The Fresno Metropolitan Museum Story:  
Assignment for Benefit of Creditors  
By Riley Walter* 

Brief History of Museum

Fresno is the fifth largest city in California and serves as the cultural and political center of the San Joaquin Valley, the richest and most productive agricultural region in the world.

The Fresno Metropolitan Museum of Art & Science ("Met") was chartered in 1979 as a nonprofit organization, and small exhibitions based on donated private collections began in 1982. The Met was initially established as a "collecting institution" dedicated to conserving and presenting the San Joaquin Valley's cultural heritage. A fundraising campaign brought in nearly five million dollars and the Fresno Bee Building (circa 1922) was converted into a museum facility and became the permanent home of the Met.

The Met was open to the public from 1984 until August 2005. In 2005 the Met closed the museum facility to the public for restoration and reconstruction of the building. There were many unanticipated expenses that occurred during the construction which saw the construction budget balloon from $15 to $28 million dollars. The Met addressed issues such as outdated climate control systems, limited access for the physically challenged, seismic upgrades, hazardous materials abatement, new roof, landscaping, and restoring the exterior of the historic building to its original design which included both demolition and new construction. The seismic retrofit was incorporated after the beginning of construction and is a major factor that substantially contributed to the increased costs.

In order to acquire financing to complete the project the Met obtained a loan in 2007 which was guaranteed by the City of Fresno ("City"). The City took a deed of trust as security against all of the Met's real property to protect itself against any default by the Met. In June 2009, the City was required to pay off the bank loan at a cost of approximately $15 million.

Not only did the construction issues increase the costs it also resulted in a greatly extended construction period. The Met did not re-open until November of 2008. The Board attempted to locate donors to help cover the remaining debt of $15 million of unpaid construction costs plus contractor claims. By 2008 capital markets had dried up to the point that re-financing the debt was not a practical option. This all occurred at a time when donations to most cultural arts institutions were declining.

In February 2009, a financial advisor was engaged to assist the Met is assessing its current financial situation, work with the Board of Trustees and City regarding the $15 million loan guarantee and hopefully avoid closing the Met. After many months of limited fundraising and low attendance at prescheduled fine art exhibitions and notwithstanding the downsizing of staff, the Board of Trustees determined that it was necessary to close the Met.

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Preparation to Close Museum

On October 30, 2009, the Fresno Metropolitan Museum Board of Trustees passed a special resolution appointing and designating the Executive Committee of the Board to perform, direct and carry out whatever was necessary to close the Met and resolve all claims against the corporation with any issues to be decided by a majority vote of the Executive Committee.

On December 14, 2009, the Board of Trustees determined that all available options had been exhausted, and voted to settle creditor claims when all assets were liquidated and the proceeds be distributed, pursuant to state law, prior to dissolving the corporation.

On December 23, 2009, a Winding Up and Dissolution of Corporation Resolution was passed by the Executive Committee. This resolution appointed the Board President as the Board's agent in the execution of all of the items listed within the resolution, including taking action on matters not specified within the resolution but consistent with the purpose of winding up and dissolving of the corporation. The Board President was authorized to act on behalf of the Board without the need for further authorization, unless an action needed to be taken that was substantially inconsistent with the resolution.

On January 5, 2010, the Board President joined the Executive Director in terminating employment for the majority of staff with notifications to remainder staff that their last day would occur within 90 days. In addition, a formal announcement was made during a public press conference held in the Met courtyard.

Formation of Friends of the Met, LLC

The Met had no ability to fund the winding up and liquidation of its assets since all cash resources had been exhausted; although, it was clear that an organized structured liquidation would be in the best interests of all the creditors.

The Board of Trustees authorized the Met to borrow up to $600,000 from the Friends of the Met, LLC, which was formed for this purpose; and to secure the loan with the Met's personal property, in order to fund the liquidating process.

Met Closes

The Met closed on January 5, 2010. The required State of California Attorney General communication and clearance letter required of nonprofit organizations were filed and later accepted.

Liquidation of Personal Property Process

Auctioneer Selection

Three personal property auction houses were initially interviewed for the sale of the collection assets. Each provided a proposal with very similar fees and brief outline on how they would handle the auction. The non-collection personal property auction took place on February 17, 2010 by a local auctioneer.
Assignment for Benefit of Creditors

An Assignee ("Assignee") was appointed as the Assignee for Benefit of Creditors effective April 1, 2010.

