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Power of Attorney Insufficient to Confer Standing. Investment advisor that had discretionary authority to make decisions for its clients and power of attorney to bring lawsuits on behalf of clients did not have constitutional standing to bring securities litigation for damage suffered by clients. Unlike assignment of claim, power of attorney did not transfer title or ownership of claim. Advisor, therefore, had no “injury in fact,” which is constitutional prerequisite to filing suit in federal court. *W.R. Huff Asset Mgmt. Co., LLC v. Deloitte & Touche, LLP*, 549 F.3d 100 (2d Cir. 2008).

Equitable Subordination: Harm to Creditors Required. Individual debtors’ estates were jointly administered. Individuals formed a corporation to purchase secured claim, with one of the individuals earning a \$35,000 fee from the transaction with the bank. Despite court’s acknowledgement that debtors’ conduct had “a certain underhanded quality” and that “their effort to hide their involvement suggests that they thought they were doing something wrong,” bankruptcy court erred in equitably subordinating claim because other creditors were in no worse position than if bank retained its secured claim. *In re Kreisler*, 546 F.3d 863 (7th Cir. 2008).

Claims against Pre-Confirmation Professionals Barred. Trustee appointed in company’s second bankruptcy, filed six months after plan confirmation in first bankruptcy, alleged that debtor’s professionals in prior case knew that plan included outdated information and did not accurately reflect debtor’s financial situation. *Held*, debtor was *in pari delicto* with professionals, precluding trustee from asserting claims. *Gray v. Evercore Restructuring L.L.C.*, 544 F.3d 320 (1st Cir. 2008). *See also Mosier v. Callister, Nebeker & McCullough, P.C.*, 546 F.3d 1271 (9th Cir. 2008) (trustee’s suit based on pre-petition counsel’s failure to advise debtor it was operating illegally as a Ponzi scheme barred; debtor and counsel were *in pari delicto* and counsel’s wrongdoing was substantially less than debtor’s).

Lender Not Entitled to Proceeds of Borrower’s Litigation. Company suffered property damage and business losses as a result of fire and commenced to lawsuits related thereto. Lender claimed a security interest in proceeds from both suits. Ruling against lender, court held first suit was solely for business losses, not diminution of collateral’s value. Further, neither suit was properly described in security agreement, which was amended after the fire. That public financing statement included commercial torts in the collateral description could not save the defective security agreement. *Helms v. Certified Packaging Corp.*, 2008 U.S. App. LEXIS 26956 (7th Cir. Dec. 30, 2008).

Property of Receivership Estate. Insurer claimed receiver had no standing to oppose summary judgment motion in action for rescission of the insurance policy and restitution of fees already expended. The court disagreed. The policy represented an inchoate right to be defended and indemnified and, if valid, the policy would required insurer to defend claims against company in receivership and, where necessary, pay damages on successful claims. Thus, the policy and its proceeds are receivership property. *New Hampshire Ins. Co. v. Suhar*, 2008 U.S. Dist. LEXIS 94332 (N.D. Ohio, Nov. 12, 2008).

Successor Liability in Sale of Company. Transfer was of substantially all assets where accounts receivable not transferred, having face value in excess of \$3 million, were largely old, uncollectible and without value. Transferee company was mere continuation because ownership, although complex, remained in same hands, companies had common shareholders and directors and transferee paid inadequate consideration for transferor's assets. *Per-Co, Ltd. V. Great Lakes Factors*, 2008 U.S. App. LEXIS 22941 (6th Cir. Nov. 4, 2008) *aff'g Per-Co., Ltd. V. Great Lakes Factors*, 509 F. Supp. 2d 642 (N.D. Ohio 2007).