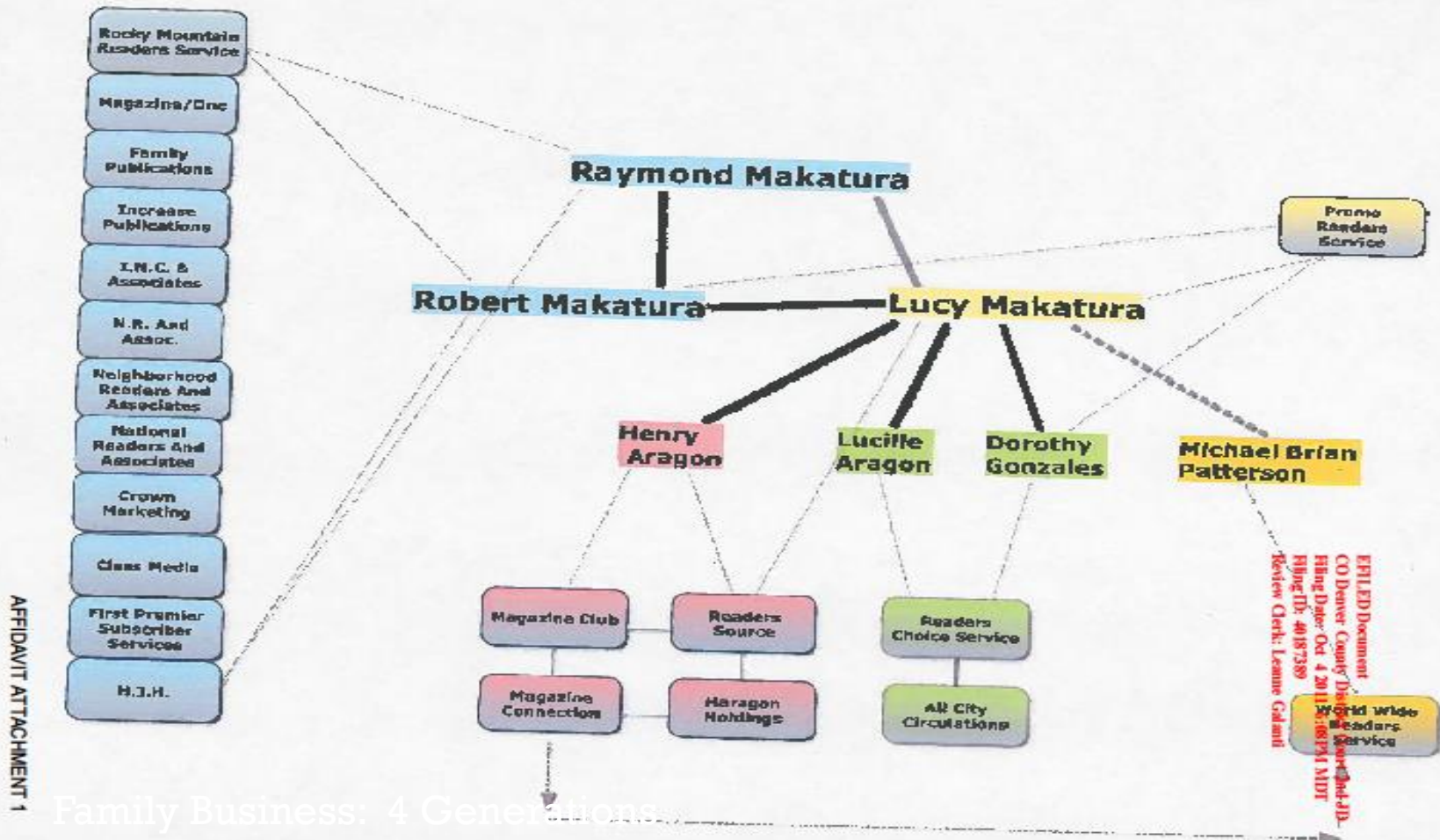
Disclaimers

- Presentation comes from publicly filed documents and information
- Here in our personal capacities – Not speaking on behalf of the Department of Law or AG
- Not legal advice – CUFTA is complicated!

Magazine Telemarketing Scam

- Fall 2010: Hundreds of consumer complaints against dozens of magazine telemarketing companies
- Pattern in complaints
 - Many victims are elderly or otherwise vulnerable
 - Tricked into “contracts” for magazine subscriptions valued at \$1,300
 - Many consumers were being billed by as many as 5 magazine companies every month

The Defendants



The Scam

- Call consumers who are receiving magazines
 - I'm with the publishers who send out your magazines
 - Calling to lower your price and set "privacy block"
- Convince consumers to go on audio recording "verifying" the new, lower price

RE: Names

<http://mail.aol.com/33124-111/aol-1/en-us/mail/PrintMessage.aspx>

From: [REDACTED]
To: [REDACTED]
Subject: RE: Names
Date: Sat, Jul 25, 2009 7:33 am

Will do [REDACTED] My best estimate is that 50-60% are making payments now. Could be more but that is my estimate. My guy David will send them to you either today or Monday. About 60% (110-120,000) of the file is credit card and the rest are "Billed" customers. I will send two pieces so you can test each. Good to hear from you [REDACTED]

From: [REDACTED]
Sent: Friday, July 24, 2009 8:09 PM
To: [REDACTED]
Subject: Re: Names

Hello [REDACTED],

I am very interested in this file. I look for leads that are currently making payments. How many of the 200k are currently making payments? Send me a test of maybe 200 records and I will make you an offer.

Thank You,
[REDACTED]

-----Original Message-----

From: [REDACTED]
To: [REDACTED]
Sent: Fri, Jul 24, 2009 12:38 pm
Subject: Names

Hello [REDACTED], how are you? I was talking with [REDACTED] earlier today, and I told him I would say hello for him when I spoke with you.