An Assignment for Benefit of Creditors (ABC) transaction is a general assignment of all assets for the benefit of all of Assignor's (Met's) creditors. A general Assignment for the Benefit of Creditors is set forth and defined in California Code of Civil Procedure, Section 493.010 et. seq. A general Assignment for the Benefit of Creditors (1) constitutes an assignment to the Assignee of all assets of Assignor which are transferable and not exempt from enforcement of a money judgment; (2) is for the benefit of all of the creditors of the Assignor, and (3) does not create a preference of one creditor or class of creditors over any other creditor or class of creditors.

Financial Institutions

The Assignee took control over the assigned assets and opened an operating checking and savings accounts. To ensure that funds held at the bank were insurance protected under the $250,000 FDIC limit, additional saving accounts were later opened at other banks.

Liquidation by Fine Art Auction

Selection Process

Prior to the appointment of the Assignee, three fine art auction houses were interviewed. They included: Bonham's & Butterfields, Sotheby's, and Christy's. Each auction house arrived on-site and in less than one day, each assessed the collection. A proposal of potential sale estimates, auction house fees and plan for the most advantageous sales process was provided by each.

After a review of each proposal, a recommendation to consign with Sotheby's in New York and Bonham's and Butterfields in San Francisco was approved by the Board President on March 3, 2010 and March 16, 2010, respectively, prior to the appointment of the Assignee.

A total of 3,218 works and objects were consigned to be sold. Sotheby's was consigned to sell 170 fine art works and objects they valued at $5,000 or greater. Bonham's and Butterfields was consigned to sell 3,048 works and objects.

Original Estimate Changes

Changes in original estimates became necessary after further expert review by each auction house. There were a significant number of paintings found to be in worse condition than originally expected, works were not of the artist stated, or works were found to lack the provenance previously represented. Thus, the original auction estimates were revised downward to accommodate the value of these paintings. Each auction house was required to provide an explanation regarding any significant decrease in estimates before the Assignee would approve such change.

The bidding practice by some potential buyers appeared that they were trying to take advantage
of the weak economy and bid below what was expected. As such, many works and objects were sold at the reserve or closer to the lowest estimate. Total original estimates received from the auction houses ranged from $2,592,000 - $3,900,000 and changes in original estimates later decreased to $1,421,000 - $2,142,000. Overall, 136 works and objects required a change from the original estimate.

Schedule of Auctions

Each auction house recommended an auction schedule to realize the best return for the benefit of creditors. There were a total of 29 auctions held within a 14-month period.

After each auction occurred, every attempt was made to sell works that did not originally sell through a one-on-one post auction sale. There were six post auction sales that netted a more positive result than had each work been listed for future auction.

Outcome/Results

The outcome of each auction differed to some degree from the original and/or revised estimated value. Overall the auction results were less than estimated with the exception of a few specific works. The Asian market was the strongest and fine art oil on canvas was the weakest. As an example, the sale of a Chinese Screen that had an original estimated auction value of $50,000 to $70,000 and sold for $250,000, and a fine art oil canvas had a revised estimated auction value of $120,000 to $180,000 that sold for $85,000.

Seventy of the 170 works consigned to Sotheby's were later revalued below Sotheby's $5,000 auction value requirement, and these works were later consigned to Stair Gallery in New York to sell. The total net proceeds from all auctions totaled $1,829,765.

Fine Art Direct Sales

Native American Indian Basket Collection

Prior to the appointment of the Assignee, the Board President approved the sale of this collection to a local Native American Indian Tribe providing for the future public display in the Valley. Bonham's and Butterfields provided an appraised value for this collection and the Tribe purchased it at that value.

Asian Snuff Bottle Collection

The original donor's family of this collection was granted an opportunity to purchase the collection for a price equal to a net amount estimated to be raised through a live auction. Bonham's and Butterfield's provided the auction value estimate for this collection, and the family purchased it from the Assignee.

