RECEIVERSHIP NEWS

Fall 2023 • Issue 79

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A Publication of the California Receivers Forum

Bob Moiser with Federal Judge, David Carter, at the Loyola IV Symposium.

Interview with the Upcoming Loyola X Keynote Speaker: Bob Mosier

By Ryan Baker*

For anyone in the know, the name Bob Mosier is synonymous with receiverships. Not only has Bob been a Court-appointed fiduciary for nearly 40-year – with 10-years of business turnaround experience before that – he is also a founding member of the California Receivers Forum and was the Publisher for *Receivership News* for many, many years.

To say Bob is an expert in the receivership field would be a significant understatement. And the CRF and *Receivership News* have been incredibly lucky to benefit from the hard work and dedication he put in to helping make these receivership resources what they are today.

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Loyola X: Riding The Economic Wave

The California Receivers Forum, in conjunction with Loyola Law School of Los Angeles, will co-host the Loyola X Symposium at the Hyatt Regency Hotel in Long Beach on January 18-19, 2024. Economic indicators continue to fluctuate and this year's Symposium theme, "Riding the Economic Wave", provides a foundation of education that will highlight industries likely to require receiverships. Learn legal and practical tips and strategies to better suit your clients' needs and hear directly from the pros with a proven track record of delivering results in unpredictable economic times.

The Symposium will feature some new voices and fresh perspectives. Reconnect with statewide experts and network with the industry professionals to support all aspects of your receivership needs. Loyola X is a forum to ask real-world questions and hear from receivers who have faced all types of challenges in receiverships.

This year, we are honored to feature **Danielle DiMartino Booth** as Keynote Speaker at the Welcome Dinner on January 18. Ms. DiMartino Booth is founder

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Inside

Publisher's Comments

By Dominic LoBuglio*

Dominic LoBuglio

***Dominic LoBuglio** is a CPA and has provided forensic accounting and taxation services to receivers for 40 years. He has served CRF since its inception as a board member and officer for LA/OC and the State.*

In our last issue, we announced our Loyola X Symposium: Riding The Economic Wave to be held January 18th and 19th. In this issue we thank our generous symposium sponsors, provide an interview with our keynote speaker **Bob Mosier**, and, in an article by our administrator **Amy Olsen**, present highlights of the program. We are excited about this biennial event and invite you to attend.

I asked our graphic designer to redesign our masthead to include the members of the CRF Board of Directors. I want to thank all these professionals for their continued support of this organization. We have two new board members, **Kyra Andrassy** of Smiley Wang-Ekvall LLP and **Oren Bitan** of Buchalter Los Angeles. You can get to know Kyra who is profiled in this issue. Oren, who has extensive experience providing legal services to receivers, has been very involved with the CRF for many years.

Since our last issue, we have produced three outstanding education programs. In San Franciso, **Gerard Keena**, **Ben Young**, **Steve Tesler**, and **Kevin Whelan** addressed what receivers should do in the aftermath of Silicon Valley Bank. In San Diego, **Ted Fates**, **Mike Bergthold**, and **Doug Wilson** presented an integrated discussion of issues that arise in complex equity receiverships. In Los Angeles, **Benjamin King**, **Kyra Andrassy**, **David Stapleton**, and **Oren Bitan** explained the expertise required to capture and monetize assets that are not as easily valued and available as a bank account or real property. If you missed any of these, they are available online on our website. We are always looking for new ideas for education programs, so please let us know if there is a subject you would like us to research or, better yet, help us put a program together and participate as a panelist.

I thank our editors, **Michael Muse-Fisher** and **Blake Alsbrook**, for enlisting lawyers from their respective firms to write articles presenting recent California cases impacting receiverships and explaining receivers' use of writs of possession to obtain custody of real property. Thank you, **Todd Wohl**, for your article explaining brokerage, auction, and hybrid methods for selling real estate and partnership interests in real estate for receivers and courts. And a shout out to **Peter Davidson**, **Chad Combs**, and **Ryan Baker** – you guys are always there for us.

Sincere appreciation for our advertisers for their continuing support for this publication and for the valuable real estate, legal, brokerage, and management services they provide to the receivership community.

Please enjoy this issue, have a safe and happy holiday season, and join us in January to ride the economic wave.

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Receivership News
Published by
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Keynote...
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Mr. Mosier will be the keynote speaker at the upcoming Loyola X Symposium, which is taking place January 18-19, 2024 at the Long Beach Hyatt. Sign up now to take advantage of the early bird rates! There, Mr. Mosier will be sharing his abundant knowledge about receiverships and reflecting on both the good – and the bad – that a career in receiverships brings. Below is a teaser interview with the man himself.

Ryan Baker (RB): Most Receivers seem to fall into this line of work as opposed to seeking it out. I can't imagine in middle school you were thinking "I want to be a receiver when I grow up". So, how did you end up becoming a Receiver?

Bob Mosier (RPM): My father-in-law was a retired Orange County Superior Court Judge, and I was in LA on some other business. I called him to say hello upon my exit, and he told me that he had just been appointed to oversee the winddown of a failed bank trust department (Valencia Bank in Orange County). There were a lot of bizarre assets, and would I help. I met with Judge Sumner later that day, and the rest is history. My first morphed receivership assignment as assistant to the Court-appointed fiduciary, a retired Superior Court Judge. We were successful, and I liked the space.

RB: Before becoming a receiver, you seem to have had a life in business tailor-made for preparing you for the skills needed in the fiduciary world. Can you share some stories of what you did prior to becoming a receiver?

Bob and his wife Ann with his father-in law Judge Bruce Sumner and his wife Susan and Bob's daughter Elyssa and her husband Caleb.

RPM: My career after graduate school started in advertising in NYC in consumer goods advertising (Proctor & Gamble and General Foods), and one year later I was recruited to oversee the turnaround of the TWA Getaway Card (now the travel business). This effort was successful, and my career as a turnaround person was officially launched. Next, it was President of the Delta Queen Steamboat Company (another turnaround). This

Continued on page 4...

Michael Muse-Fisher

***Michael Muse-Fisher** is a Shareholder at Buchalter, a Professional Corporation. He regularly represents receivers across all receivership types.

Editor's Comments

MICHAEL MUSE-FISHER*

Welcome to another blockbuster issue of *Receivership News!* CRF is gearing up for what promises to be the best conference in the history of all conferences: LOYOLA X! **Bob Mosier** and the Loyola X Committee have combined forces on our front page to deliver a taste of what's coming to Long Beach in January 2024. If you haven't already bought your tickets, do so now to avoid the vicious resale market on StubHub. In addition to all things Loyola, this issue is packed with critical information for receivers: **Peter Davidson** and **Chase Stone** explain how to forcibly obtain real property from disobedient parties, **Jarett Osborne-Revis** reviews a number of critical receivership cases from the past two years, and **Todd Wohl** compares traditional brokerage and auction sale of real estate through receivership. And no issue of RN would be complete without veterans **Peter Davidson**, **Chad Coombs**, and **Ryan Baker** providing their quarterly columns. Last, but not least, this issue profiles one of my favorite lawyers, **Kyra Andrassy**, who details how she turned her childhood dreams of practicing bankruptcy and receivership into reality!