I have a sizeable file I think you will definitely want to try. A good friend of mine named [REDACTED] passed away almost a year ago, and I was in the process of brokering the sale of his business when it occurred. He had a nice sized magazine customer base that he handled all in house. The company buying the company was not a dedicated magazine company but was going to try and work the data for renewals, etc. The deal did get finalized but they did not do a very good job working the file. [REDACTED] widow (also a good friend) has asked me to see if I can move the file to someone that is better at magazines. [REDACTED] said you have a real strong PDS deal going, and that this type data is what you look for. There are right at 200K customer names with all the info.

Give me a call at [REDACTED] and we can discuss. I am on the east coast and will be reachable today, Friday till about 7 PM EST, and Saturday from about 10 AM to 6 PM.



Confidential
Exempt from Disclosure M000074
1/24/2011 6:16 PM

Lead Lists

Preferably have:

- Name and address
- of consumer
- Magazines the consumer is receiving
- Partial or full cc number

The Script

● Three-Step Process

1. Sales Pitch
2. Closing/Capping
3. Verification



- Recording Defendants later use to prove an “oral contract.”
- Record it multiple times until it sounds right

• First Step: Sales Pitch

Promo

I'm with the circulation department with the publishers that send out your magazines. We were going through your files and noticed that some of your magazines had set to terminate prematurely on you. You are receiving what you're paying for, but not the 60 months that goes on the end. They thought we should contact you just in case another company calls and tries to get you to order more. Please don't get anymore. With what you have coming up, you're 60 months away from not getting any more magazines at the \$2.99/week. Okay? So do me a favor. If you receive any calls or notices from any other companies don't get anymore, because you're all set. Okay! Now you do have a free gift coming to you- it's a \$1000 in grocery coupons. Now allow 8 to 10 weeks to receive your free gift.

We like to classify our readers by age and occupation.

How old are you?

You're occupation?

Are you single or married? (get spouses information)

Do you carry a Visa, MasterCard, American Express or Discover? Do you have a checking account?

Do you own or rent?

How long? (double check address)

Again how long did you understand the magazine to run for?

And how much did you understand the payment to be?

And what free gift again will you receive?

Okay, that is it on my end. My supervisor will be giving you a call back to make sure I was polite and courteous. Could you please put in a good word for me?



First Step: Sales Pitch

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I'm with the circulation department with the publishers that send out your magazines. We were going through your files and noticed that some of your magazines had set to terminate prematurely on you. You are receiving what you're paying for, but not the 60 months that goes on the end. They thought we should contact you just in case another company calls and tries to get you to order more. Please don't get anymore. With what you have coming plus you're 60 months; you're set with us for quite sometime at the \$2.99/week. Okay? So do me a favor. If you receive any calls or notices from any other companies don't get anymore, because you're all set. Okay!

Now you do have a free gift coming to you- it's a \$1000 in grocery coupons.

Now allow 8 to 10 weeks to receive your free gift.

We like to classify our readers by age and occupation.

How old are you?

You're occupation?

Are you single or married? (get spouses information)

Do you carry a Visa, MasterCard, American Express or Discover? Do you have a checking account?

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Okay, that is it on my end. My supervisor will be giving you a call back to make sure I was polite and courteous. Could you please put in a good word for me?

- “I’m with the circulation department with the publishers that send out your magazines”
- “You are receiving what you’re paying for, but not the 60 months that goes on the end.”
- They thought we should contact you just in case another company calls and tries to get you to order more. Please don’t get anymore.”
- “Okay? So do me a favor. If you receive any calls or notices from any other companies don’t get anymore, because you’re all set.”
- We like to classify our readers by age and occupation.

Step Two: Capping



CAPPING PITCH

HI (CUSTOMERS NAME) I'M SORRY TO BOTHER YOU TWICE, THIS IS (YOU'R NAME), I'M (REP. NAME) SUPERVISOR. ALL I'M DOING IS CHECKING UP ON (REP. NAME), WAS (HE/SHE) POLITE AND COURTEOUS WHEN (HE/SHE) SPOKE WITH YOU? GOOD!!!! (HE/SHE) DID LET YOU KNOW THAT YOU ARE ONE OF OUR PREFERRED CUSTOMERS AND RECEIVING YOU'R MAGAZINES AT ~~\$9.99~~ A WEEK, IS THAT CORRECT? YOU KNOW THAT'S NOT FOR EACH ONE, THAT COVERS THEM AS A GROUP. WE EVEN GUARENTEE THAT IN WRITING FOR YOU, FOR 60 MONTHS, BUT THEN THEY DO HAVE TO STOP. IS THAT THE WAY YOU UNDERSTOOD IT? IN OTHER WORDS, YOU KNOW WE CAN'T GIVE YOU MORE.

I'M CALLING BECAUSE WE ARE GOING TO GET YOU OUT OUR NEW LISTING, WE DID UPDATE THAT. THERE ARE NOW 250 DIFFERENT MAGAZINES ON THERE, SO YOU CAN SWITCH THEM AS OFTEN AS YOU LIKE AT NO CHARGE. YOU DONT HAVE TO WRITE TO US, WE ARE NOW FULLY AUTOMATED. ALL YOU HAVE TO DO IS CALL OUR 800 NUMBER AND WE'LL SWITCH THEM RIGHT OVER THE PHONE FOR YOU. FULLY AUTOMATED. ALL YOU HAVE TO DO IS CALL OUR 800 NUMBER AND WE'LL SWITCH THEM RIGHT OVER THE PHONE FOR YOU.

NOW WE ARE HELPING YOU WITH THE BILLING. WE'RE TAKING YOUR ^{13.33} PAYMENTS DOWN TO ~~\$12.95~~ A MONTH. NOW YOU ARE GOING THROUGH YOUR CREDIT CARD, IS THAT A REGULAR CARD OR A DEBIT CARD?

