

Assignee Unknown: The Curious Cases of SmartLabs, Shine Bathroom Technologies, Liftopia, GlassPoint, SolarReserve, Maker Media, & Toymail

May 16, 2022 / By Jonathan Friedland

What is an Assignment for the Benefit of Creditors?

An assignment for the benefit of creditors is a legal procedure available in many, but not all, states. Commonly referred to as an “**ABC**,” the procedure is one of several legal procedures used by owners of distressed (almost always insolvent) companies and their creditors to, essentially, sell the assets of the subject company (using terminology defined below, another way to say this would be “sell the assets of the assignment estate”) and then distribute the proceeds of the sale (or sales) to creditors in accordance with a priority scheme dictated by applicable law.¹

The ABC is an old remedy, pre-dating the current U.S. Bankruptcy Code of 1978 by many decades. It is commonly described as a state law alternative to a chapter 7 bankruptcy and is also commonly preferred over a chapter 7 by the owners of the subject company and at least some creditors.

The reasons for this preference are several-fold. While beyond the scope of this article, you can read [Chapter 11 is Not Always the Answer: Strategic Alternatives For and Against Distressed Businesses](#) to understand why. For some of these same reasons, attorneys typically have (or at least should have) the same first

question when a client tells them that one of their customers commenced an ABC – “*Who is the Assignee?*”

Why Do ABCs Work?

ABCs work because people agree they work. An analogy could be made to the classic debate about fiat currency and the more current questions about cryptocurrency (*i.e.*, will one or more be able to ultimately be used by tens of millions of people a day to conduct hundreds of millions of transactions based solely on the strength of the fact that “everyone” agrees that it has value?).

An ABC can be terminated if unsecured creditors get together and file an involuntary bankruptcy petition. That usually *doesn't* happen. But when it does, a bankruptcy court may decline the case and allow the ABC to continue unimpeded. That usually *does* happen. Why and why?

Because over time, creditors, their attorneys, and bankruptcy courts have come to trust the ABC process. But why?

Because time and again, the vast majority of the professionals who act as assignees have demonstrated they can be trusted to act as the fiduciaries they are to the creditors of the assignment estates they manage. This is one reason why the identity of the Assignee (defined below) is so important: attorneys know or can easily determine who the regular, experienced, and trustworthy assignees are. This doesn't mean that creditors and their attorneys should pay no attention to the goings-on of an ABC, but it does permit them to relax at least a little and save their most circumspect lenses for ABCs led by assignees who are less well known to them.

The takeaway? It's all about credibility – of the process and, thus, of assignees.

Assignee Sales

It is important to understand at the outset that most ABC sales do not involve the sale of assets on a piecemeal basis. In other words, don't visualize a flea market. Rather, most ABC sales involve the sale of all of the assets of the subject company (or, again, if you prefer, of the assignment estate) to a single buyer.

Remember, the assets (and value) of a business do not consist merely of the

things you can pick up and carry away (such as inventory, machinery, and equipment). The most important assets of many, if not most companies are “soft.” They include contracts with third parties, licenses, intellectual property, the knowledge of their employees, and the ethereal “glue” that makes it all work together to produce income.

Companies whose going concern value has diminished to nothing or close to nothing are more likely to either file bankruptcy under Chapter 7 of the Bankruptcy Code or simply cease operations and just fade away (that is, wind down and eventually dissolve). Looking at it from another perspective, one of the reasons why parties-in-interest (companies, their owners, and their secured creditors) decide to use an ABC is because the business still has going concern value and they believe that an ABC is more likely to result in a sale of the business as a going concern than other available options.

A Quick Vocabulary Lesson

Before we continue, let’s make sure we’ve got the lingo down.

The “**Assignee**” is the person (human or entity) to whom an assignment is made. The Assignee is a fiduciary, meaning that the Assignee has legal duties to the beneficiaries of the assignment. These legal duties are commonly referred to as “**fiduciary duties**” and an Assignee, in fact, owes fiduciary duties to the creditors of the assignment estate. This essentially means that an Assignee must act in a way that is intended to benefit the creditors. Other examples of such a fiduciary relationship include the board of directors of a solvent corporation to the shareholders of the corporation and the trustee of a trust to the beneficiaries of the trust.