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time I got lucky and then President Jimmy and Roslyn Carter decided to vacation on the Delta Queen for a week's voyage between St. Paul and St. Louis. With five minutes of network news every night for a week covering the President onboard the Delta Queen, my marketing plan for the following year was set to double revenues, which happened. From the slowest form of transportation (steamboats) to the fastest form of transportation, my next assignment was to turnaround and sell Executive Jet Aviation. After a year's effort, the company was sold. This was my last formal assignment/appointment before becoming a Receiver.

Bob Mosier (far right with daughter Elyssa, wife Ann and Yellow Lab Brittany). On the left side of the propeller, Kathe and Don Fahland, Bob's sister and brother-in-law. Location: Pacific Northwest over one 4th of July.

RB: I know that your father-in-law, **Bruce Sumner**, had a big influence on you in becoming a Receiver. Are there any other ways that Bruce affected your approach to receiverships specifically, or have advice or guidance that affected your life more generally?

RPM: As a former (and well respected) judge, Bruce was a great role model in how to deal with adversary forces, how to build consensus among the investors, and ultimately how to achieve a result of 100 cents on the dollar. With my business versus judicial background, I might have had some influence on the success in liquidating a bevy of bizarre assets.

RB: In 2009, you were appointed over Private Equity Management Group, Inc (PEMG) after being nominated by the SEC alleging an $1 billion Ponzi. This is the type of case that can be a career-maker, or a career-breaker. When you have such a large case thrown on to the table, how did you approach the case and deal with the magnitude of what is required?

RPM: Hire great (not good) counsel – I hired Nick Morgan, former SEC enforcement attorney who had just left the SEC and was highly recommended to me. **Kirk Rense**, a founder of the CRF, was my counsel for decades until he retired. **Edy Bronston** has represented me, and currently **Alan Mirman** and **Michael Bubman** are representing me. All experienced and well qualified Receiver's counsel.

RB: We all have cases that we regret taking up in the first place. Is there a horror-story case that you wished you had never taken up in the first place?

RPM: I resigned from one recently where the financial institution (a large national firm) would not give me control of the suspect accounts without my personal Tax ID. I refused, the investment house refused, and I resigned. If I searched my memory, I am sure there may be some family-law matters that I wish I had passed on. It can be challenging to be a common-sense receiver in a family law dispute. However, I have had some great family law assignments.

RB: Are there any "receivership principles" that you live by? What would you say are the Bob Mosier Pillars of Receivership?

RPM: Always be honest even if it hurts. Always strive to be a neutral until you deem it impossible. Always defer to the Judge on the tough or really big decisions.

RB: We all know that receivers can be the target of anger and frustration of various parties to the cases we're involved with, but have you ever been directly or indirectly threatened from an emotional or irrational party?

RPM: Not as a Receiver, but I was the Chapter 11 Trustee for Michael Goodwin when he allegedly hired a "hit man" who shot and killed his nemesis partner, Mickey Thompson and his wife. At one point, I wondered if I was next? I have confiscated loaded weapons out of the desk drawers of the principal of the defendant/debtor.

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RB: You've been a big part of and given so much to the California Receiver's Forum as well as *Receivership News*. What are some of the benefits, that maybe you've gotten out of being a member of CRF and a regular reader of *RN*?

RPM: Introduction to quality members like **Rob Evans**. Introductions and exposure to quality counsel like **Edy Bronston** and **Kirk Rense**. Exposure to and reinforcement for the right or preferred way to do things. The opportunity to work with and exposure to some quality Judges.

RB: In your mind, what are your favorite types of appointments – whether it relates to asset type, or rents and profits vs. equity vs. others, and why?

RPM: I prefer operating companies over real estate assignments, although I have probably handled several hundred real estate assignments. I come from an operating company background and therefore am very comfortable in this environment even though there is a dispute or insolvency. I managed one large real estate case with properties throughout CA and even a few neighboring states. These were pretty interesting as well. The PEMG case was a blend of operating companies and real estate both in the US as well as all over the world.

RB: If you could travel back in time and meet your younger self that's just getting started out as a receiver, what advice would you say to him? Said another way, for someone who may be a young receiver or professional looking to make a career of receivership, any advice that you would impart to them as they embark on this exciting, but dubious, journey?

RPM: Become an active participant in the CRF, respect defendants in an assignment, always defer to your boss (the Judge), and in the unlikely event you make a mistake, blame it on your counsel – no, step up and take ownership. Such an approach may or might pay dividends later on depending on the size of the indiscretion.

RB: Finally, can you provide an outlook on the future of receivership and your thoughts on the evolving role of court-appointed receivers in the legal landscape? Has there been any changes or evolutions in the role from when you first started out to what you see now?

Bob Mosier on the squash court at the Jonathan Club in downtown LA with granddaughter Olivia in a squash lesson to get'um started young. It didn't work. Olivia is now 11 and 100% into ballet with a little sailing on the side. Olivia lives with her parents in Gig Harbor, Washington and unlike her grandfather, she is a straight "A" student!

RPM: It is a lot more competitive than when I started when there were only a handful of recognized receivers. This is probably a good thing as long as the new Receivers are active participants in the CRF and listen well to the speakers (experts) at the programs.

RB: One of these questions (and only one) was generated using Artificial Intelligence—which one do you think it was?

RPM: I could personally benefit from artificial intelligence to boost my single digit IQ to low double digits.

***Ryan Baker** is Vice President of Douglas Wilson Companies*

DWC is based in San Diego, CA with offices in Orange County, Los Angeles and throughout the U.S. The company provides services in real estate development or completion, maximizing asset value in receiverships, advisory consulting, and as a specialized broker.

Ryan Baker

and CEO of Quill Intel Research, providing independent research on what is driving the markets – both in the United States and globally. She spent nine years at the Federal Reserve Bank of Dallas and served as Advisor to President **Richard W. Fisher** throughout the financial crisis until his retirement in March 2015. She is a frequent speaker and commentator on MSNBC, Bloomberg, Fox News, Fox Business News and other major media outlets.