(CREDIT) GOOD, BECAUSE STARTING TODAY YOU'LL PAY NO

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And §§ 24-72-305
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Second Step: Capping

CAPPING PITCH

HI (CUSTOMERS NAME) I'M SORRY TO BOTHER YOU TWICE, THIS IS (YOU'R NAME), I'M (REP. NAME) SUPERVISOR. ALL I'M DOING IS CHECKING UP ON (REP. NAME), WAS (HE/SHE) POLITE AND COURTEOUS WHEN (HE/SHE) SPOKE WITH YOU? GOOD!!! (HE/SHE) DID LET YOU KNOW THAT YOU ARE ONE OF OUR PREFERRED CUSTOMERS AND RECEIVING YOU'R MAGAZINES AT ~~\$9.99~~ A WEEK, IS THAT CORRECT? YOU KNOW THAT'S NOT FOR EACH ONE, THAT COVERS THEM AS A GROUP. WE EVEN GUARENTEE THAT IN WRITING FOR YOU, FOR 60 MONTHS, BUT THEN THEY DO HAVE TO STOP. IS THAT THE WAY YOU UNDERSTOOD IT? IN OTHER WORDS, YOU KNOW WE CAN'T GIVE YOU MORE.

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- “All I’m doing is checking up on (Rep.Name), was (he/she) polite and courteous when (he/she) spoke with you?”
- “(He/she) did let you know that you are one of our preferred customers and receiving your magazines at \$3.99 a week, is that correct?”
- “I’m calling because we are going to get you out our new listing, we did update that.”
- “Now we are helping you with the billing. We’re taking your payments down to \$12.95 a month.”
- “Now you are going through your credit card, is that a regular card or a debit card.”

Second Step: Capping

CAPPING PITCH

HI (CUSTOMERS NAME) I'M SORRY TO BOTHER YOU TWICE, THIS IS (YOUR NAME), I'M (REP. NAME) SUPERVISOR. ALL I'M DOING IS CHECKING UP ON (REP. NAME), WAS (HE/SHE) POLITE AND COURTEOUS WHEN (HE/SHE) SPOKE WITH YOU? GOOD!!! (HE/SHE) DID LET YOU KNOW THAT YOU ARE ONE OF OUR PREFERRED CUSTOMERS AND RECEIVING YOUR MAGAZINES AT \$3.99 A WEEK, IS THAT CORRECT? YOU KNOW THAT'S NOT FOR EACH ONE, THAT COVERS THEM AS A GROUP. WE EVEN GUARENTEE THAT IN WRITING FOR YOU, FOR 60 MONTHS, BUT THEN THEY DO HAVE TO STOP. IS THAT THE WAY YOU UNDERSTOOD IT? IN OTHER WORDS, YOU KNOW WE CAN'T GIVE YOU MORE.

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- “From now on your monthly amount will show up separately for you.”
- “But I’m also going to put a privacy block on there for you, because as (Rep. Name) stated, we’ve been getting a lot of phone calls from our customers stating that they’re getting calls from other companies trying to get them to buy more.”
- “Now on your card it shows (Customer Name), is there a middle initial?”

Second Step: Capping

INTEREST, OR FINANCE CHARGES, AND THIS IS NO LONGER GOING TO AFFECT YOUR BALANCE. FROM THIS DAY NOW ON YOUR MONTHLY AMOUNT WILL SHOW UP SEPARATELY FOR YOU.

(DEBIT) GOOD, BECAUSE STARTING TODAY WE'RE DOING SOMETHING SPECIAL FOR YOU, WE'RE GOING TO SEND OUT A REMINDER CARD 10 DAYS BEFORE ITS DEDUCTED SO YOU DON'T FORGET. ON THAT CARD WILL BE OUR 800 NUMBER, IF YOU'RE NOT GOING TO HAVE IT JUST LET US KNOW AND WE WILL HOLD THE PAYMENT FOR YOU.

BUT I'M ALSO GOING TO PUT A PRIVACY BLOCK ON THERE FOR YOU, BECAUSE AS (REP. NAME) STATED, WE'VE BEEN GETTING A LOT OF BECAUSE AS (REP. NAME) STATED, WE'VE BEEN GETTING A LOT OF PHONE CALLS FROM OUR CUSTOMERS STATING THAT THEY'RE GETTING CALLS FROM OTHER COMPANIES TRYING TO GET THEM TO BUY MORE. NOW ON YOUR CARD IT SHOWS (CUSTOMER NAME), IS THERE A MIDDLE INITIAL? IF YOU CAN GRAB YOUR CARD, I'LL NEED THE EXPIRATION DATE AGAIN/ AND THIS WILL BE THE LAST TIME YOU'LL HAVE TO DO THAT. AND THE (CARD/ACCOUNT) NUMBER. NOW DO ME A FAVOR AND TURN THAT AROUND. YOU SEE ON THE BACK WHERE YOU SIGN YOUR NAME. THERE'S 3 MORE NUMBERS BACK THERE, I NEED THOSE. THAT # IS CALLED YOUR CVV, THAT'S WHAT I'M GOING TO USE TO PUT A PRIVACY BLOCK ON THERE FOR YOU.

ALSO WE ARE NO LONGER GOING TO CALL YOU OVER THE PHONE STARTING TODAY ALL CORRESPONDENCE FROM US WILL BE THROUGH THE MAIL ONLY, SO IF ANY OF THOSE OTHER COMPANIES DO HAPPEN TO CALL JUST HANG UP BECAUSE IT'S NOT US!!!! BUT IF YOU'RE EVER

- “If you can grab your card, I’ll need the expiration date again and this will be the last time you’ll have to do that.”
- “And the (card/account) number. Now do me a favor and turn that around.”
- You see on the back where you sign your name. There’s 3 more numbers back there, I need those. That # is called your CVV, that’s what I’m going to use to put a privacy block on there for you.”

Second Step: Capping

CONFUSED JUST ASK THEM FOR YOUR CONFIRMATION NUMBER AND
THEY'RE NOT GOING TO HAVE IT SO JUST HANG UP ON THEM.

