



IWIRC@ABI
Washington, DC

April 22-23
2026

Discovery in Distress: Investigative Tools for Restructuring and Insolvency Professionals

April 22, 2026 • 11:45 AM - 12:45 PM



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Underwater
Advisors LLC

Case Study: Balance Sheet Ballers



Case Study: Balance Sheet Ballers

- Balance Sheet Ballers basketball team files for Chapter 11 after declining attendance, rising costs, and failed capital raises.
- Owned by Balance Sheet Holdings LLC (majority owner: Richard King)
- \$52M in secured debt held by the Royal Bank of Restructuring
- Chapter 11 approved by the Board as a pre-arranged bankruptcy, with a Restructuring Support Agreement (“RSA”) 6 weeks before the filing.
 - Enterprise value and sale price at **\$50 million**
 - Requires expedited Section 363 sale to insider-affiliated buyer
 - Includes broad releases to certain insiders
 - Restricts Debtor from supporting competing bids
- The Debtor seeks immediate approval of a sale motion reflecting the RSA’s valuation.
- **Key Players**
 - **Debtor:** Balance Sheet Ballers
 - **Equity Owner:** Richard King
 - **Secured Lender:** Royal Bank of Restructuring
 - **Buyer:** Insider buyer
 - **UCC:** Players’ union, stadium authority, and Recovery Athletic Gear
 - **Debtor Counsel:** Liz Boydston (Thompson Coburn)
 - **Debtor Financial Advisor:** Blanche Zelmanovich (Underwater Advisors LLC)
 - **UCC Counsel:** Laura Miller (Seward & Kissel)
 - **UCC Financial Advisor:** Sarah Hawco (Hawco Peters & Associates Inc.)



Fed. R. Bankr. P. 2004

Rule 2004. Examinations

(b) SCOPE OF THE EXAMINATION.

(1) *In General.* The examination of an entity under this Rule 2004, or of a debtor under §343, may relate only to:

(A) the debtor's acts, conduct, or property;

(B) the debtor's liabilities and financial condition;

(C) any matter that may affect the administration of the debtor's estate; or

(D) the debtor's right to a discharge.

132540 (Form 2540 – Subpoena for Rule 2004 Examination) (12/15)

UNITED STATES BANKRUPTCY COURT
District of _____

In re _____ Debtor Case No. _____
Chapter _____

SUBPOENA FOR RULE 2004 EXAMINATION

To: _____
(Name of person to whom the subpoena is directed)

Testimony: **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at an examination under Rule 2004, Federal Rules of Bankruptcy Procedure. A copy of the court order authorizing the examination is attached.

PLACE	DATE AND TIME

The examination will be recorded by this method: _____

Production: You, or your representatives, must also bring with you to the examination the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: _____
CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party) _____, who issues or requests this subpoena, are:

Fed. R. Civ. P. 26

Rule 26. Duty to Disclose; General Provisions Governing Discovery

(b) DISCOVERY SCOPE AND LIMITS.

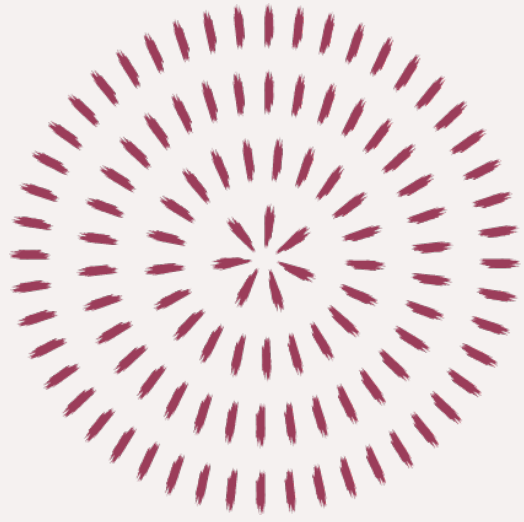
(1) *Scope in General.* Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

US Rule 2004 v. Canadian Insolvency Equivalents

Dimension	US — Rule 2004	Canada — BIA (Bankruptcy & Insolvency Act)	Canada — CCAA (Companies' Creditors Arrangement Act)	Canada — Receivership
GOVERNING FRAMEWORK				
Source of authority	Fed. R. Bankr. P. 2004 — court rule enabling examination by motion; no separate statute required	BIA ss. 163–164; BIA General Rules r. 84–90	No standalone statute; court-ordered terms in Initial Order / claims procedure order	Receivership order (court or private); provincial rules; s. 243 BIA for national receivers
Applicable court	US Bankruptcy Court	Superior Court / bankruptcy court of each province	Superior Court exclusively (CCAA is a Superior Court statute)	Superior Court; private appointment possible under PPSA / debenture
SCOPE OF EXAMINATION				
Who may be examined	Any entity with knowledge of the debtor's acts, conduct, property, liabilities, or financial condition — insiders, third parties, former officers	Bankrupt + any person believed to have knowledge of bankrupt's property or affairs (s. 163); sworn oral examination	No statutory equivalent; depends entirely on wording of Initial Order and any subsequent order granted by CCAA judge	Primarily the debtor; third-party examination by separate court motion following provincial civil procedure
Third-party reach	Very broad — no prior adversary proceeding required; any person may be examined	Moderate — focused on persons with knowledge of debtor affairs; less expansive than Rule 2004	Case-specific — entirely dependent on order terms; practice varies by judge and province	Limited — generally confined to debtor company and its officers/directors
TRIGGERING MECHANISM				
How initiated	Ex parte motion (often) or motion on notice; no underlying adversary proceeding required; court order or stipulation	Notice of examination (Form 65 or equivalent) by trustee or creditor; court order if person refuses or disputes scope	Motion before CCAA judge; granted at court's discretion as part of restructuring proceedings	Receiver's power under appointment order; separate court motion for contested examinations
Advance notice	Required once order granted; courts vary on notice to third parties	Reasonable notice required; examinee may seek court direction on scope	Per applicable provincial rules or order terms (Rules of Civil Procedure)	Per provincial rules unless order is silent
DOCUMENT PRODUCTION				
Power to compel documents	Explicit and broad — subpoena duces tecum under Rule 9016 accompanies examination order	Statutory — trustee has broad investigative powers (ss. 163–170); books and records vest in trustee automatically on assignment	Order-dependent — monitor's powers and document access defined in Initial Order; not automatic	Via appointment — receiver's order typically grants access to all books and records of debtor