Friday's Keynote Speaker is a founding member of CRF and its past chair, **Robert (Bob) P. Mosier**. Bob has a long and respected background in state and federal receiverships, first starting in 1974 with turnarounds and dissolutions and then applying those skills to receiverships beginning in 1985. An oft-consulted expert, Bob shares his retrospective on the receivership industry in his presentation titled "The Life and Times of a Receiver...The Good, The Bad, And The Ever-Present Ugly."

More experts follow in a general session titled "Receiver As Detective – Working With A Receiver To Uncover Fraud And Other Bad Behavior." Receivers often act as investigators, identifying and liquidating assets, calculating the amount of claims, identifying creditors, and more. This session takes a look at how receivers uncover fraud and other malfeasance and includes real case studies to help illustrate.

The afternoon offers concurrent sessions with a track for those entering the receivership field as well as those wishing to advance their current level of experience and expertise.

The Symposium will also feature over ten sponsored luncheon table discussions on a variety of contemporary topics for newer or veteran receivers and their counsel.

The Symposium wraps up with a Beach Party cocktail reception. This is a great way to put on your flip flops, kick back and enjoy some beachside fun.

The Loyola Symposium is held biannually, so don't miss the insights and connections to position your business for the coming receivership engagement opportunities. Be sure to reserve January 18-19, 2024, on your calendar. Registration is available at www.Receivers.org.

LOYOLA X SCHEDULE

THURSDAY, JANUARY 18, 2024

6:00pm – 7:15pm
WELCOME DINNER

7:15pm – 8:15pm
INTRODUCTORY REMARKS

Symposium Program Co-Chair, **Mia Blackler**
Lubin Olson & Niewiadomski LLP, San Francisco CA

Symposium Program Co-Chair, **Scott Sackett**
Fiduciary Management Technologies, Inc., Sacramento, CA

KEYNOTE SESSION

Danielle DiMartino Booth
CEO and Chief Strategist, Quill Intelligence LLC, Dallas, TX

A global thought leader on monetary policy, economics and finance, DiMartino Booth founded Quill Intelligence in 2018. She is the author of FED UP: An Insider's Take on Why the Federal

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Reserve is Bad for America (Portfolio, Feb 2017), a full-time columnist for Bloomberg View, a business speaker, and a commentator frequently featured on CNBC, Bloomberg, Fox News, Fox Business News, BNN Bloomberg, Yahoo Finance and other major media outlets.

FRIDAY, JANUARY 19, 2024

8:45am – 9:45am

KEYNOTE SESSION:
The Life and Times of a Receiver...The Good, The Bad, and The Ever Present Ugly

Robert P. Mosier
Mosier & Company, Inc., Costa Mesa, CA

Bob Mosier is the founder of Mosier & Company and has been a Court-appointed fiduciary for nearly 40-years, with 10-years as a turnaround and dissolution professional before that. To say he is an expert in the receivership field would be a significant understatement. Mr. Mosier is also a founding member of the California Receiver's Forum and the previous Publisher for Receivership News. Mr. Mosier will be sharing his abundant knowledge during this keynote speech about receiverships and reflecting on both the good – and the bad – that a career in receiverships brings.

10:00am – 11:00am

GENERAL SESSION:
Receiver As Detective – Working With A Receiver To Uncover Fraud And Other Bad Behavior

Receivers wear many hats, amongst the most important of which is that of an investigator. This includes identifying and monetizing assets, calculating the amount of claims, identifying creditors and formulating a case strategy based on the foregoing. In this session, we'll take a look at how receivers uncover fraud and other malfeasance and include real case studies to help illustrate.

Moderator: **Geoff Winkler**
American Fiduciary Services, Portland, OR

Panelists: **Kyra Andrassy**
Smiley Wang-Ekvall LLP, Costa Mesa, CA

Stephen Donell
FedReciever, Inc., Los Angeles CA

11:15am – 12:30pm

LUNCHEON WITH HOSTED TABLE TOPICS

Industry experts will host lunch tables to continue the conversations on a variety of topics

12:40pm – 1:40pm

SESSION A1 – Step Into Il-Liquid – Types Of Receiverships

Panelists: **Michael Gomez**
Frandzel, Robins, Bloom & Csato LLC
Los Angeles, CA

Ivo Keller
SSL Law Firm, San Francisco, CA

Scott Sackett
Fiduciary Management Technologies
Sacramento, CA

SESSION B1 – Bad Vibrations – Partnership Disputes And Dissolutions

Moderator: **Michael Muse-Fisher**
Buchalter, Sacramento CA

Panelists: **Ryan Baker**
Douglas Wilson Companies, Irvine CA

Ted Lanes
Lanes Management Services

Eric Pezold
Snell & Wilmer LLP, Costa Mesa, CA

Kevin Singer
Receivership Specialists, Los Angeles, CA

2:00pm – 3:00pm

SESSION A2 – Surf's Up! First Day Issues

Moderator: **Richardson "Red" Griswold**
Griswold Law APC, Encinitas, CA

Panelists: **Mike Brumbaugh**
MBI Consulting Group, Fair Oaks, CA

Laura Lutz
Lubin Olson & Niewiadomski LLP
San Francisco, CA

Cooper Plyler
Stapleton Group, Los Angeles, CA

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SESSION B2 – Chasing Mavericks – Commercial Real Estate Momentum

Moderator: **Todd Wohl**
Braun International | Premier Estates
Los Angeles, CA

Panelists: **Brian Fagan**
Selective Real Estate Corp.,Los Angeles, CA

Dan Miggins
Hilco Real Estate, San Diego, CA

Nicolas Prouty
Putnam Bridge, San Juan, PR

3:10pm – 4:10pm

SESSION A3 – Shooting The Tube – Getting Out And Paid

Moderator: **Jake Diiorio**
Stapleton Group, Solano Beach, CA

Panelists: **Michael Kasolas**
Michael Kasolas & Co., San Francisco, CA

Jarrett Osborn-Revis
Buchalter, Sacramento, CA

Annie Stoops
Arent Fox LLP, Los Angeles, CA

SESSION B3 – Avoiding Wipeouts While Selling A Cannabis Business

Moderator: **John Rachlin**
Receivership Specialists, Los Angeles, CA

Panelists: **Blake C. Alsbrook**
Ervin Cohen & Jessup, Beverly Hills, CA

Drew Mathews
Greenlife Business Group, San Diego, CA

Adam Nach
Lane & Nach, PC, Phoenix, AZ

Sharmi Shah
Attorney At Law, Campbell, CA

4:20pm – 5:20pm

SESSION A4 – The Rogue Wave – Avoiding Liability As Receiver

Moderator: **Benjamin King**
Loeb & Loeb, Los Angeles, CA

Panelists: **Anne Redcross Beehler**
Bryan Cave Leighton Paisner LLP, Irvine, CA

Mia Blackler
Lubin Olson & Niewiadomski LLP
San Francisco, CA

SESSION B – Point Break: Stump The Experts

Moderator: **Peter Davidson**
Ervin Cohen & Jessup, Beverly Hills, CA

Panelists: **Mike Essary**
Calsur Property Management, San Diego, CA

Kathy Phelps
Raines Feldman LLP, Los Angeles, CA

Christopher Seymour
Gilmore Magness Janisse, Fresno, CA

Susan Uecker
Uecker & Associates, San Francisco, CA

5:30pm to 8:00pm

BEACHSIDE COCKTAIL RECEPTION

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The Differences in How to Sell Real Estate and Partnership Interests in Real Estate: Brokerage and Auction