NOW ON YOUR MAGAZINES, HAVE YOU RECEIVED YOUR _____? THE
PUBLISHERS WANTED TO MAKE SURE YOU ARE RECEIVING YOU'RE SUPPOSED
TO. OFF THE TOP OF YOUR HEAD WHICH TITLES HAVE YOU SEEN COME
THROUGH THE DOOR SO FAR?
GREAT, LOOKS LIKE YOUR ALL SET. (GIVE MAGAZINES)

TO ^{13.33}~~16.66~~ A MONTH, HOWEVER THE WAY THE PUBLISHERS ARE
HANDLING THE BILLING NOW IS ³~~12~~ MONTHS AT A TIME. I'M
GOING TO LEAVE YOUR BILLING AT THE ³~~12~~ MONTHS WHICH WILL SAVE
YOU MORE MONEY, NOW ³~~12~~ MONTHS ^{12.95}~~16.66~~ TIMES THE \$12.95 COMES OUT
TO ^{29.98}~~199.98~~ EACH MONTH FOR THE FIRST ²⁴~~12~~ MONTHS ONLY, AND
NOTHING THE REMAINING ³⁶~~12~~ MONTHS AS YOUR ACCOUNT IS PAID IN
FULL. SO I JUST SAVED YOU A COUPLE HUNDRED DOLLARS.

NOW I'M GOING TO GET YOU OUT A WRITTEN CONFIRMATION FOR YOUR
RECORDS. IT WILL COME FROM OUR HOME OFFICE SINCE I HELPED
YOU WITH THE BILLING. IT'S GOING TO ^{Family Readers club may contact} SAY FROM READERS OUT OF
COLORADO. IT'S GOING TO SHOW THE MAGAZINES AND THE NEW LISTING.
SO YOU CAN CHANGE THEM AT ANY TIME.

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And §§ 24-72-305

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- “The publishers wanted to make sure you are receiving what you’re supposed to, off the top of your head which titles have you seen come through the door so far.”
- “Great, looks like you’re all set.” (Give magazines)
- “Going over the billing of course that \$3.99 a week comes out to \$16.66 a month, however the way the publishers are handling the billing now is 3, 6, and 12 months at a time. ... So I just saved you a couple hundred dollars.”

Verification (Oral “Contract”)



Recorded multiple times

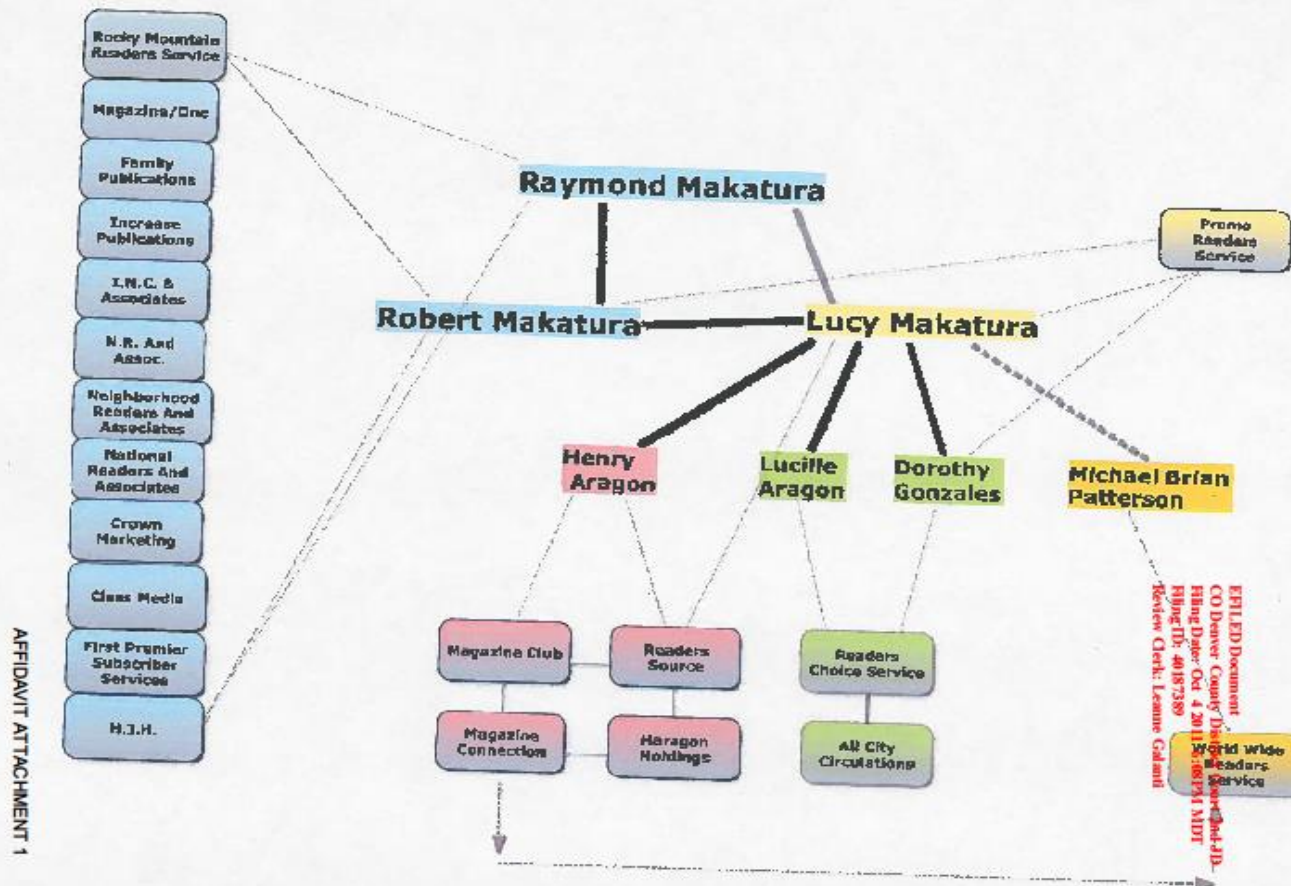


Automatic debits from credit card or bank account + Refusal to cancel = Monthly income stream