Where there is an Assignee, there must be an assignor. The “**Assignor**” is the company at issue. The owners and/or directors (it depends on state law and on the corporate organizational documents of the Assignor) of a company have the power to cause the Assignee to make the assignment.

An “**assignment**” is what it sounds like: the company (the Assignor) makes an assignment by transferring the legal but not equitable title of all its assets to an Assignee (you will commonly see it phrased as an assignor transferring all its “right, title, and interest” in all its assets to an assignee), for the benefit of the

Assignor's creditors. Those assets constitute what is commonly called the "**assignment estate**." And there you have it: an assignment for the benefit of creditors.

The phrase "**legal but not equitable**" is key, and while it has a very legalistic sound to it, the concept is not complicated. It just means that the Assignee is bestowed the legal title of the assets for the purpose of managing them only as long as necessary to sell them, and then distribute the proceeds of the sale(s) to creditors.

A "**proof of claim**" is a form that the Assignee tells creditors to fill out in order to be eligible for a distribution of funds that may be available after the sale of the assets of the assignment estate.

Notice

There are typically at least three points in time when an assignee provides notice to all creditors of an assignment estate during an ABC: (1) shortly after the ABC is commenced, (b) when the assignee is getting ready to sell the assets of the assignment estate, and at the end of the ABC, to provide a final accounting to creditors.²

The notice of commencement of an ABC typically comes in the form of a letter and is typically accompanied by a proof of claim form. In the letter, the Assignee explains that the company in fact made the assignment, the ABC process, the Assignee's role in the process, and the need for the creditor to fill out and return the proof of claim form. The letter may include additional information, such as a summary of the company's financial position as of the date of the ABC.

A notice of the upcoming sale of the assets of an assignment estate (again, typically of all the company's assets as a going concern) is customarily sent to all creditors and, at least as importantly, to potential buyers. Most but not all assignees utilize a public sale process – one that involves advertising the sale publicly so that potential buyers may learn about it and, thus, the price that is ultimately paid is the highest price possible under the circumstances.

Commercial Reasonableness of Sales

Notice of the sale is typically provided to creditors because among them may be a potential buyer. If you are a retail consumer who was a customer of the subject company (that is, the Assignor) and is a creditor by virtue of being owed a refund, a deposit, or services under a warranty, then this is most likely not the case. But the subject company's more significant creditors are most certainly other businesses. It is not uncommon for a supplier to buy its customer.

Such notice is almost never enough, however. "Enough" is a funny word. When is something ever "enough?" Well, in this context, the law answers the question: an assignee must conduct its sale in a "**commercially reasonable**" manner, which is to say that the sale must be done in good faith and in a manner consistent with commonly accepted commercial practices.

Under certain, limited circumstances, such a sale must be done privately, without soliciting competing bids. However, the vast majority of circumstances call for a public sale. And one requirement for a public sale to be commercially reasonable is that notice of the sale must be provided in a commercially reasonable manner.³

Depending on the circumstances, an assignee will use its business judgment to contact specific potential buyers in the same way an investment banker would. Regardless, an assignee will almost always publish a public notice of the opportunity to bid at the sale.⁴

One More Bit of Vocabulary: Stalking Horse Bid

The use of a "**stalking horse bid**" is common practice in the context of sales of insolvent companies, including in ABCs. It involves the Assignee making a contingent deal with a third party to buy the company for a certain price. That party is the "**stalking horse**," and the stalking horse is generally legally bound to buy the company for the negotiated price. But the Assignee's obligation to sell at that price is subject to higher and better offers, after notice of the opportunity to bid is provided (as discussed in the prior section) to other potential bidders. The stalking horse, in return for setting a floor price by virtue of its stalking horse bid, commonly negotiates certain benefits.⁵

Assignee Unknown: The Curious Case of SmartLabs (Part 1)

I recently came upon a [notice of assignment](#) (“**Notice**”) of an ABC involving a California corporation named SmartLabs, Inc. A simple internet search quickly led to its [homepage](#), the top of which displays what appears to be SmartLabs’ slogan: “The Leader in IoT Lighting.” The bottom of the homepage features what appear to be its two divisions: Smarthome and Insteon, and each has its own website.

