The book offers you the cocktail of business, real estate, established business practices, and a significant body of law. Shaken, and not stirred, Mr. Bond.

Your mission, Mr. Hawke, should you choose to accept this assignment, is advising a client whether to accept any one of the following offers: (1) settle a $10,000,000 judgment for $500,000 in cash; (2) accept a community property settlement based on a 30-year marriage that cycled through $10,000,000 but the wife gets only $500,000; (3) accept a policy-limits offer of $500,000, and release the defendant of $10,000,000 liability including a claim for wrongful death, or (4) shelve a $10,000,000 judgment because the client believes, and you advise, that the judgment is uncollectable. Everyone and everybody are counting on your skills to properly advise the client. Don’t cock it up, Bond.

Suppose you ask for, and receive, a detailed financial statement from the debtor’s lawyer that is executed under penalty of perjury. The debtor denies ownership of any real property, discloses near-poverty earnings, and lists marginal assets. Believing what you are seeing, any settlement is better than no settlement, and you are prepared to accept the debtor’s representation that his family will raise the money to bail out their miscreant relative. You hire a private investigator who advises that he is unable to locate any real property in the name of the defendant. The $500,000 offer looks even better. However, well-versed in Shakespeare and supremely paranoid, you mutter “something is rotten in the state of Denmark,” Horatio. What is wrong with this picture? You think, “I am staring at what appears to be a supremely successful businessman who claims abject poverty but is aided by an angel who is willing to lend $500,000 to resolve his financial crisis. What is wrong with this picture? ‘Wake up, Little Suzie.’”

The answer is changing the channels and looking at another picture. The first picture is the debtor’s credit report. A common credit report reveals the debtor’s liabilities, not assets. The usual suspects are credit card, department store, and gas company credit card balances. These are called revolving balances. Financial institutions that make real estate loans are disclosed as “installment” obligations, the length of the maturity (360 months, or a 30-year loan), whether the loan is current, late, defaulted, or charged, off,
the unpaid balance and rated. The credit report lists five separate installment loans that each exceeds $2,000,000, and all are current. Some of these lenders are local (your state, such as First Bank of Beverly Hills) and others are out of state or clearly regional (such as First Bank of Seattle).

Remember this rule: “Security follows the debt.” Debt, like a real estate loan, is secured by the real property. Find the security, and you will find the debt. The flip side of this rule is “find the debt, and you will find the security that encumbers the collateral.” With knowledge that the credit report reflects secured debt in which the debtor is the obligor, and with a little elbow grease, you can find the real property when you cycle through the grantor/grantee index of the local county recorder in which the property sits. If the name of the bank is First Bank of Beverly Hills, chances are the property is located in Los Angeles County.

What are you going to find? First, you are going to find the deed of trust (or mortgage) in the name of the debtor, which is not released or refinanced in the name of another. You will probably find a transfer instrument (grant or quitclaim deed) from the debtor to someone who bears the same last name or a newly formed limited liability company. The grant deed is handwritten, and the upper-left corner provides a return address of the debtor, and not the putative buyer. The grant deed for each parcel (five in all) is dated with the same date and recorded in serial order by the debtor (as the claimed seller) just before the offer of settlement. You do not see any earmarks of an escrow, such as an escrow number. You see cross-outs on the deeds. The notary, whom you can trace, works out of a Mail Box Etc. You don’t find a refinance of the property when sold to the current buyer. You cycle through the multiple listing service (MLS), and never find that the property was listed for sale. You don’t find a jump in the real property tax assessment, which is common in a rising market. The sale of real property authorizes the county tax assessor to reassess the property based on the current sales price, which arises from a bona fide sale, and prompts a reassessment, which appears in the public records of the county tax collector (not recorder). The county (or city) likewise collects transfer taxes upon the sale of property at the rate of $1.10 per thousand, which is likewise a public record.

Most, if not all, buyers purchase real property subject to their own “new financing,” and rarely acquire property subject to existing financing. The reason is that the buyer in these cases brings better financing to the table; moreover, the sale of the property triggers the “due on sale” clause of the existing deed of trust that enables the lender to promptly foreclose. You do not find any new financing.

You come to the conclusion that the evidence suggests that the debtor still owns the five parcels of valuable real property, despite the denial, given the lack of an apparent escrow, no listing through the MLS, no new financing, no jump in the real estate taxes, no transfer fees, no transfer to a relative, and no serial recordings recorded in the face of the settlement offer for about $.05 on the dollar of the liability. You are staring at five
living and breathing fraudulent conveyances, which, if recovered, might generate a million-dollar recovery for the client and for you, a big fee and the undying gratitude of the client. When you come to the realization that you spotted these fraudulent conveyances, avoid shouting out, “It’s alive. It’s alive,” or at least until everyone has left for the day.

Let’s keep in mind that the debtor denies ownership of property to convince you to take the settlement because the debtor lacks big assets that are vulnerable to enforcement. You can see attributes of them, such as checks for property taxes or insurance or maintenance, or loan payments to a bank. I can’t see the property in the name of the debt, but I see attributes of ownership and infer that property exists and therefore reject the small-dollar settlement.

Do you advise the client to take the offer or reject the offer and hold out for a lot more? You can do the math.

This story tells it all. For the price of this ABA book, you can save yourself an eternal heartache, and maybe a lawsuit from the client, and may even make very good money if charged with the duty to recover these fraudulently conveyed properties.

By the way, you don’t need the credit report to dig up the deeds of trust (or mortgages). These instruments are recorded documents and are readily accessible. March forward through this book to discover other ways to locate that secured credit instrument, which might be accompanied by a candid credit application executed by the debtor as a part of the credit due diligence.