Collections

- If consumer stops automatic debits → Collections
 - Repeated, harassing phone calls. Threats of:
 - Late fees
 - Report to credit agencies
 - No real expectation of collecting all \$1,300
 - Market value of a contract = about \$300
 - Attempt to collect on a “discount” or “settlement” rate, often through one-time payment

Sharing Leads



“Add-ons”

- Use exact same procedure to call your own customers and get an “add-on” account



Staying Below the Radar

- Defendants wanted to stay below the radar of

1. Better Business Bureau
2. Merchant Account Processors
3. Law Enforcement

Techniques

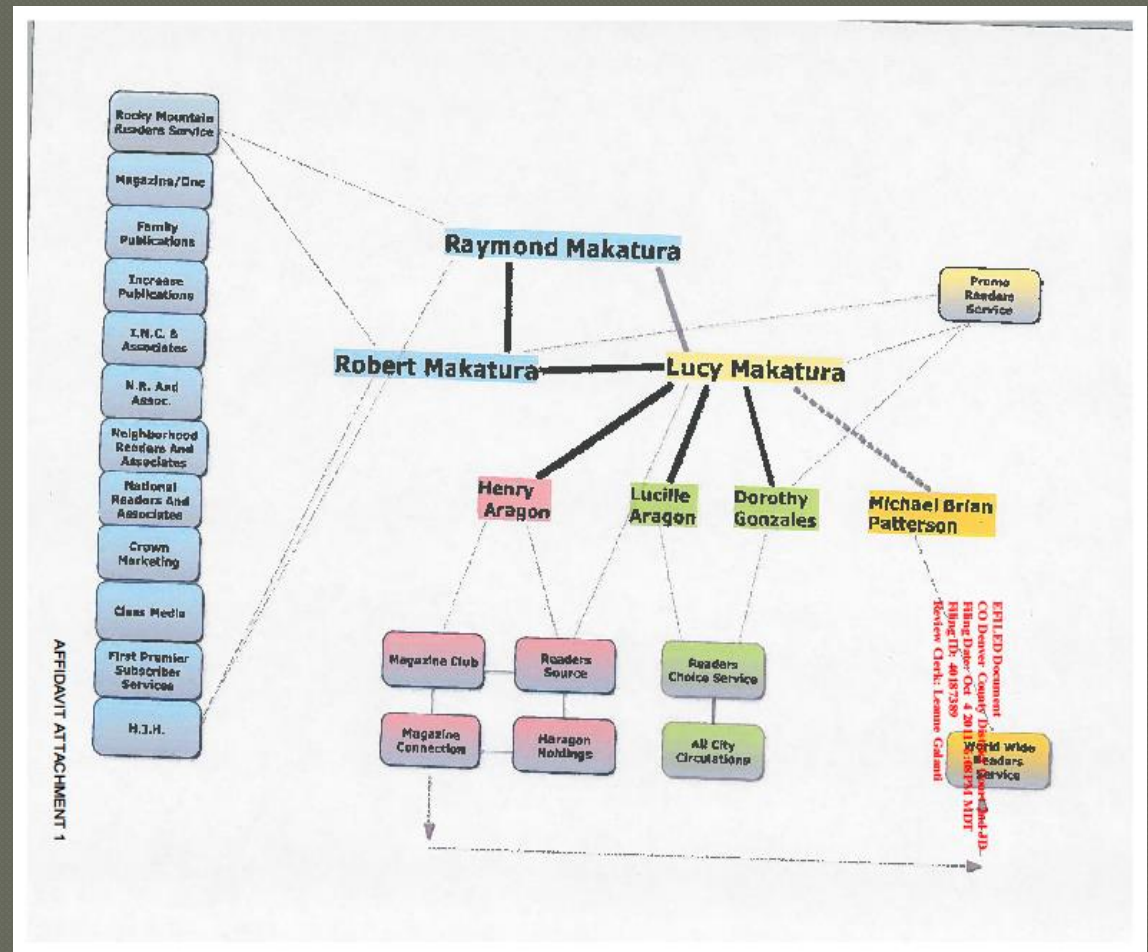
● Have Employees:

- Form corporations
- Set up P.O. Boxes
- Establish Bank Accounts
- Establish Merchant Accounts

● Use companies with similar names and identical abbreviations

Use Companies with Similar Names

- National Readers and Associates
- Neighborhood Readers and Associates
- N.R. & Associates



Exposing the Scam

◉ Former Employees

- Provide the real script and explain the scam

◉ Follow the money

- Bank records, other financial documents

◉ Audio Recordings

- Defendants happy to provide evidence of “verifications”
- Telemarketers forget to turn off recording device after verifications

Resolution of Case

- ◉ All but one Defendant settled.
- ◉ Settling Defendants = \$1.5M in judgments
- ◉ Defendant that went to trial = \$6M judgment
- ◉ All Defendants barred from selling magazines in Colorado
- ◉ Restitution payments to consumers scheduled to commence this fall

Three similar cases followed

State v. Patriotic Readers et al., sworn testimony of former employee:

23 Q. Let me ask you this: During the whole
24 time that you've worked for -- during the whole time
25 you worked at -- for Rose, did you ever hear any

50

1 telemarketer call up a customer and just in a
2 straightforward honest way offer to sell them a new
3 magazine contract?

4 A. No. No.

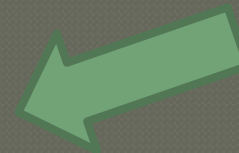
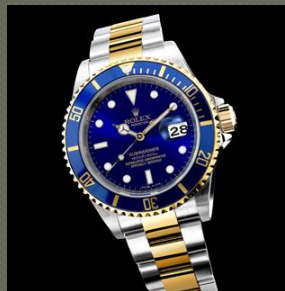
POP QUIZ, HOT SHOT...



How much is a \$6 million judgment worth?

Judgment Collection

- Post-judgment Discovery (CRCP Rule 69)
 - Interrogatories, subpoena for documents
- Order debtor “to appear before court, master or referee with requested documents . . . To answer concerning property.” (CRCP Rule 69(e))



Might
want to
leave
these at
home.