By Todd Wohl*

Brokerage sales and auctions are both methods of effectuating public sales of real estate and partnership interests in real estate for receivers and Courts. All methods of public sales are intended to create market awareness, transparency, and market value crucial to a successful sale that is approved by the Court. That said, the sale terms and process of a public sale should be determined through the Broker or Auction company and the receiver. Regardless of which sale process is chosen, both brokerage and auction methods of disposition of real estate have their own benefits and drawbacks, and practitioners and receivers need to be mindful of both in order to assess which option may be the best avenue for the particular situation.

Real Estate Brokerage:

Practitioners are generally familiar with real estate broker sales. Selling real estate using the brokerage method starts with retaining an individual broker or brokerage firm who charges a fee or commission to sell the real estate. The seller enlists a broker, who should act as an unbiased third-person facilitator between the buyer and the seller. Brokerage firms tailor the listing term based upon the demands of the seller and the nuances of the property. Both commercial and residential properties are listed online through a regional or local Multiple Listing Service "MLS." The MLS then feeds this information to syndicator companies such as Zillow, Redfin, Realtor.com, Trulia, Loopnet and Costar and dozens of others for pay "public" websites. For many brokers who wish to advertise their properties, online listing services function as a powerful and effective marketing tool for both commercial and residential properties. On the buyer's side, 99% of buyers start their search on the internet via countless listing websites, all of which pull information from the internet. These databases provide easy access to real estate information ranging from photos, historic listing information, city and state demographics, and a myriad of other types of information. Interested buyers will then be able to search and find those that fit their criteria to attend showings, and potentially purchase.

Understanding how a broker is going to manage the listing, sale and negotiation process is one of the most important factors in choosing the broker. Like any sale, creating an effective process of offering, negotiation strategy, offer review, and pricing disclosure strategies between the seller and the broker is critical to the success of receivership sales. The broker will work with the seller to assemble underwriting and due diligence materials (include any and all state required disclosures, financial reports, PTR's, accountings, environmental reports, operating agreements, rent rolls, IRS k-1's) at the start of the marketing campaign and available for review in an online data room.

The next step for a broker is to provide the seller with a marketing campaign over the course of the listing and to provide metrics of buyer interest on a weekly basis. Not only should a marketing campaign be custom-tailored to each piece of real estate, it must be unique to the proper demographics and audience needed to reach. In the digital

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world in addition to having standard marketing campaigns (mailers, signs, brochures, etc.), having a website, email marketing and social media accounts enables Brokers to further market featured real estate using internet Search Engine Optimization (SEO) techniques. SEO will help websites rank higher on search platforms and generate organic reach, clicks, and views through paid campaigns. Regardless of the marketing efforts, a brokers' market knowledge and relationships in the industry play an important role in selling real estate. And, like all aspects of receiverships, marketing budgets should be discussed and approved to maximize the best sale. Marketing may be provided at zero cost depending on the broker/auction company. Timing is also important. Often, depending on the type of property, if offers are not presented within 15 days, alternative marketing and pricing strategies should be discussed. Because properties become less marketable and less valuable over time, failing to adjust the price accordingly can negatively affect the marketability and value.

As offers come in, merely accepting the highest offer out of the gate can in many situations, leave "money on the table." Indeed, if the broker fails to allow all-inclusive countering and multiple countering opportunities to potential buyers, the Receiver may be left open to critical questions from the Court. The Court may perceive the Receiver as not providing equitable opportunities to purchase real estate to all potential buyers. Therefore, after enlisting a broker, it is of utmost importance that open and ongoing communications are maintained between the receiver and the broker to ensure that the sale and negotiation process is transparent and accomplishes the best sale for the receivership estate.

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Auction Platforms:

For many, the auction method is less well understood. Whether you use an auction to sell a Picasso, Ferrari, IP, real estate, business assets, or minority interests, auctions can be an invaluable sale method. Auctions can create a sense of urgency by establishing a definitive sales date, terms of sale, and an equitable sale process for all buyers. Depending on the asset type, urgency and frenzy may actually create value. Using auction platforms can create a competitive bidding environment that may help bolster an equitable and transparent sale process that can be useful for receiverships.

The timeline of an auction will be suggested by the auction company and is based on a multitude of factors for the required exposure of the real estate and minority interest. Article 9 sales and non-real estate may have a 30 day or less marketing timeline. With respect to real estate auctions, the industry rule of thumb is a 60 to 90 day timeline plus the standard escrow closing timeframe of 15 to 60 days. Factors for consideration for the marketing timeline include court requirements, type of real estate, location of real estate, depth of buyer pool and buyer underwriting requirements. If the Receiver or Court approves pre-auction offers, this can often decrease the sale timeline.

Sellers are free to customize their auction experience by choosing auction pricing options which include published reserve, undisclosed reserve, absolute, and no reserve. Knowing which pricing option is best for your situation can create a more effective marketing campaign. A published reserve price allows sellers to state a minimum price at which the real estate or minority interest will be sold and can be crucial to pricing a property, because it creates a starting point for interested buyers and may create bidding momentum. In an undisclosed reserve

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auction, the reserve price is only known to the seller, listing agent, and auction company. This option may create buyer anxiety, so be mindful whether this route is best for your situation. On the opposite end of the spectrum is absolute auctions, which can be a powerful way to find market value, as the asset will sell to the highest bidder at market value without limitation by the Seller. That said, receivers must absolutely disclose if this method is to be used, and seek court approval in advance (like all sales).

An experienced auction company will provide multiple bidding platforms that will be tailored to the Seller's objectives. Bidding platforms such as sealed bid, multi-round sealed bid, onsite, online, telephonic, live online and in-Court each have their benefits and may be used in sequence or in parallel. The auction company should provide their suggestions as to which platform to use based on a thorough analysis of real estate, potential buyer demand and depth of buyer pool.

Once the Seller decides how to move forward, the terms of sale and qualification process should be clearly outlined in the due diligence materials for buyers.