Ansel Adams Museum Set Edition Prints

The family of Ansel Adams brought legal action against the Met in March, 2010 to prevent the sale of certain Museum Set Edition Prints. Pursuant to an agreement with the Assignee, the
family was granted an opportunity to purchase the collection at the fair market value. Sotheby's provided an appraised value for this collection, and the family purchased from the Assignee through the trade of two Ansel Adams' prints and cash payment. The two prints received were later sold by Sotheby's at auction in October 2010.

**Creditor Claims**

**Notification**

Letters were mailed to creditors on January 5, 2010, March 8, 2010, and April 9, 2010.

The April 9, 2010 communication noticed 206 creditors regarding the requirement of filing a Proof of Claim for any outstanding amount they believed was owed to them. All claims were due on or before May 31, 2010 in order to be allowed for consideration.

**Review**

In June 2010, an in-depth review of claims filed commenced by the Assignee and his Financial Officer. A total of 95 claims were filed and reviewed.

Claims were categorized as either approved or disputed. All disputed claims required additional research and/or negotiations to resolve. A total of 85 claims were approved, two were disallowed, four were disputed and four claims were withdrawn.

Two of the disputed claims were negotiated for acceptance in a lesser amount and one claim was settled and paid at 20% of the disputed amount; and, one claim, the City of Fresno, was settled by providing that it would only receive any excess funds available after all other creditors and expenses had been paid.

**Lawsuits**

Creditors who previously filed a lawsuit against the Met were also noticed by the Assignee and required to file a Proof of Claim. Each of these creditors were contacted by counsel and the process was explained.

**Outcome/Payout**

A letter was mailed on January 20, 2011 to those creditors whose claim had been approved. A total of $1,403,486.85 was distributed to approved claims on a pro-rata basis. The first of two distributions were made on June 30, 2011 in the amount of $1,050,000 and the second distribution will be made on or before December 19, 2011 in the amount of $353,486.98. Each claimant received 79% of their approved claim.

**McClatchy Endowment**

Included in the assets of the Met upon appointment of the Assignee was the restricted Carlos K. and Phebe McClatchy Conley Art Endowment Fund ("Endowment"), totaling approximately $1,800,000. By California law, a restricted gift cannot be liquidated to fund obligations to the
Met's creditors, and as such it must be passed on to another 501 (c)(3) corporation that is able to carry out its purpose to the greatest extent possible. Therefore, the proper handling and transfer of the Endowment became the responsibility of the Assignee.

Following the filing of an Application on August 9, 2010 with the Fresno County Superior Probate Court and pursuant to the Court's Order entered September 17, 2010, the Endowment funds were transferred to the Central Valley Foundation. The Foundation's Board has been entrusted to carry out the donor's wishes with specific requirements and the matter remains subject to the Court's continuing jurisdiction.

At about the time the Assignment for Benefit of Creditors was being approved by the Board, the Board also reached agreement with the City of Fresno to convey the museum facility real property back to the City in exchange for cancellation of the indebtedness.

Once the Board had approved the Assignment for Benefit of Creditors the process began. This results in all of the assets being transferred to the Assignee to be held in trust with instructions to liquidate the assets and pay the proceeds out in order of priority allowed by California law.

**Creditors’ Claims Process**

Once the Assignee was in place he sent notices to all creditors of the Museum giving them 90 days to file a claim with documentation supporting the claim. The notice was clear that if a claim was not filed on time there would be no distribution.

Once all of the claims were fixed, the Assignee then made a series of pro rata distributions to creditors having allowed claims. Over time creditors received 79 cents on the dollar on allowed claims.

**Conclusion**

Several lessons can be learned from utilization of this process: first, it was cheaper than a bankruptcy proceeding and it is believed that there was a higher recovery because the prices received were better than a Chapter 7 Trustee would have received. It was also a faster process. Second, it was important to the Board that the obligations to creditors be honored to the extent possible. Third, a key to having this process work is to carefully review the gifting documents to make sure there are not restrictions that would impede such process. Fourth, unsurprisingly, pledges do not get honored once the entity is in a process of liquidation. Last, it is a very public process. People who care about museums and art/artifacts care deeply and are very vocal.

In conclusion, the Fresno Met used a little known legal process that allowed it to honor all allowed claims in a process that was faster, more efficient and less expensive than a formal bankruptcy process.