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Bankruptcy trustee Randy Seaver flexing his investigative muscle in Hecker case

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Randy Seaver (Pioneer Press)

Note to anyone contemplating bankruptcy: Don't get on the wrong side of the trustee handling your case, especially if that trustee is Randy Seaver.

Just ask Denny Hecker. The former auto mogul was hoping for a fresh start after being pushed into bankruptcy in June 2009, owing $767 million. Instead, after months of squaring off with Seaver over accusations that he hid assets and lied to the court, Hecker finds himself facing federal charges of bankruptcy fraud that could put him in prison for the rest of his life, shackled to a mountain of debt. Hecker has vowed to fight the criminal charges.

Seaver says he's just doing his job. "It's important to the system that people know everybody's getting treated the same when they file bankruptcy," he said in a rare interview. "If they were supposed to give up assets, they should give up assets."

That sense of mission, combined with a knack for rounding up assets, has made Seaver a pivotal figure in a drama that is still unfolding.

'NOBODY DOES IT BETTER THAN RANDY'

Seaver prefers to avoid the spotlight, rarely appearing in court and, until now, never speaking to the media. He agreed to talk with the Pioneer Press to shed light on his work as a bankruptcy trustee, but he made it clear his personal life was off limits.

Hecker's bankruptcy attorney, Barbara May of Roseville, says Seaver's strict sense of right and wrong has left the former auto mogul feeling that he's being unfairly treated, but she knows the trustee is just doing his job. "I'm sure the U.S. trustee's office thinks nobody does it better than Randy," she said last week. "He's an extremely hard-working trustee. I've never seen anyone bust their chops the way he does."

Others who have faced Seaver in court have a similar view, describing him as "dogged" and "zealous." In person, however, the tan, lanky 59-year-old is soft-spoken and polite. His law firm's offices are in a nondescript Burnsville office complex.

Attorney listings show he earned a bachelor's

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degree from Michigan State and his law degree from William Mitchell College of Law. Admitted to the bar in 1983, he started as a general-practice attorney but soon began representing bankruptcy trustees in complex cases in which they couldn't do all the legal work themselves. He discovered a passion for the work and became a trustee in 1998.

While the judge in a bankruptcy case gets final say, trustees have a special role, with two main duties: ensuring that debtors report their assets and liabilities accurately, and if there are any assets, liquidating them to pay creditors.

A trustee's job is a unique mix of investigator, lawyer and negotiator, with a dash of accounting and liquidating skills.

"What I really like is investigating and figuring things out, and as a trustee you get to do a lot of that," Seaver says.

Probe a little deeper and you'll discover that, actually, Seaver loves the investigation part of his job. And he really loves the challenging, complex cases.

The Hecker case is as big and complex as personal bankruptcy gets.

The staggering amount of debt, the long list of creditors and the complexity of the more than 200 interconnected private companies in Hecker's empire make the case unique in Minnesota history, bankruptcy experts say. Adding to the drama: Hecker's contentious divorce from his fourth wife; the suicide of his former father-in-law, who was accused of helping him hide assets; and creditors' claims that the former car dealer committed fraud — claims that later resulted in criminal charges.

"It's a bankruptcy trusteeship on steroids," says David Leibowitz, a bankruptcy trustee in Chicago who sits on the board of the National Association of Bankruptcy Trustees.

KNOWING WHERE TO LOOK

If there's any hint that a debtor is hiding baubles, expensive toys or bank accounts, Seaver will go after them.

A fellow trustee who has known Seaver for two decades says that in investigating a debtor's financial affairs, Seaver leaves no stone unturned — and then he "digs up the dirt under the stone as well."

"He has the best nose for money of any of the trustees," says Michael Iannacone, who has faced Seaver on numerous cases and worked alongside him on others. "He has an uncanny sense of where to look."

"I think lawyers prepare in advance more when they know he's the trustee," says Craig Andresen, a debtors' lawyer who serves as the state chairman of the National Association of Consumer Bankruptcy Attorneys. "You know when you go in front of Randy Seaver that he's going to ask a question in a way that you know he's going to get the information."

The Hecker case put Seaver's skills to the test right away.

Once the owner of a large network of auto dealerships and a big leasing operation, Hecker, now 58, went bankrupt after he couldn't repay financing loans he had personally guaranteed. He filed for Chapter 7 personal bankruptcy June 4,

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2009, but didn't provide detailed information until July 1, when he listed $767 million in liabilities and $18.5 million worth of assets. Those assets included vacation homes and condos in Crosslake, Minn., and Cabo San Lucas, Mexico; a 53-foot yacht; assorted motorcycles; snowmobiles; scooters; Segways and four-wheelers; and a whole page of watches.