The [Smarthome homepage](#) suggests a business that is alive and well. The [Insteon homepage](#) does not. Instead, it displays a message stating that SmartLabs, Inc. (not just Insteon) is the subject of an ABC, and that the Assignee is searching for a buyer.⁶

No information about the assignee or how to contact the assignee is included. While Insteon appears to be out of business, the Smarthome website suggests it has valuable assets:

“At Insteon, we deliver the world’s leading Smart Lighting and Electrical Control products for residential and commercial use. With the power of IoT computing and our integration with Amazon Alexa, Google Home, Tesla, Apple and other technology leaders, our products enable users to improve safety, security, and the quality-of-life by harnessing the power of light.

With over 5 million Insteon products sold and 50+ innovative patents, our goal of bringing Smart Lighting to the mass-market has just started. Come join the journey.”

According to the notice of assignment, the assignment was made on March 22, 2022. The notice does not identify who the assignee is. Instead, the assignee is identified as “SmartLabs (ABC), LLC.” In other words, the Assignee of SmartLabs, Inc. is a special purpose entity (“**SPE**”) with a name that is very similar to the Assignor.

Such use of an SPE is common and it is not a bad thing in and of itself. But what’s uncommon (totally alien) in my experience is the total opacity regarding

who the human being, decision-making fiduciary is, and how to contact that person.⁷ Let's break this down:

1. In some states, assignees are commonly human beings, and they identify themselves like this: "John Doe, not individually but solely in his capacity as assignee for the benefit of creditors (the "Assignee") of Digital Golf Technologies XYZ, Inc." Here are examples involving well-known assignees who do just that: [Howard B. Samuels at Rally Capital Services, LLC](#), [Matthew Brash at NewPoint Advisors Corporation](#), [Michael Kaymen at Realization Advisor](#), [Joshua J. Luzinski at DSI Consulting](#), and [Robert P. Handler at Commercial Recovery Associates, LLC](#);
2. In other states, California, Delaware, and Minnesota included, assignees are commonly legal entities rather than human beings. Also, some assignees choose to use corporate entities regardless of the state they operate in. Such assignees include: [DSI Consulting](#), [B. Riley Financial Advisory Services](#), and [Insolvency Services Group, Inc.](#)⁸
3. If you look at any of the public notices linked above, you will see that in each case, even where an SPE was created for the specific ABC, the name and contact information of the ultimate actual decision-making fiduciary (*i.e.*, the human being) is included. The failure to do so does not help the cause of enhancing the credibility of an assignee or the ABC process.

Why the "Who" is So Critical

Although some states currently have (and more states will adopt) statutory law governing ABCs, many states' ABC processes are governed almost entirely by common law (*i.e.*, past legal decisions by courts). And only some states require any part of the ABC process to happen in court. ABCs, even in states with statutes and/or that require court supervision, entrust assignees with a great deal of power. Because of this authority, assignees must be trusted:

- By the owners and secured creditors - or else they cannot be the assignee⁹
- By potential buyers - or else the sale will tend to be far less successful

- By customers - or else they will walk away, in which case the sale price will reflect that
- By unsecured creditors and their attorneys - or else the ABC will be attacked by lawsuits, perhaps an involuntary bankruptcy petition, and potentially governmental agencies and the like
- By courts, both in states where courts are involved in ABCs as a matter of course and in states where they are not but where creditors seek to involve them

Assignee Unknown: The Curious Case of SmartLabs (Part 2)

Getting back to SmartLabs, the Assignee's (that is, the SPE's) address, provided in the Notice, is 231 Market Place, Suite 373 San Ramon, California 9458 (*that appears to be a UPS store*).

While it is common for many small businesses to use a UPS store or P.O. box as their address, it is the first time I can recall in my nearly 30-year career seeing an assignee do this.

The Notice is "signed" by SmartLabs (ABC), LLC without any indication of who (person or firm) is actually making decisions for this entity. In other words, nobody signed it. Again, I haven't seen this before.