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Electronically stored information (ESI)	Fully subject to Rule 2004 subpoena; courts apply Fed. R. Civ. P. 26/34 ESI standards by analogy	Not expressly addressed in BIA; courts apply provincial e-discovery guidelines (e.g., Ontario e-Discovery Guidelines)	CCAA Initial Orders increasingly include express ESI provisions; practice is actively evolving	Follows provincial e-discovery rules; largely ad hoc in practice
LIMITATIONS & PROTECTIONS				
Pending litigation rule	Rule 2004 examination generally not permitted once adversary proceeding filed; parties limited to ordinary discovery rules	No direct analogue; BIA examinations not similarly constrained, but court has discretion to limit scope	Once adversarial motion commenced, discovery follows Rules of Civil Procedure rather than any CCAA-specific regime	No express rule; court exercises discretion; balance of convenience test applies
Privilege	Solicitor-client / attorney-client privilege and work-product doctrine apply fully; crime-fraud exception available	Solicitor-client privilege fully applies; BIA does not abrogate privilege	Solicitor-client privilege applies; CCAA courts have addressed privilege scope in restructuring context	Solicitor-client privilege applies; receiver steps into debtor's shoes but does not automatically waive debtor's privilege
Harassment / frequency protection	Courts can limit repetitive or burdensome exams; 'good cause' standard applied	Court oversight available; examinee may seek protection order limiting scope	CCAA supervising judge has broad discretionary control over process and scope throughout proceeding	Court supervision; balance of convenience test; protection orders available
PRACTICAL USE & ENFORCEMENT				
Primary use cases	Asset discovery; fraudulent transfer investigation; preference analysis; pre-litigation fact gathering; examination of insiders and former management	Investigating estate assets; preferential payment review; conduct of bankrupt inquiry; s. 178 non-dischargeable debt investigation	Claims verification; tracing pre-filing transactions; supporting plan negotiations; investigating related-party dealings	Asset tracing; enforcement; investigating debtor's dealings; supporting potential litigation by receiver
Typical examiner	Trustee, creditor, creditors' committee, or US Trustee	Trustee in bankruptcy; creditor with court leave	Monitor (officer of court); applicant creditor by motion	Receiver; secured creditor directing receiver
Consequences of non-compliance	Contempt of court; sanctions; adverse inference; deposition may be compelled by US Marshal	Contempt of court; arrest warrant possible under BIA for absconding bankrupt (s. 168)	Contempt of the CCAA court; sanctions within monitor's reporting framework; can affect plan approval	Contempt; receivership order enforcement; potential personal liability of obstructing officers/directors

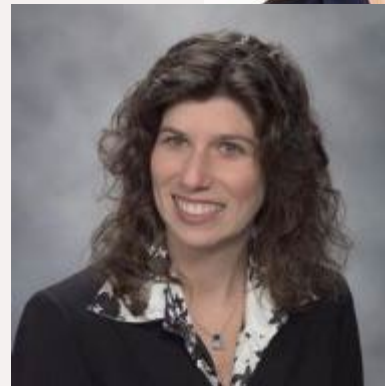
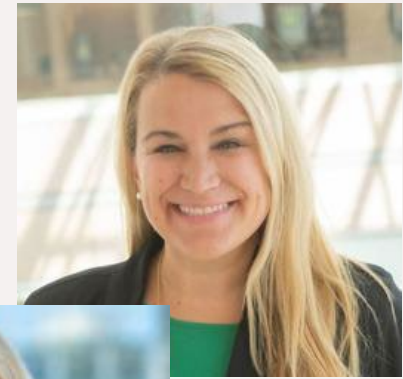


How has AI changed discovery?

x



Prompt: Using these headshots as the base, create a photo of these people as professional basketball players on a team called the "Balance Sheet Ballers" with the file called CC as the coach and the following player numbers....



Output...something is not exactly right here





Getting the idea ...however

Why are the players not facing the court?

Progress but again...





Results!

Balance Sheet Ballers sold for **\$80 million**.

Including: Stadium, licensing agreements, and the parking lot.