The bankruptcy schedules ran 124 pages, but that didn't satisfy Seaver.

Within a week, he filed a lawsuit seeking Rolexes and other luxury watches Hecker hadn't reported.

A week after that, at what's known as a meeting of creditors, Seaver relentlessly hammered Hecker with three hours of questions. Why did Hecker put so much personal property in the name of his companies? What happened to the $47,000 in jewelry he purchased from Chanel in Las Vegas? Whom did he buy that fur coat for? And so on.

What made him suspect Hecker was hiding assets so early on? Seaver won't say, citing Hecker's pending criminal case.

He did, however, provide a glimpse of his process.

REASONS TO LOOK HARDER

When a debtor files his initial bankruptcy documents, Seaver pores over everything, looking for gaps in the paperwork. He'll also review tax returns, bank statements, property records and vehicle registration records for cars, boats, all-terrain vehicles and the like.

Seaver knew there were more Rolexes and jewelry than Hecker reported, for example, by looking at Hecker's homeowner's insurance policy — a trick he picked up handling bankruptcy cases of other wealthy individuals.

The meeting of creditors is critical. The answers Seaver gets there often determine whether he will pursue hidden assets or close the case quickly.

"If you find you've been given information that is not accurate, it's going to make you look harder," Seaver says.

Subpoenas are another favorite tool. Seaver has subpoenaed about 100 people and companies in the Hecker case so far, asking for documents and interviews. The list includes Hecker's former girlfriends, family members, employees, business associates, e-mail providers, banks, casinos, elite country clubs, the private school his children attend and the company that sold him a $30,000 guard dog that he gave his girlfriend, Christi Rowan.

Such sources put him on the trail of a long list of other assets Hecker didn't report, including the contents of a storage unit in Colorado, three bronze Bear sculptures that once stood in front of Hecker's Medina mansion, a fur coat and jewelry Hecker gave to Rowan and $80,000 Hecker allegedly gave his former father-in-law to pay bills.

Tipsters often play a role, even in more average cases, Seaver says. Divorces, for example, almost always generate fodder for trustees. Hecker's divorce from his fourth wife, Tamitha, was an extreme example in that she publicly accused her estranged spouse of continuing to live a lavish lifestyle while in bankruptcy. But Seaver said the situation is a common one.

"If you're a debtor and not disclosing everything, other people will know about it, and you're at risk

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that you're going to fall out of grace with them and they're going to contact the trustee at some point," Seaver says. "And that's not a good result."

Seaver acknowledges that once he finds evidence a debtor hasn't been truthful, he will aggressively pursue a lawsuit asking the court to deny the debtor the fresh start bankruptcy promises, referred to as a denial of discharge.

That's exactly what Seaver did in the Hecker case. He spent months building a list of violations of the bankruptcy code, then in January filed the lawsuit, known as a 727, for the applicable section of the federal code. Such lawsuits are rare, occurring in only about one of 500 bankruptcies in Minnesota, court statistics show. If they succeed, a debtor remains on the hook for his or her debts, a condition known as "bankruptcy hell."

Seaver doesn't keep track of how many such lawsuits he's filed, he said, but it appears he's won at least 22 and lost at least one.

The complaint against Hecker laid out six "schemes" he allegedly used to conceal assets, including putting the titles for personal boats, trailers and other vehicles in the name of one of his companies; transferring more than $200,000 in cash to his girlfriend; making payments on an $86,000 Land Rover for her; and making deals to maintain control of homes he owned in Medina and Crosslake.

But the main goal of the lawsuit was to prove Hecker had been dishonest in the way he'd handled the bankruptcy. Bankruptcy attorneys say a trustee can prove intent simply by showing a pattern of conduct. "It is a classic Randy Seaver crucifixion," Roseville bankruptcy attorney Barbara May said at the time the suit was filed, before she joined Hecker's defense team. "He doesn't bring one of these until he has you nailed down."

Trustees are required to report potential criminal activity to the U.S. attorney's office. In March, many of the allegations from Seaver's 727 ended up in a criminal indictment for bankruptcy fraud. Hecker pleaded not guilty to all the criminal charges.

But by that point, Hecker and a changing cast of defense attorneys had already dug themselves into a deep hole with U.S. Bankruptcy Judge Robert Kressel. In February, the famously no-nonsense Kressel had responded to repeated delays and missed deadlines from the defense team by slapping Hecker with an $83 million judgment, saying he "lied to Chrysler Financial, he lied to me."