Like broker sales, underwriting and due diligence materials should be provided by Seller at the start of the marketing campaign and made available for review in a data-room or online; therefore, buyers are prepared and their offers arefully vetted. And, the auction process can limit or eliminate contingencies when selling real estate and minority interests for auction day offers. Pre-Auction offers may have standard contingencies with the requirement to remove the contingencies 48 hours prior to the auction date. The benefit of accepting pre-auction offers will be on a case-by-case basis, though buyers may see a value in a contingent offer (especially for residential real estate) and as such, bid higher. Auction day bids are without contingencies.

Compensation to the auction company is different than brokerage. The buyer will pay a "buyer's premium" to the auction company. This a standard auction industry method of compensation, as the buyer's premium is a percentage based on the sale price, which is added to the highest bid hence, the contract price. Buyer premiums ranges from as low as 1% to 5%. The buyer's premium is negotiable and based on the estimated sale price at the time of listing contract execution. The buyer's premium can include the listing broker and buyer's agent commission (if the listing broker is not affiliated with the auction company).

A successful use of the auction method is shown by the following real life example. A trustee had a large land parcel and a portfolio of 38 minority interests in commercial real estate held in a variety of entities. Initially, the trustee saw little value in the minority interests and focused solely on the land. Ultimately, the Trustee elected to use the auction method, which we assisted in by devising a structured marketing and sale process that included a 60-day global marketing campaign and two-tiered, sealed bid auction. Bidders were given the opportunity to conduct their due diligence during the marketing campaign. All bids were provided without contingencies and proof of funds was required. After initial bids were received there was a second round of "highest and best" bids for the highest 33% of initial bids that met Seller criteria. After court approval, the bids were approved and the buyers confirmed. We received 11 bids totaling nearly $1.1 million for the minority interests. The sale proceeds exceeded the Court's expectations by 350%.

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Hybrid Option:

Hybrid sale methods can also be deployed. Hybrid brokerage allows the property to be listed through a brokered sale first and, if the property is not sold within the time hoped for, the seller may flip the property to auction, thereby having a guaranteed end date of sale and closing. Additionally a broker can provide for what is sometimes referred to as a "stalking horse bidder," and then retain an auction company to conduct an auction and use the "stalking horse" bid as the floor for the purchase price.

The selling process is never one-dimensional. Whether you choose to auction or broker real estate, minority interests, or any other type of asset, it is important to be aware of the pros and cons of both, and to speak with industry specialists to make sure the option chosen makes sense for your particular receivership. In the end, being well-educated on how both auctions and brokerage sales work will invariably benefit the receiver and may make it easier to get court approval to sell an asset.

**Todd Wohl* *is the Senior Partner of Braun International, Premiere Estates International Real Estate Group and Braun Minority Interest Market Exchange "MIMX". Todd is a licensed real estate agent, a trained Auctioneer and is certified appraiser with the American Society of Appraisers. Todd has valued and sold over an estimated $4 billion of real estate, business assets, partnership interests, and other asset classes.*

Todd Wohl

Receivership Case Law Updates: Recent California Cases Impacting Receiverships

By Jarrett Osborne-Revis*

1. *WB Music Corp v. Royce Int'l Broad Corp.*, 47 F.4th 944 (9th Cir. 2022)

The Ninth Circuit recently upheld a district court's refusal to terminate a post-judgment receivership after the defendants deposited sufficient funds to satisfy the judgment. The defendants owned and operated three radio stations in California and Nevada.[1] The plaintiffs owned copyrights to certain musical works.[2] The plaintiffs discovered the defendants had broadcasted the plaintiffs' music on the defendants' radio stations and sued the defendants for violating the Federal Copyright Act, 17 U.S.C. § 101 *et. seq.*[3] After the plaintiffs prevailed on a partial summary judgment motion, the district court awarded the plaintiffs a monetary judgment.[4] The district court afforded the defendants ample time to satisfy the judgment, but the defendants repeatedly failed to do so.[5] Frustrated with the defendants' "repeated stonewalling," the district court appointed a post-judgment receiver to aid the plaintiffs in collecting the judgment.[6] The district court empowered the receiver to manage the defendants' radio stations, assets, business, and affairs as well as to solicit offers for the radio stations.[7] To avoid losing the radio stations, the defendants deposited sufficient funds with the district court to satisfy the judgment and requested the district court terminate the receivership.[8] Critically though, the defendants sought this remedy even though the receiver had not prepared a final accounting and the receivership benefitted nonparty creditors.[9] The district court denied the defendants' premature motion for two principal reasons – protecting other creditors and ensuring payment of the receiver's obligations.[10]

The defendants appealed. The Ninth Circuit agreed with the defendants that a receivership generally should cease "as soon as the legitimate purposes of the receivership have been accomplished."[11] In a post-judgment receivership, the receivership ordinarily terminates once a judgment debtor pays the petitioning creditor's judgment. The rule, however, is not absolute.[12] The Ninth Circuit rejected the defendants' contention that the district court could not prolong a receivership once the judgment debtor fully satisfied the petitioning creditor's judgment.[13] The Ninth Circuit held that the district court had ample authority, rooted in common law, to prolong the receivership to benefit other creditors.[14]

II. *Medipro Medical Staffing LLC v. Certified Nursing Registry, Inc.*, 60 Cal. App. 5th 622 (2021)

In *Medipro Medical Staffing LLC v. Certified Nursing Registry, Inc.* (Medipro), the Second District Court of Appeal reached a different result to *WB Music Corporation* – it determined that a post-judgment receiver was unwarranted. In *Medipro*, the plaintiff recovered a money judgment against the defendants.[15] The plaintiff thereafter started executing on the judgment; the plaintiff served execution levies on various financial institutions and hospitals and obtained a charging order against membership interests in a limited liability company.[16] The plaintiff, however, did not serve any discovery or seek to compel the defendants' appearance at a judgment debtor's exam.[17] Nevertheless, on the plaintiff's motion, the trial court appointed a post-judgment receiver to enforce a charging order against one of the judgment debtor's membership interests in an LLC.[18]

The defendants appealed the trial court's appointment.

1 *WB Music Corp. v. Royce Int'l Broad Corp.*, 47 F.4th 944, 947 (9th Cir. 2022).
2 *Id.*
3 *Id.*
4 *Id.* at 947.
5 *Id.* at 948.
6 *Id.*
7 *Id.*
8 *Id.* at 949.
9 *WM Music Corp.*, 47 F.4th at 949.
10 *Id.*
11 *Id.* at 952 (citing 3 Ralph Ewing Clark, Treatise on the Law & Practice of Receivers § 691, at 1271).
12 *WM Music Corp.*, 47 F.4th at 952.
13 *Id.*
14 *Id.*
15 *Medipro Medical Staffing LLC v. Certified Nursing Registry, Inc.*, 60 Cal. App. 5th 622, 625 (2021).
16 *Id.*
17 *Id.*
18 *Id.* at 626.