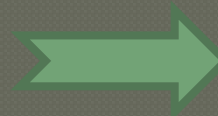
**What did our scammer do
with his assets?**



Get rid of 'em!



Wife



Father-in-law

WITHDRAWAL	SAVINGS	DEBIT
NAME _____ \$ _____ Amount Withdrawn		
DATE _____ 19 _____		
SIGN PER _____		
Teammates Signatures (4)		
Bonk's Banking		



?????

Colorado Uniform Fraudulent Transfer Act (“CUFTA”)

- CUFTA, C.R.S. § 38-8-101 *et seq.*, dates back to the Fraudulent Conveyances Act of 1571, also known as the Statute 13 Elizabeth

Statute 13 of Elizabeth

- Churches, other locations were “sancturaries” into which the King’s Writ could not enter
- Debtors could take refuge in a church (or certain precincts) and “live in relative comfort . . . Immune from execution by their creditors.”
- Debtors would sell their property to friends and family “for a nominal sum with the tacit understanding that the debtors would reclaim their property after their creditors gave up or compromised their claims.”
- *Fraudulent Conveyance Law and Its Proper Domain*, Douglas G. Baird, “Chicago Unbound,” University of Chicago Law School (1985), http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2046&context=journal_articles

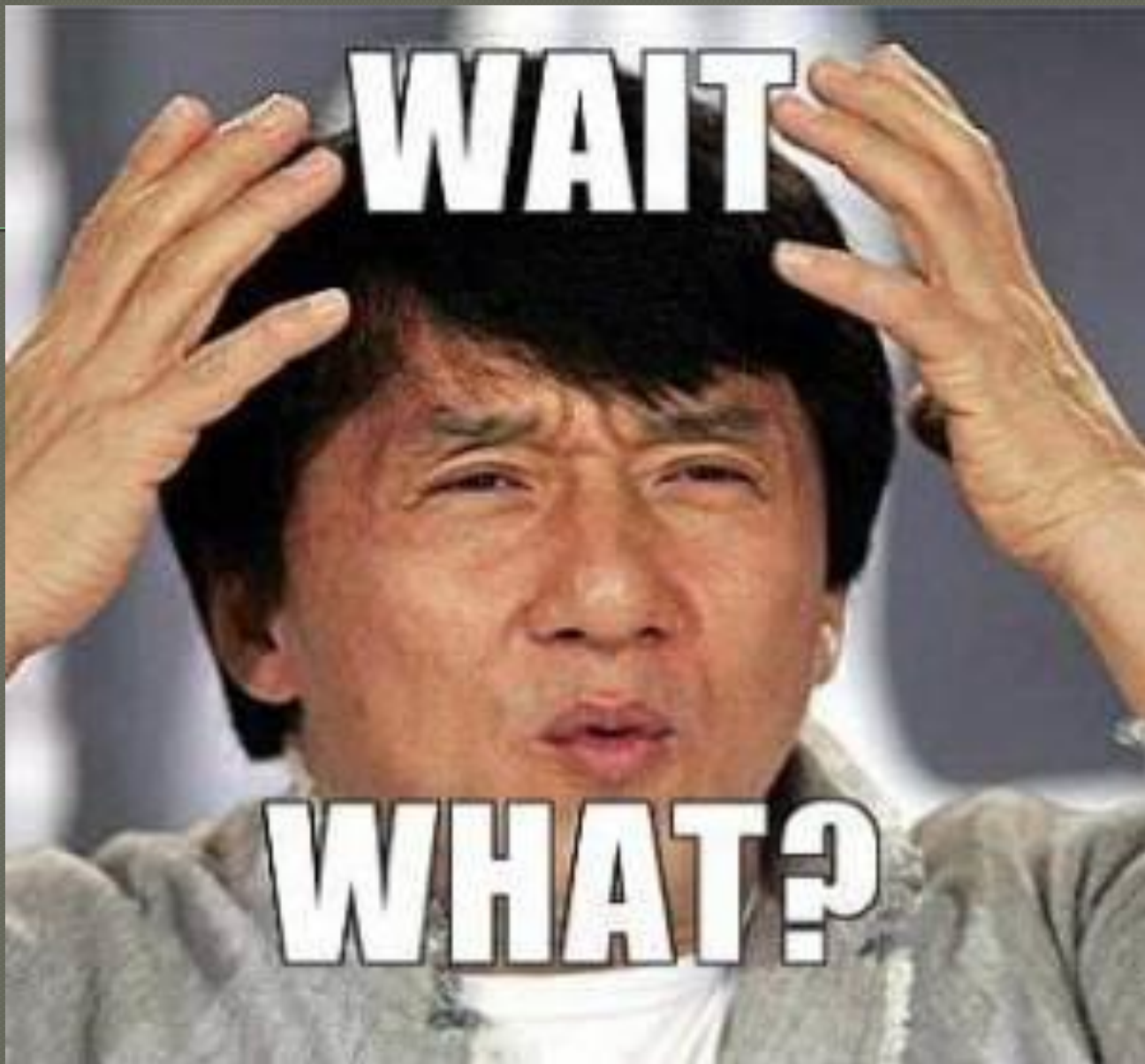
Statute 13 of Elizabeth

For the avoiding of feigned, covinous and fraudulent feoffments, gifts, grants, alienations, bonds, suits, judgments and executions, as well of lands and in tenements . . . which feoffments, gifts, grants etc have been and are devised and contrived of malice, fraud, covin, collusion or guile to the end, purpose and intent to delay, hinder or defraud creditors and others of their just and lawful actions, suits, debts, etc; not only to the let or hindrance of the due course and execution of law and justice, but also to the overthrow of all true and plain dealing, bargaining and chevisance between man and man, without the which no commonwealth or civil society can be maintained or continued.