With no money to pay his lawyers and a criminal trial to prepare for, Hecker threw up his hands on the bankruptcy. In exchange for having his discharge denied, putting him on the hook for a lifetime of debt, he asked only that his girlfriend be allowed to keep the $30,000 guard dog Seaver had wanted to sell to pay creditors.

THE SEARCH FOR ASSETS

With the settlement in hand, Seaver has been able to concentrate on finding and liquidating assets he can use to pay Hecker's creditors. Progress has been slow.

Most of the big-ticket items Hecker listed among his $18.5 million in assets when he filed for bankruptcy turned out to have no value to the bankruptcy estate. The majority of the real estate holdings had little equity and were foreclosed upon by lenders. All but one of Hecker's automobile dealerships was sold before the bankruptcy, and many of the other 200-plus companies owned nothing of value.

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Despite that, Seaver has recovered about $1.7 million.

Trustees have an added incentive to round up assets — they get paid a percentage of what they recover. In cases without assets, they get a flat $60 fee.

Statistics show Seaver gets results. Typically, he recovers assets in 15 percent to 20 percent of his cases each year, which is roughly double the national average.

Trustees who are also lawyers, such as Seaver, can hire themselves — with court approval — for legal work on the asset cases. In complicated cases such as the Hecker one, trustees hire other lawyers, accountants, auctioneers and other professionals to help administer the estate. All of their fees are paid from the assets collected.

The bulk of Seaver's income — at $390 per hour — comes from legal work, which largely consists of drafting motions or other court documents.

So far, Seaver has been paid about $69,000 for legal work between June and October 2009 on the Hecker case. He hasn't requested any payments for himself or the other lawyers since then. He won't get his trustee pay, which will likely eclipse $100,000, until the case is closed in another year or two.

Though Seaver juggles between 200 and 300 cases at a time, he says he's spending an "immense" amount of time on the Hecker case, typically four to six hours per day.

There are about a dozen other lawyers working anywhere from a few hours to 60 or more hours per week on the Hecker case. The lead lawyer, Matt Burton, says he often puts in 12-hour days and time on nights and weekends.

"And it's the type of case that's never out of your mind, all day long," Burton says.

WHICH ROADS TO WALK DOWN

The money Seaver has recovered so far has been hard-won, coming after a slew of lawsuits.

So far, nine of those suits have resulted in property being turned over to the bankruptcy estate. Some were resolved quickly, such as the early one over the missing Rolexes. Six are still pending, including one against a North Dakota bank, a jewelry store and an owner of both businesses.

When that case was filed last month, Leibowitz, the Chicago trustee, called that case "cutting edge — maybe too cutting edge."

Seaver claims that Cornerstone Bank got preferential treatment from Hecker because one of the bank's founders, Richard Olson, had an "inside" connection because of his 25-year friendship with Hecker. The lawsuit alleges Cornerstone bent the rules to lend Hecker some $11 million with little collateral in 2007 and early 2008. When Hecker couldn't pay it back, putting the bank at risk of being shut down, Seaver claims a scheme was concocted to shift other Hecker assets to Cornerstone. That favored the bank over other Hecker creditors, the lawsuit says.

The suit's claim of an inside connection "is within reason, but would be considered creative," Leibowitz said.

Cornerstone has fired back at Seaver. In a press

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release posted on its website last week, the bank accused Seaver of making "false allegations in retribution" for a lawsuit the bank filed against him last fall. Cornerstone contested a settlement Seaver negotiated in the sale of a Hecker Toyota dealership in the Brainerd area.

Hecker has his own complaints. In particular, he doesn't like how Seaver challenged a $1 million consulting agreement Hecker had arranged as part of the sale of an Inver Grove Heights dealership to Midwest Motors. Seaver called the payments to Hecker a diversion of the purchase price. Last month, a Hecker attorney, John Neve, claimed that Seaver forced Midwest Motors to breach its contract with him and is now "trying to cram down our throats" a settlement that benefits creditors and the bankruptcy estate, but would get the dealership's former owner only forgiveness on a $200,000 loan and a 2007 Toyota Tacoma pickup.

Seaver makes no apologies for being aggressive. It is his duty, he says, to go after any assets that should be part of the bankruptcy estate, no matter how difficult the fight.

One of the things that makes the Hecker case more challenging than others, Seaver says, is knowing which "roads to walk down." Sometimes there will be assets at the end of that road, sometimes there won't.

"You can spend an enormous amount of time in this case — or other complex cases — walking down roads that lead you nowhere, and you can burn up a lot of your time and attorney time doing that," Seaver says. But, he adds, "there's no way you can do this job in a case like this and not follow some things that lead nowhere."

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ONLINE

For more about the Denny Hecker case, go to TwinCities.com/Hecker.