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The Court of Appeal held that two statutes – Code of Civil Procedure section 680.010 and Corporation Code section 17705.03(b)(1) – authorized the trial court to appoint the post-judgment receiver.[19] These statutes, however, do not confer unfettered authority on trial courts.[20] Because of the special costs imposed by post-judgment receivers, the Court of Appeal determined that a trial court should appoint post-judgment receivers only when necessary, usually after exhausting other less intrusive collection methods.[21] Relying on a rich body of cases, the Court of Appeal agreed that a judgment creditor could obtain a post-judgment receiver if the judgment debtor's conduct necessitates such a receiver.[22] The Court of Appeal found no exceptional circumstances justified the trial court's appointment of a post-judgment receiver.[23] After the trial court issued the charging order, the LLC's financial liquidity decreased due to factors beyond the judgment debtor's control.[24] Although the plaintiff encountered some difficulty in collecting the judgment, the plaintiff had not shown that other methods of enforcing the judgment would fail.[25] Thus, the Court of Appeal concluded that the trial court abused its discretion in appointing a post-judgment receiver to take over the judgment debtor's business.[26]

III. *County of Sacramento v. Singh*, 65 Cal. App. 5th 858 (2021)

In *County of Sacramento v. Singh*, the Third District Court of Appeal affirmed a trial court's order approving a receiver's final account and discharging the receiver.[27] The County of Sacramento sued the defendants to abate building and housing code violations at their two properties.[28] The trial court appointed a receiver under Health and Safety Code section 17980.7 to take control and rehabilitate the properties.[29] While the receiver investigated the properties, the receiver discovered that the properties needed substantial rehabilitation, which the receivership estate could not fund.[30] After a fire at one of the properties injured some visitors, the receiver sought the court's approval to remove the structure.[31] Before the trial court decided the receiver's motion though, the County dismissed the action.[32] The trial court approved the receiver's final report and account, exonerated the receiver's bond, and wound up the receivership estate.[33]

The defendants appealed the trial court's orders on the receivership. The Court of Appeal swiftly rejected the defendants' appeal. Addressing the trial court's post-dismissal jurisdiction, the Court of Appeal found the County's dismissal did not strip the trial court's jurisdiction to wind up the receivership. "Dismissal of the complaint does not deprive the trial court of jurisdiction to settle the receiver's account and discharge the receiver."[34] The Court of Appeal also agreed with the trial court that the receiver properly served his final account and report and request for discharge to all known entities with claims against the receivership.[35] Lastly, the Court of Appeal concluded that the trial court rightly approved the receiver's final account and report that detailed the receiver's activities during the receivership estate.[36]

IV. *Breanne Martin v. Leslie Gladstone*, Case No. D080534, 2023 WL 6889015, at*1 (2023)

In *Breanne Martin v. Leslie Gladstone*, the Second District Court of Appeal reversed a trial court's judgment dismissing the plaintiff's state law tort claims against a bankruptcy Chapter 7 trustee. The bankruptcy court authorized the

19 *Id*. at 627.
20 *Medipro Staffing, LLC*, 60 Cal. App. 5th at 627.
21 *Id*. at 628.
22 *Id*.
23 *Id*. at 629.
24 **Id**. at 629.
25 *Id*.
26 *Id*. at 630; *accord Single Box, LP v. Del Valle*, Case No. 20-09412 PSG, 2022 U.S. Dist. LEXIS 96161, at *1 (C.D. Cal. April 6, 2022) (declining to appoint a post-judgment receiver where judgment creditor had not shown judgment debtor obstructed the judgment creditor's efforts to obtain the judgment.
27 *County of Sacramento v. Singh*, 65 Cal. App. 5th 858, 861 (2021).
28 *Id*.
29 *Id*.
30 *Id*. at 864.
31 *Id*.
32 *County of Sacramento v. Singh*, 65 Cal. App. 5th at 864.
33 *Id*.
34 *Id.* at 866 (citing *Pacific Bank v. Madera Fruit etc. Co*., 124 Cal. 525, 526-27 (1899)).
35 *County of Sacramento v. Singh*, 65 Cal. App. 5th at 866.
36 *Id*. at 867.

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trustee to operate the debtor's business, accept lease payments, and pay expenses that arose during the ordinary course of business until the trustee sold the estate assets.[37] The trustee later sought to abandon one of the debtor's commercial properties (the Alpine Property) as inconsequential to the estate – the property was underwater and it had "numerous" uncorrected code violations.[38] Before the trustee's abandonment became effective, the plaintiff suffered injuries from an accident at the Alpine Property.[39] After the plaintiff sued the trustee, the trustee sought to dismiss the plaintiff's complaint.[40] The trustee contended that the plaintiff's lawsuit violated the *Barton* doctrine – a century-old Supreme Court rule from *Barton v. Barbour*, 104 U.S. 126 (1881) – that required the plaintiff to obtain the bankruptcy court's consent and bring the suit in the bankruptcy court.[41] The trustee also argued her abandonment of the Alpine Property immunized her from Martin's claims.[42] The trial court rejected the trustee's *Barton* doctrine defense but accepted the trustee's immunity defense from her abandonment of the Alpine Property.[43] The plaintiff appealed.

Considering the trustee's abandonment argument first, the *Martin* Court conceived the key issue as when the abandonment became effective.[44] The trustee contended the abandonment should operate retroactively, so the debtors retained the Alpine Property without interruption during their bankruptcy case.[45] The *Martin* court disagreed. Some cases, the *Martin* Court noted, generally recognize that

37 *Breanne Martin v. Leslie Gladstone*, 2023 WL 6889015, at *2.
38 *Id.*
39 *Id.*
40 *Id.* at *3.
41 *Id.*
42 *Breanne Martin*, 2023 WL 6889015, at *3.
43 *Id.*
44 *Id.* at *5.
45 *Id.*

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abandoned property reverts to the debtor from the petition date.[46] But that rule is not absolute: "Courts do not blindly give retroactive effect to trustee's abandonment of bankruptcy estate property in every situation."[47] The *Martin* Court found no case where "a court at the pleading stage" applied abandonment retroactively to "relieve a trustee of liability for injuries caused by a dangerous condition of estate property."[48] Although abandonment of bankruptcy estate property is a legal fiction, the *Martin* Court declined it to avoid an unfair result – leaving the plaintiff without a judicial remedy.[49]