Be it therefore declared, ordained and enacted, that all and every feoffment, gift, grant, alienation, bargain and conveyance of lands, tenements, hereditaments, goods and chattels, or any of them, by writing or otherwise, and all and every bond, suit, judgment and execution at any time had or made to or for any intent or purpose before declared and expressed, shall be from henceforth deemed and taken, only as against that person or persons, his or their heirs, successors, executors, administrators and signs of every of them, whose actions, suits, debts, etc; by such guileful, covinous or fraudulent devices and practices, as is aforesaid, are, shall or might be in anywise disturbed, hindered, delayed or defrauded, to be clearly and utterly void, frustrate, and of none effect, any pretence, color feigned consideration, expressing of use or any other matter or thing to the contrary notwithstanding.

(Source: Wikipedia)





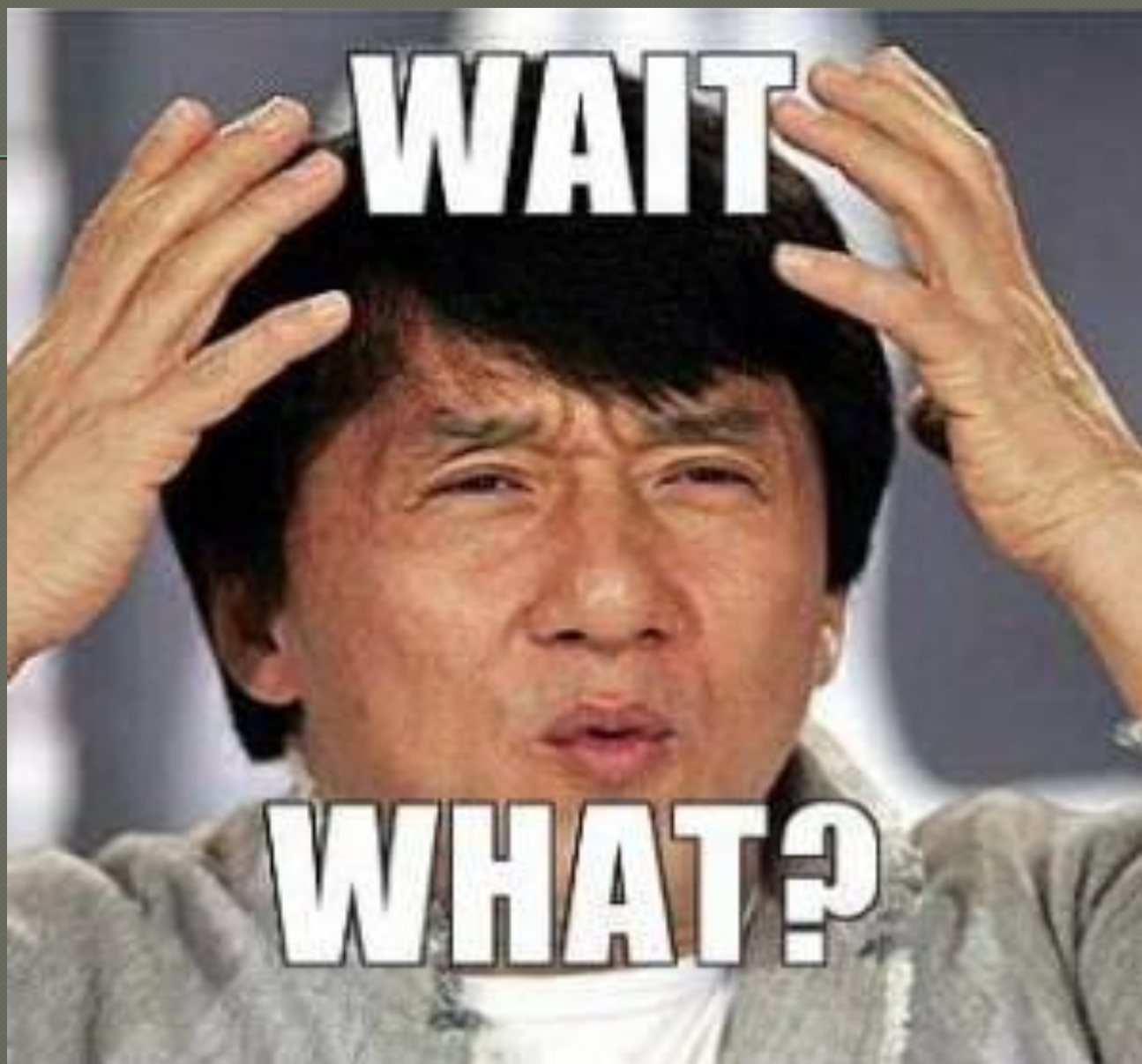
Certain transfers are void as to your
present and future creditors

“Badges of Fraud”

- ◉ 1918: Original Uniform Fraudulent Conveyance Act
 - Codified “badges of fraud” identified in 350 years of cases applying Statute of 13 Elizabeth
C.R.S. 38-8 (Uniform Fraudulent Transfer Act Prefatory Note)
 - Subsequently fine-tuned
- ◉ Colorado adopted Uniform Fraudulent Transfer Act in 1991

CUFTA: Rules Depend on When Transfer Occurred

- ◉ Did transfer occur before or after the creditor's claim arose?
 - C.R.S. § 38-8-105: Applies if the transfer occurred before or after the claim arose.
 - C.R.S. § 38-8-106: Applies only to transfers that occurred after the claim arose



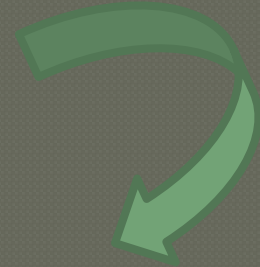
Assume your claim is a court judgment



Jan. 1, 2015: Lawsuit not looking good.
Better put the boat in my wife's name!



Mar. 1, 2015: Judgment
enters against you –
CLAIM ARISES



C.R.S. § 38-8-105

Assume your claim is a court judgment



April 1, 2015:
Judgment
Enters –
CLAIM ARISES



April 2, 2015:
Transfer the boat!



