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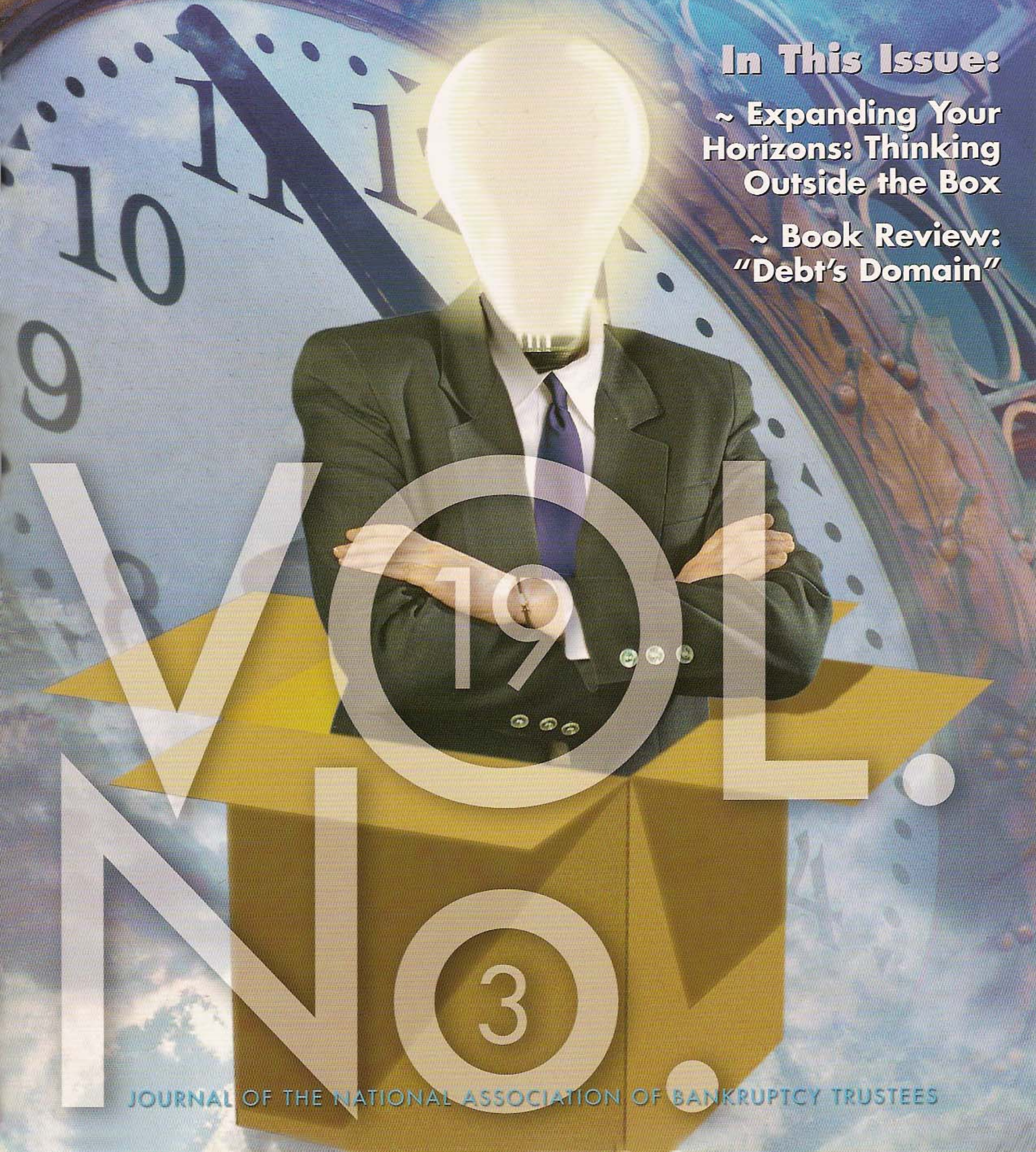

In This Issue:

~ Expanding Your Horizons: Thinking Outside the Box

~ Book Review: "Debt's Domain"

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Turning the Unusual Into the Usual

by John Palumbo*

Every year, hundreds of thousands of Chapter 7 bankruptcy cases are closed with "no assets to report". As trustee of an estate, one often wonders if a particular asset actually did have any value. Simply because the debtor said it was worthless and the outer appearance indicates that it doesn't hold a viable place in the market, it is sometimes just easier to "no asset" the case and move on. Many times assets that are listed on the schedule as unworthy may only be unusual instead. A private investor can take the unusual and turn it into the usual resulting in a win-win situation for the creditors and trustee alike.