The trustee urged the *Martin* Court to uphold the trial court's dismissal anyway, claiming the *Barton* doctrine prohibited the plaintiff's claims.[50] Examining the *Barton* doctrine, the *Martin* Court recognized it generally requires a party to obtain leave from the appointing court before pursuing a claim against a receiver or bankruptcy trustee for actions in that party's official capacity.[51] The *Martin* Court though pointed out that the *Barton* doctrine is not limitless.[52] As the *Martin* Court explained, Congress enacted legislation (codified at 28 U.S.C. § 959(a)) to circumscribe the *Barton* doctrine's reach.[53] Section 959(a) allows aggrieved parties to sue "trustees, receivers, or managers of any property" without the appointing court's consent, for claims regarding "any of their acts or transactions in carrying on business connected with such property."[54] This section preserves the *Barton* doctrine for an aggrieved party's claims against a trustee or receiver for actions consistent with preserving and liquidating the estate.[55] But if an aggrieved party challenges the trustee's actions or transactions in carrying on the debtor's business, the aggrieved party need not obtain the appointing court's consent for such claims.[56] The Martin Court canvassed bankruptcy cases nationwide analyzing § 959(a)'s application to similar claims against bankruptcy trustees.[57] Relying on these cases, the *Martin* Court declined to apply it to Martin's claims at the pleading stage.[58] The plaintiff's complaint alleged that the trustee "owned, leased, occupied, maintained, or controlled" the Alpine Property as landlord during the relevant period.[59] The trustee's request to operate the debtor's business and her monthly reports to the bankruptcy court supported this allegation.[60] Those documents showed Gladstone was "carrying on an ongoing rental business connected with the premises" when Martin suffered her injuries.[61] Thus the *Martin* court concluded that the plaintiff had sufficiently invoked § 959(a)'s exception to the *Barton* doctrine.[62] The true impact of *Martin* on California Receivers and whether *Martin* should be viewed as narrowly tailored to specific circumstances involving bankruptcy trustees (and possibly federal equity receivers) will be the subject of a future article.

46 *Id.*
47 *Id.*
48 *Id.* at *6.
49 *Id.*
50 *Id.* at *13. Because the Martin asserted claims against a bankruptcy trustee, the *Martin* court applied the *Barton* doctrine rather than California's collorary rule under Code of Civil Procedure section 568. Section 568 requires claimants to bring claims against the receiver in the appointing California court and to obtain the court's consent to bring such claims. *See Vitug v. Griffin*, 214 Cal. App. 3d 488 (1989).
51 *Breanne Martin*, 2023 WL 6889015, at *10.
52 *Id.* at *10.
53 *Id.*
54 *Breanne Martin*, 2023 WL 6889015, at *10.
55 *Id.* at *11 (citing *In reVistaCare Group, LLC* (*In re VistaCare*) 678 F.3d 218, 227 (3d Cir. 2012)).
56 *Breanne Martin*, 2023 WL 6889015, at *11 (citing *Beck v. Fort James Corp.* (*In re Crown Vantage, Inc.*), 421 F.3d 963, 971-72 (9th Cir. 2005)).
57 *Breanne Martin*, 2023 WL 6889015, at *11-12.
58 *Id.* at *13.
59 *Id.*
60 *Id.*
61 *Id.*
62 *Id.*

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Jarrett Osborne-Revis

Receivers' Use of Writs of Possession to Obtain Custody of Real Property

By Peter A. Davidson and Chase Stone

When a receiver is appointed over real property whether directly, or indirectly as receiver of a partnership or corporation that has real property, the order of appointment usually orders the receiver to take possession of the property involved and usually contains injunctive provisions which order the parties not only not to interfere or hinder the receiver in the performance of the receiver's duties, but order the parties to "immediately turnover possession of the property ...to the receiver." See, Judicial Counsel Form RC-310 ¶ 28a (Order Appointing Receiver After Hearing and Preliminary Injunction) as an example. Parties usually comply with such court orders. On occasion, however, a party, often without counsel, may refuse to comply. When that happens, the receiver must take steps to obtain possession of the property, as the court has ordered.

One option is to commence contempt proceedings. Interference with a receiver or refusal to comply with the terms of a court's order can be contempt. Strain v. Superior Court, 168 Cal. 266 (1914). Contempt proceedings, however, are costly and time consuming because, among other things, they often require a mini-trial with live testimony, are quasi-criminal with the attendant safeguards (right to counsel, 5th Amendment, etc.) and the penalty may not be sufficient to coerce compliance. See, Cal. Civ. Proc. Code § 1218(a) limiting fines to $1,000 payable to the court (not the receiver) and not exceeding 5 days imprisonment. Although, each separate act of disobedience is a separate contempt and can be punished as such. In re Stafford, 160 Cal. App. 2d 110, 113-114 (1958). Further, where a contemnor refuses to perform an act within his or her power, the court may jail them until performance is accomplished. Cal. Civ. Proc. Code § 1219.

Given these limitations, in the rare case when a party refuses to turn over possession of real property to a receiver, the receiver should consider obtaining a writ of possession, directing the Sheriff to seize the property and turn it over to the receiver.

A writ of possession is a written command by the court, to the Sheriff, to take property a party is wrongfully possessing and give it to the person entitled thereto. It is authorized by California law in various contexts. It is available, for example, in Claim and Delivery actions, C.C.P. § 510.010 et.al.; in forcible entry, forcible detainer and unlawful detainer actions, C.C.P. § 1166a; in eminent domain cases, *Housing Authority of Los Angeles v. Lopez*, 159 Cal App. 2d 661,662 (1958); and in the enforcement of a judgment for possession or sale of real property, C.C.P. §§ 712.010 and 715.010.

Courts of Equity have long used a writ of possession to aid their receivers obtaining possession of property. "Under the practice of the English Court of Chancery, when it was sought to compel a defendant to deliver up possession of lands to a receiver appointed in the cause, an order was first obtained to deliver possession and a writ of execution of such order was then served upon the defendant." High, Treatise on the Law of Receivers, § 147 (1876). See also, § 144 ("The receiver...may have an order to procure possession of such property..."). These orders were often called writs of

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assistance, which were simply the equitable equivalents of writs of possession issued at law. G.E. Capital Mort. Services, Inc. v. Edwards, 144 Md. App. 449, 458 (2002); Fuller v, Gibbs, 122 Mont. 177,182 (1948) ("The terms 'writ of possession' and 'writ of assistance' are sometimes used synonymously ...[It] is the ordinary process used by a court of chancery to put a party, receiver, sequestrator, or other person into possession of property when he is entitled thereto..."). Clark agrees: "Some courts hold that a receiver may recover possession of property withheld by parties to the suit or by others claiming under such parties, in a summary way by a writ of possession." 2, Clark on Receivers, § 634 (3d Ed.1959). Clark cites Thornton v. Washington Sav. Bank, 76 Va. 432 (1882). There the Virginia Supreme Court stated: "When, however, the possession is withheld by persons who are parties to the suit, or by others claiming under such parties, with notice of the appointment of the receiver, there can be no question as to the authority of the court to interfere in a summary way, and enforce its order for the surrender of the property, by attachment or by a writ of possession." See also, In re Kennison Sales & Engineering Co., 363 Mich. 612, 618 (1961).