C.R.S. § 38-8-105 and 106

Transfers Before or After Claim Arose

Can be deemed fraudulent in 3 different ways:

1. If made with “actual intent to hinder, delay, or defraud any creditor of the debtor.”
C.R.S. § 38-8-105(1)(a)
2. If made “[w]ithout receiving a reasonably equivalent value” and C.R.S. § 38-8-105(1)(b)
3. C.R.S. § 38-8-106

Transfers Before or After Claim Arose

- C.R.S. § 38-8-105(1)(a)
 - Transfer or obligation fraudulent if done with **intent to defraud**
 - In determining “Intent,” look to the “badges of fraud” (C.R.S. § 38-8-105(2)).
 - (a) The transfer or obligation was to an **insider**;
 - (b) The debtor retained possession or control of the property transferred after the transfer;
 - (c) The transfer or obligation was disclosed or concealed;
- (“Insider” defined at C.R.S. § 38-8-102(8))
- “obligation” refers to “the assumption by the debtor of a duty to transfer an asset as a fraudulent transfer, even though no actual transfer has as yet taken place. **Sands v. New Age Family Partnership, 897 P.2d 917, 919 (Colo. Ct. App. 1995)**”

Transfers Before or After Claim Arose

- More “badges of fraud”

(d) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(e) The transfer was of substantially all the debtor's assets;

(f) The debtor absconded;

(g) The debtor removed or concealed assets

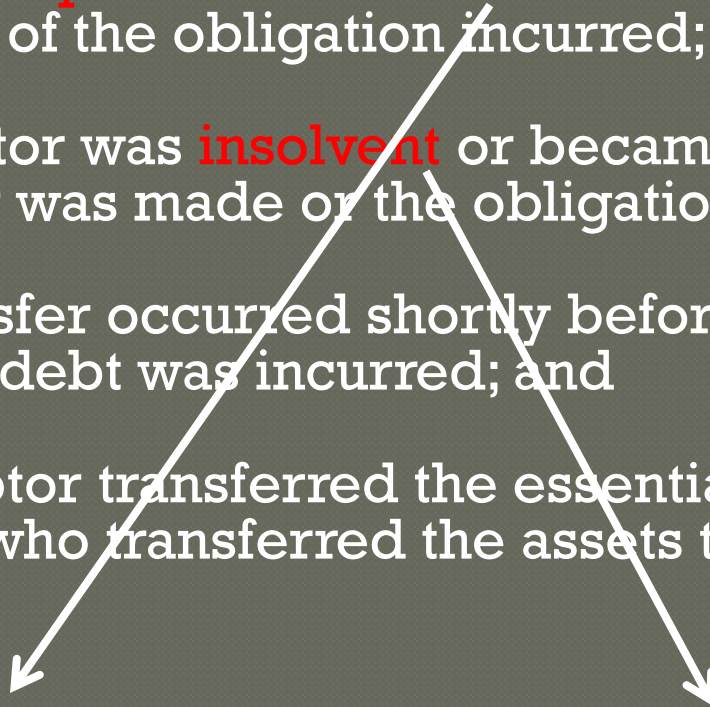
Transfers Before or After Claim Arose

(h) The value of the consideration received by the debtor was **reasonably equivalent** to the **value** of the asset transferred or the amount of the obligation incurred;

(i) The debtor was **insolvent** or became insolvent shortly after the transfer was made or the obligation was incurred;

(j) The transfer occurred shortly before or shortly after a substantial debt was incurred; and

(k) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.



(“Value” and “reasonably equivalent” discussed at C.R.S. § 38-8-104)

(“Insolvency” discussed at § 38-8-103)

Later creditors may get the benefit of attempts to defraud prior creditors

- Transfer is fraudulent “as to a creditor” if made “[w]ith actual intent to hinder, delay, or defraud **any** creditor of the debtor.” C.R.S. § 38-8-105(1)(a).

Boat was transferred in response to Kansas Attorney General Investigation 3 years before we invoked CUFTA.



Note: Claims are extinguished 1 or 4 years after the transfer, or 1 year after claimant discovered or should have discovered the transfer, depending on the statutory basis for your claim. C.R.S. § 38-8-110.

Transfers Before and After Claim Arises

● Can be deemed fraudulent in 3 different ways:

1. If made with “actual intent to hinder, delay, or defraud any creditor of the debtor.” C.R.S. § 38-8-105(1)(a)
2. If made “[w]ithout receiving a reasonably equivalent value” and
C.R.S. § 38-8-105(1)(b)
3. C.R.S. § 38-8-106

Transfers Before or After Claim Arose

- C.R.S. § 38-8-105(1)(b) → Transfer fraudulent if done:

“Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(I) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction;

or

(II) Intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.”

- “Without receiving a reasonably equivalent value in exchange for the transfer or obligation”



“I agree to purchase your boat for \$5.”

(Must prove remaining factors of C.R.S. § 38-8-105(1)(b) – but no need to prove actual intent or any “badges of fraud”)

Transfer After Claim Arises



April 1, 2015: Judgment
Enters – CLAIM ARISES



April 2, 2015: Transfer the boat!

*C.R.S. § 38-8-105 and
106*



Transfers After Claim Arises

- Don't have to prove "intent to defraud"
- C.R.S. § 38-8-106(1)
 - Transfer or made or obligation incurred fraudulent if
 - "debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation"
 - AND
 - "debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation"

("insolvent" defined at C.R.S. § 38-8-103)

Transfers After Claim Arises

- C.R.S. § 38-8-106(2)

- Transfer fraudulent if “made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.”

- Any transfer fraudulent under C.R.S. § 38-8-105

Remedies of Creditors

- **Found at C.R.S. § 38-8-108**

- **Avoid transfer and attach it to apply to judgment**
- **Judgment for 1.5X value of asset**
 - **Including against transferee who acts with “wrongful intent”**
- **Injunction against further transfers**
 - **Contempt!**
- **Also can bring action for civil conspiracy**



Defenses

- ◉ What about a third party who purchases an asset in good faith?
- ◉ C.R.S. § 38-8-109 (1):

“A transfer or obligation is not voidable under section 38-8-105 (1) (a) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.”
- ◉ More defenses listed at 109