The Notice provides a link to a webpage (<https://fileclaim.info/SmartLabs-ABC/>) which, in turn, (a) includes a hyperlink to a copy of the General Assignment Agreement (https://fileclaim.info/wp-content/uploads/2022/04/SmartLabs-ABC_C.pdf) ("**Assignment Agreement**"), (b) includes a [link back to the Notice](#), and (c) invites creditors to fill out a "proof of claim" ("**POC**").

To fill out the POC, one must provide the Assignee (identity unknown) with their name, tax ID or social security number, and other information.

I don't know about you, but I don't usually feel comfortable providing such personally identifiable information to someone or something I do not know. Maybe it's because I get way too many calls and from people purporting to be

from Apple telling me my computer is broken but they can fix it if I let them remote into it. Or maybe it's because I get too many emails from people with Gmail addresses purporting to work for Amazon or Microsoft, with attachments to download.

What I'm trying to say is that, while I assume the POC wasn't *designed* to cause people to decide not to fill it out and return it, that precise outcome is predictable. If you fill out the required fields, by the way, which I did with fake information, you will be taken to a second page that asks for even more information about yourself— all of which will go somewhere, to someone, though you'll have no real clue where or to whom.

And this is fun: on that second page, there is this statement:

“Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.”

Why do I say it's “fun”? Because it is a false statement about false statements, which I think is funny.

18 U.S. Code § 152 is clearly limited on its face to chapter 11 bankruptcy cases, and I believe § 3571 is also inapplicable, inasmuch it is a federal statute whereas ABC law is governed by state law.¹⁰

Look, I'm not suggesting that you should, or that I would, ever file a false claim. What I'm saying is that when a website has clear mistakes on it, one might reasonably be concerned that the website is not legitimate.

But let's say that I did not know that these citations to federal laws were wrong. I might nonetheless think twice before filing a claim if I had any question at all about any aspect of its enforceability. What I'm saying is that if I were not an attorney, I might appreciate the exact line between “presenting [a] fraudulent claim” and making an honest mistake. I could see myself wanting to ask someone (such as, say for example, an assignee) about this, but that isn't an option when I don't know who the Assignee is or how to get in touch with the Assignee.

Web of Confusion - <https://fileaclaim.info/>

Being a curious fella, I wanted to know more. First, I looked more carefully at the websites and noticed that each of the URLs is, on its face, a subdomain of <https://fileaclaim.info/>, so I looked at it with the hope that it would provide some indication of who the assignee is and to whom creditors are being asked to submit their sensitive information.

Nope. No such luck. The URL is totally devoid of any “About Us” information or any FAQ section that would give a visitor any information about this company. Nor does it provide any hyperlinks leading off the page.

The URL www.fileaclaim.info *does* include a copyright notice, stating that the copyright owner of the content on the website is fileaclaim.info, suggesting that that is the name of a legal entity. This is unlikely to be the case, however, as I am unaware of any state that allows a legal entity to be formed with a name that ends in something other than inc., corporation, LLC, or the like.

Then, I examined the information contained at fileaclaim.info. That didn’t take too long, since all it say is this:

“As a service to many creditors we have built an online Proof of Claims form. You can utilize the online form for all submissions. This website is a service provided by FileAClaim.info for purposes of filing a claim electronically and viewing electronic copies of the creditor notice and general assignment for the associated company. We will provide a link to file a claim with the estate, however, making a claim does not guarantee payment by Assignee. This site is operational using a mobile device, but is more fully usable on a desktop or notebook computer.”

How very generous of these anonymous do-gooders, I thought. I attempted to determine who the owner of www.fileaclaim.info is, but the owner appears to have chosen to keep its ownership private by using Domains by Proxy.

Our benefactor is not just *anonymous*, but also *mysterious*.

Web of Confusion - <https://cases.creditorinfo.com>

As I say above, the Notice I first found is at <https://fileaclaim.info/wp->

<content/uploads/2022/04/SmartLabs-ABC-Creditor-Notice.pdf>. However, in my research, I came across an identical copy of the Notice [here](#). This URL is a subdomain of <https://cases.creditorinfo.com>. A simple look-up at <https://www.whois.com/> revealed that the owner is BMC Group, Inc.