While the list of unusual assets are too numerous to account for in this article, following are a few examples of assets with a limited market: divorce decrees, life insurance policies, farm credits, remainder interests, criminal restitutions, fractional interests in real estate, and viaticals. Assets such as the aforementioned are not considered liquid assets and are usually not easily sold.... if so, it is likely the debtors would have tried to dispose of them before they filed bankruptcy.

There are numerous alternatives for where and how a trustee could liquidate some unusual assets. There are: public and private auctions, newspaper advertisements, real estate agencies and even the Internet (NABT website, E-bay, etc.). However, most of these venues could never do assets of this nature any justice because of their inherent complexities. The best strategy a trustee could adopt is to cultivate private investors.

These investors, whether known personally, or by another trustee, are investors who are capable of making offers and taking risks... often times high risks. A private investor is also capable of completing their own due diligence and are more likely than the general public to understand that the trustee often does not have all of the information to disclose about an unusual asset. A private investor is cognizant of the fact that they are liable to be jumping off into an abyss because the debtor may not have revealed all relevant information to the trustee.

The manner in which most trustees desire to relinquish assets is by more conventional means or to institutional buyers. However, unusual assets are typically not what the general public or institutional buyers are looking for. Normally, an institutional buyer is only going to consider a deal if it is clean and easy without any encumbrances or additional effort on their part after the purchase. The institutional buyer is looking for something that is easy to acquire and will sell with equal ease.

A savvy private investor, on the other hand, should be willing to put forth the effort required to research the asset, to take the additional steps required after purchase and to take the risk of making a purchase that is not so clean. Most importantly, approaching private investors to purchase an asset is a more efficient use of the the trustee's time.

A sophisticated private investor can also be a trustee's best friend when it is necessary to flush out an asset. The flushing out process is required when the trustee is aware than an asset has some value and the most logical buyer is the debtor, but, for some reason, the debtor will not provide the details on the asset. The debtor and their family are potentially assuming that at some point the trustee will abandon the asset and if they do not reveal the specifics of the asset it will end up back in the debtor's hands anyway.

A sharp private investor can be a four-leaf clover in the trustee's pocket in these instances by getting the bidding process in motion, placing a bid and stirring the pot. Usually, when a bid is placed by a private investor, a knee jerk reaction occurs by the debtor or someone in the debtor's family or business circle and they are be compelled to respond potentially with an objection-which equates to nothing more than a higher offer for the estate.

Inevitably, assets can be flushed out in the courtroom, but are most often resolved during a telephonic auction quickly and efficiently. The estate predictably wins in these situations because they will receive the highest obtainable offer due to this flushing out process.

The private investor becomes the

(Continued on page 44)

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(Continued from page 43)

catalyst that makes the initial bid and many times will not actually end up as the final buyer of the asset. Whether or not the private investor acquires the asset or not, they become an essential part of the process of eliminating assets that the trustee and debtors may not otherwise have received any retribution from.

A knowledgeable private investor can be invaluable to a trustee. Most private investors will only need a few items to make an assessment of an unusual asset. They include: the deed, affidavit, title certification of document, schedule and list of assets, whether or not the asset is encumbered, any notes or additional disclosed information and any advice of marketability that may not appear in schedules or in asset lists. Due diligence on the trustee's part begins at the 341 meeting by asking in depth questions regarding the various assets including their past and present value in order to determine a future value. Thorough questioning will provide the trustee with an increased ability to market the asset and will ensure that they receive higher offers.

Reduce your "no asset" cases significantly by stepping out of the comfort zone and establishing trusted private investors to assist in your liquidation process. These private investors will make your work easy by completing their own due diligence, taking higher risks, investing in assets that have encumbrances, and providing valuable assistance in the flushing out of assets...making the unusual truly the usual indeed.

{For over 15 years, John has specialized in the area of asset liquidation. As one of Americas leading authorities on unusual assets, he has transformed high-risk investing into an extraordinary art form. John has concentrated his practice in the areas of: divorce decrees, remaining interests in real property, probate estates, intellectual properties such as books, music, films, copyrights and royalties, criminal restitution investments, and farm credits, just to name a few. Should you have questions on unusual assets, you may contact John personally. He resides in Jacksonville, Florida, and can be contacted at: (904) 641-2043, or via e-mail at PalumboJ@aol.com.}