[BMC Group](#) (“**BMC Group**”) is a well-known bankruptcy notice and claims agent with whom I have worked many times in the past to great satisfaction. BMC being involved gave me some comfort. But this still didn’t tell me who the actual Assignee is.

And now I had a new question: why is the Notice posted on two websites, with somewhat confusing names?

Mystery Solved

Looking at the *Assignment Agreement* provides two additional clues.

First, it is signed by an actual human being, as “Manager of the Assignee.” I leave his name out of here as a professional courtesy and instead refer to him using the de plume of “**Larry Baker**.” The problem is that there is no indication in the signature block of the entity with which Larry Baker is affiliated or any contact information by which he can be contacted. According to the website howmanyofme.com, there are 16,642 people in the United States alone with his (real) name. I’m a curious fella, as noted above, but I’m not devoid of hobbies, so looking in the phone book (for younger readers, a phone book was a thing people used to use to get information about how to contact other people) is out of the question.

The second clue is that Section 12 of the Assignment Agreement includes an indemnification provision in favor of the Assignee “and its past and present officers, members, managers, directors, employees, counsel, agents, attorneys, parent, subsidiaries, affiliates, successors and assigns, including without limitation [a specific professional services firm whose name I leave out here as a professional courtesy and instead shall refer to using the *de plume* of “**Anonymous LLP.**]”¹¹

So, it was pretty clear to me at that point that the human being acting as the Assignee in SmartLabs is Larry Baker and that he is with Anonymous LLP. A

simple check of Larry Baker's LinkedIn page and the Anonymous LLP website confirmed the relationship between the man and the firm.

Am I Guilty of Overblown Paranoia But With the Best of Intentions?

Not only was the day getting away from me, but it also just so happens that I was previously aware of the Anonymous LLP firm as having a good reputation. Moreover, there is not just one way of doing things, and even though I have never seen an ABC conducted in this manner, I am just one professional in a large profession.

But then, just as I was about to turn my attention elsewhere, I came upon a [Reddit post](#) posted by a user named u/yachius on or about April 21st which stated:

“I received an email from enotice@creditorinfo.com this morning with the subject line “SmartLabs, Inc.”

The email basically only contained this link with the text ‘Insteon Users: Important Notice to Creditors [and then u/yachius included this [link](#) to a subdomain of <https://cases.creditorinfo.com>]”

As of the date this article was written, u/yachius' post had more than 90 comments from other Reddit users saying such things as:

- “I'm not feeling good about putting my SSN in to a web form on such a janky looking website.”
- “I received this as well. Could be phishing. Could be SmartLabs created a new LLC and transferred all assets to the new LLC to avoid paying any debts.”
- “This raised my phish flag...anyone know if it's legit?”
- “I got the same email but was reluctant too share my unique-url link.”

This convinced me it was them (the Assignee), not me. People *are* confused. A

lot of people.

Melting Ice Cubes

A company that becomes financially distressed is subject to falling into a self-reinforcing feedback loop, so to speak. I'll explain briefly and summarily: take company X. X has a credit line that it relies on in certain seasons because of the seasonality of its business. If X's credit line is shut off by its bank (usually its senior secured lender) because of some covenant default, then X may not have the cash it needs to buy inventory, pay employees, etc. for the coming selling season. If that happens, then it will generate less (or may be no) revenue, employees will have to be laid off, and X will not be able to pay its bank as scheduled, thus triggering a payment default. The hole just becomes bigger and bigger.¹²

There are tools available to X and companies like it. Attorneys who do what I do and other professionals in the industry know what those tools are, how to select the right one, and how to wield it (I say "wield" instead of "use" to feel more macho).¹³

One of the benefits of an ABC (as well as a chapter 11 bankruptcy) is the ability to borrow new money or make other arrangements to get cash to the Xs of the world. In bankruptcy, this is called "***DIP financing***."¹⁴ In an ABC, it is common in the context of an "***operating assignment***."¹⁵ The short story is that outside of chapter 11 or an operating ABC, any new money that is loaned to X would be subordinate to the claims of the secured creditors of X. In contrast, both chapter 11 and an operating assignment create optionality to permit third parties (including potential buyers) to loan money and have their loans enjoy a higher level of priority of repayment.

This is often, but not always, very important to preserve the going concern value of X. Why? Because if X has stopped buying things, employing people, and selling things (or its services), then that cessation is felt by parties on the other sides of those transactions. In other words:

1. Suppliers may find new customers to replace X and not be able to service X as well as before if and when X is ever ready to buy again, or even

worse, if X was a very large customer, then a supplier itself may suffer its own financial distress and shut down;

2. Employees will find new jobs; and

3. Customers will find new suppliers of the goods and/or services that X sells (or, more accurately, sold).

In SmartLabs' situation, the Notice, which is dated April 12th, states that the ABC commenced on March 22nd. I can't find any evidence that its business is being actively marketed. In the meantime, history suggests to me that going concern value dissipates with each passing day.

Assignee Unknown: The Curious Case of SmartLabs (Part 3)

The Reddit post revealed another curiosity. Remember that u/yachius told us that the notice they received came by email from enotice@creditorinfo.com?

This is significant because up until seeing that, this URL had not come up in my internet sleuthing. So, with a flashlight in one hand and a sword in the other (again, in my head I am a great warrior), I embarked on my next destination: creditorinfo.com. And what I found was a total of 22 words. They are:

- Login
- Password
- Sign Up
- Forgot Password
- Customer Support
- If Pluto had Creditor Info it'd still be a planet
- Powered by Smartcloud

Three of these are hyperlinked:

- The words "sign up" link to a popup box that reveals a form to fill out to register an account (though, again, there is no information on the page that even attempts to explain what sort of account one would be registering for or why one would want to).

- The words “Forgot Password” link to a second popup box that provides a space to enter one’s email address to reset one’s password.
- Finally, the words “Customer Support” opens one’s email with a new email addressed to info@bmcgrop.com.¹⁶ *I recognized that email address (sort of) almost immediately!*

But the email address is info@bmcgrop.com, and not info@bmcgroup.com. Curious. The URL bmcgrop.com, by the way, at least at the time this article was written, is available for registration. I assume this is just a typo. Also, one of BMC Group’s offerings is indeed a product called Smartcloud.

I still am unclear of the exact relationship between <https://cases.creditorinfo.com> and <https://fileclaim.info>, or why there is a need for both. I think it just adds to the confusion.¹⁷

But Wait, There’s More: The Curious Cases of Shine Bathroom Technologies, Liftopia, GlassPoint, SolarReserve, Maker Media & Toymail

The one stone I can think of that I didn’t overturn at this point was to dig into the www.fileclaim.info URL just a bit more. After all, I still didn’t determine who the generous, anonymous, and mysterious do-gooders behind this website are.

So, I did a simple web search for Fileclaim.info found several other ABCs that had used its service:

1. [Toymail, Inc.](#), a Delaware corporation (commenced April 3, 2019)
2. [Maker Media, Inc.](#), a Delaware corporation (commenced June 21, 2019)
3. [SolarReserve, Inc.](#), a Delaware corporation (commenced December 31, 2019)
4. [GlassPoint Solar, Inc.](#), a Delaware corporation (commenced September 11, 2020)
5. [Liftopia, Inc.](#), a California corporation (commenced October 29, 2020)
6. [Shine Bathroom Technologies, Inc.](#), a Delaware corporation (commenced January 20, 2022)

Our old friend, Larry Baker, is the signatory of each of the general assignment agreements, as the “Manager” of each of the assignees in each of these ABCs and Section 12 of each of the general assignment agreements includes the same indemnification provision as in SmartLabs, Inc., in favor of Anonymous LLP. In other words, it appears that they were each conducted in the same basic manner as SmartLabs.

Conclusion

ABCs have become far more common over the past two decades, as well they should.¹⁸ And this will continue so long as they are perceived as credible. In law and business, as in life, perceptions matter. And credibility is something that is perceived. And the perception of credibility starts with transparentness.

It is my opinion that an assignee must disclose their identity to the creditors of their assignment estate and make themselves available to those creditors, because it is to them that assignees owe their fiduciary duties. Simply stated, this is a *sine qua non* of being an assignee.¹⁹

About Jonathan Friedland

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Footnotes:

1. See generally [STRATEGIC ALTERNATIVES FOR AND AGAINST DISTRESSED BUSINESSES](#) (Jonathan P. Friedland ed., Thomson Reuters 2022). (includes comprehensive state-by-state comparisons of ABCs among the following: Alabama, California, Colorado, Delaware, Florida, Illinois, Indiana, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, Tennessee, Texas, Utah, and Wisconsin).
2. Applicable state law may require a yearly accounting (to the extent the ABC continues beyond a year).
3. To be clear, UCC 9-627(c)(4) provides that a disposition of collateral is deemed to be commercially reasonable if that disposition has been approved by an assignee. Thus, there is at least an argument that no notice at all is necessary if an assignee deems notice to be unnecessary. Another, and I think better, reading is that this subsection goes only to the *manner* of disposition and not the notice of the disposition. Then again, I am certainly subject to some potential bias on the issue because I have a financial interest in the answer as the publisher of DailyDAC, a venue for assignees, secured creditors, bankruptcy trustees, and similarly situated fiduciaries to publish notice of their sales. My own pecuniary interests aside, it is difficult to fathom how general unsecured creditors of an insolvent company (*i.e.*, an assignor) will be better off if a sale is done in private by an assignee, without exposure to the market. This is particularly the case given that many ABC sales result in net proceeds to the assignment estate that is insufficient to pay off secured creditors, thus leaving nothing for general unsecured creditors. A desire for privacy is often cited by those who argue in favor of private sales without an opportunity for overbid. Those wanting such privacy, however, are often: (a) secured creditors (who want to avoid the embarrassment of public knowledge of a loan gone bad); and (b) owners, directors, and officers of assignors (for the same basic reason); and both groups as well as third parties. Additionally, of course, buyers (who may include these two groups) will also benefit from a sale not being adequately marketed to potential overbidders. As a normative matter, the benefit of exposing the assets of an assignment estate to the market generally outweighs countervailing considerations. Some courts appear to agree with my view (*e.g.*, *El Saad v. Tarakji*, 2011 WL 2910059, *5, n.3 (Cal. Ct. App. Nov. 28, 2011) (unpublished)), but not all do. Regardless, as a practical matter, general unsecured creditors who find a sale process less than credible may seek to enjoin a sale, file an involuntary bankruptcy, or later seek recovery from the buyer under a successor liability or fraudulent transfer theory.
4. See Geoffrey L. Berman and Steven L. Victor, An Overview of Assignments for the Benefit of Creditors, in [STRATEGIC ALTERNATIVES FOR AND AGAINST DISTRESSED BUSINESSES](#) §§ 10:1 et seq. (Jonathan P. Friedland ed., 2022); Cahill and Friedland, [The Myth of the Newspaper Being a Commercially Reasonable Notice](#) (DailyDAC, July 29, 2019).
5. See generally [90 Second Lesson: Stalking Horse Bid, Yay or Neigh?](#) (DailyDAC, July 8, 2021); see also Jonathan Friedland [The Dealmakers Guide to Buying Distressed Assets – Section 363 Sales and the Alternatives](#), in NORTON ANNUAL SURVEY OF BANKRUPTCY LAW 2008; Russell C. Silberglied, [Determining Whether or Not to Seek Court Approval of a Sale in a Delaware Assignment for the Benefit of Creditors Case](#) (DailyDAC, August 21, 2021).
6. As of the time this article was written. This goes for all my references to websites in this article. It is possible that some of these websites will have been modified by the time you read this. If you believe that to be the case, I would appreciate hearing from you. Of course, I have screenshots of each website as they existed on the date I wrote this.
7. To be clear, I am not contending that this is a unique situation. I am merely saying that (a) I do not recall seeing it before; and (b) whether it's unique or not, it's not best practice.
8. The most comprehensive list I am aware of, of people who serve as assignees (or the ultimate decision-making fiduciary of assignees) is found in [DailyDAC's Assignee Directory](#).
9. To be clear, assignees must meet certain requirements (including being free from conflicts of interest). Creditors, however, cannot commence an ABC, only an assignor's directors or owners can do so, and they get to

select the assignee (again, subject to the assignee meeting certain requirements). On the other hand, a secured creditor with a blanket lien on all of a debtor's (*i.e.*, an assignor's) assets must, as a practical matter, agree to the ABC. For more on ABC, generally, see [General Assignments for the Benefit of Creditors: The ABCs of ABCs, 3d](#) (Geoffrey L. Berman).

10. I don't mean to suggest that federal law is completely inapplicable to ABC. Assignees and receivers should be especially aware of 11 U.S.C. 3713, for example, which most decidedly *is* applicable to both assignments and receiverships.

11. I'm not taking issue with an indemnification provision. They are common and generally uncontroversial. But they should not be the place one needs to look to try to guess at the identity of the assignee.

12. For a comprehensive discussion of causes of corporate financial distress, see Alexander Weckenbrock and Todd Zoha, *Mistakes Companies Make that Lead to Crisis (or Why Companies Fail)*, in STRATEGIC ALTERNATIVES FOR AND AGAINST DISTRESSED BUSINESSES §§ 2:1 et seq. (Jonathan P. Friedland ed., Thomson Reuters 2022)

13. See Friedland, O'Connor, and Jouglaf, *Chapter 11 is Not Always the Answer: Strategic Alternatives For and Against Distressed Businesses* (DailyDAC, April 28, 2021).

14. See Kuney and Friedland, *A Peek Into Some Basic Chapter 11 Concepts* (DailyDAC, December 21, 2015).

15. An operating assignment is an ABC in which the business of the subject company continues uninterrupted (as opposed to being shuttered for a period of time). Nearly all companies shut down immediately prior to or after the filing of chapter 7. This was also true years ago with respect to ABCs but it is not common for businesses to continue operating through an ABC, all the way until the sale of the business. See generally [An "Oldie," But a Goodie: Recommended Reading On the Subject of ABCs](#) (DailyDAC, March 10, 2022).

16. As of the date of the publication of this article, the email address goes instead to info@creditorinfo.com. I reached out to Anonymous LLP and shared a draft of this article with it before permitting the article to be published. Anonymous LLP declined to comment on the draft; I assume Anonymous LLP changed the email address after reading the draft.

17. To add to the confusion, there is a third, similarly-named website: <https://www.proofofclaims.com/>. It looks like <https://fileclaim.info> but it discloses its owner to be Sherwood Partners, another well-known firm that provides assignee services.

18. See Jonathan Friedland, Jack O'Connor and Hajar Jouglaf, *Dealing with Corporate Distress 07: Chapter 11 is Not Always the Answer: Strategic Alternatives For and Against Distressed Businesses* (DailyDAC, April 21, 2021). I am not suggesting that ABCs are right for all, or even most, circumstances. See James Sprayregen, Jonathan Friedland, Roger Higgins, *Chapter 11: Not Perfect, But Better Than The Alternatives*, JOURNAL OF BANKRUPTCY LAW AND PRACTICE, Vol. 14, No. 6 (2005). Indeed, recent changes to the Bankruptcy Code have made chapter 11 far more viable for smaller companies than at any point in the preceding two decades. See [Subchapter V of Chapter 11: A User's Guide](#) (DailyDAC, October 18, 2022).

19. The Delaware Chancery Court's decision in *In the Matter of Global Safety Labs, Inc.*, C.A. No. 2022-0309-JTL, dated May 12, 2022, is instructive. In that case, the Court essentially instructs assignees (according to my interpretation of dicta) to prepare a disclosure document that is comparable to a "first day affidavit" in a chapter 11 case. The context is that the Court concluded it did not have enough information to rule on the relief being requested. This is a positive development that I hope will be followed by the Uniform Law Commission's committee (to which I am an Observer) studying the need and feasibility of a uniform or model law on assignments for the benefit of creditors.