Because courts, and more importantly Sheriff's offices who must enforce writs of possession, may be reluctant to rely, solely, on 19th century equity practice, receivers may want to use the Enforcement of Judgment Law provisions, cited above, which authorize writs of possession. C.C.P. § 715.010 states, in part: "A judgment for possession of real property may be enforced by a writ of possession of real property issued pursuant to Section 712.010. C.C.P. § 712.010 states, in part: "After entry of a judgment for possession or sale of property, a writ of possession or sale shall be issued by the clerk of the court upon application of the judgment creditor..."

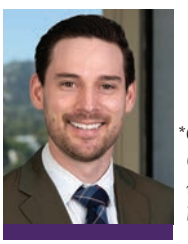
The Enforcement of Judgment Law has its own definition of "Judgment." It provides: "'Judgment' means a judgment, order, or decree entered in a court of this state." Cal. Civ. Proc. Code § 680.230. As a result, the receiver's order of appointment and accompanying injunction, which order one or more parties to deliver possession of designated property to the receiver is a "judgment for possession," as required in C.C.P. §§ 715.010 and 712.010 and enables the receiver to obtain a writ of possession.

While the order of appointment and injunction constitute the predicate judgment needed to obtain a writ of possession, it is good practice to instead inform the court that the party is not complying with its orders and request a separate specific order, ordering the party and its agents to turnover the property to the receiver within "X" days. Such a motion and order of itself may result in compliance. The requested order should also direct the receiver, if the party fails to comply, to obtain a writ of possession under C.C.P. § 712.010, state the order is a judgment for possession and direct the clerk to issue the writ. It should also order the Sheriff to comply with and enforce the writ and remove the party in possession. In appropriate cases, the receiver may want to consider provisions indemnifying the Sheriff for the legal enforcement of the writ or that anyone interfering with the execution of the writ is subject to arrest.

C.C.P. §§ 712.020 and 715.010 state the information that is to be included in the writ. The Judicial Council has adopted Form EJ-130 for use in compliance with these sections. A copy of the court's order (judgment) for possession should be attached to the form as "other" in paragraph 22(c) of the writ, because it will help explain to the Clerk and the Sheriff why the writ should issue and why the receiver is entitled to possession, instead of the occupant. Once the writ is issued it then needs to be forwarded to the Sheriff, with instructions. Each Sheriff's office may have different instruction forms, which should be determined ahead of time, along with the fees the Sheriff will charge for executing the writ. Because writs of possession in favor of receivers are not something Sheriffs deal with day-to-day, calling the Sheriff's office to clarify what is needed and follow-up calls will often make the process go smoother. Additionally, a detailed cover letter, sent with the writ and instructions, explaining the situation and the court's orders may help.

Peter A. Davidson *is a Partner of Ervin Cohen & Jessup LLP a Beverly Hills Law Firm. His practice includes representing Receivers and acting as a Receiver in State and Federal Court.*

Peter A. Davidson



Chase Stone

Chase Stone *is an Associate in ECJ's Bankruptcy, Receivership and Creditors' Rights Department. Chase specializes in bankruptcy, receiverships, and creditors' rights matters proceeding under California law and Chapter 7, 11 and Subchapter V of the Bankruptcy Code. He represents individual and corporate creditors, receivers, and parties in interest to help resolve complex insolvency issues.*

Farewell Amy Olsen and Her Wonderful Team

If you know anything about **Amy Olsen**, she is always there to get things done, with a positive attitude and an infectious smile. Amy and her team at Olsen and Associates have been nothing short of marvelous in their stewardship of the California Receivership Forum over the last few years. Alas, Amy is being taken from us... at least, that is what we are telling ourselves. To say that Amy and her team will be missed would be an understatement. It feels like we are losing a member of the family.

Amy holds herself out as a champion for the underdog, and an advocate for the cause. Her team joined the CRF in the Summer of 2021 in the midst of the COVID-19 pandemic, and she championed us through some of the most difficult times facing the CRF. Confronted with a pause of in-person events, Amy and her team helped set up CRF's streaming educational platform that was so well received that it has become a mainstay. Recognizing a need for a platform to assist in helping our members market and brand themselves, Amy helped create our "member clicks" online receiver and professional search engine, as well as "Receivership Academy" that provides professional materials and past events for even the most seasoned receivers to learn new tricks of the trade. And, dealt the hand of a declining membership, Amy helped greatly increase our membership.

Notwithstanding setback after setback caused by COVID-19, Amy championed Loyola IX, and in so doing made it a memorable event that we still talk about. She is also leading the charge for the upcoming Loyola X event in January 2024.

Her efforts have put the California Receivership Forum on excellent footing for years to come. But, it is her attitude and smile that we will miss the most. Thank you for everything, and all the best in your future endeavors. Don't be a stranger now, ya hear. We will not allow it.

Professional Profile:

Meet Kyra Andrassy: Music Enthusiast, Receivership Guru, and Bird Launcher

Kyra Andrassy

Like many of you, I became a lawyer by default. When I was twelve, I had surgery for scoliosis. That experience made me want to be a pediatrician. But, after getting through two years of calculus and chemistry at UC San Diego, a biology class at 8:00 a.m. three days a week, finally did me in. Unsure of what to do next, I took classes ranging from Introduction to Theatre Design to Caribbean Literature to Ethnic Images in Film before finally declaring a major in political science and a minor in writing. I then applied to law school. In my third year of college and with my fake ID in hand, I met my husband, Michael, at a Common Sense concert at the Belly Up Tavern in Solana Beach.

With my medical career jettisoned and finding myself in law school at Loyola Law School, I externed for the Hon. Barry Russell of the U.S. Bankruptcy Court, Central District of California, Los Angeles Division. I loved how bankruptcy involved so many different areas of the law and both litigation and transactional work. It seemed the best of all worlds. After graduation, I served a two-year clerkship to the Hon. John E. Ryan (ret.) of the U.S. Bankruptcy Court, Central District of California, Santa Ana Division and the Ninth Circuit Bankruptcy Appellate Panel. The first year I served as his trial clerk and the second year as his appellate clerk and was able to travel with him around the Ninth Circuit hearing bankruptcy appeals. Those of you who practiced before him or worked with him know he ran his chambers like a Marines boot camp and expected nothing but the best from everyone working for or appearing before him. However, he also took the time to get to know his law clerks and externs, eating lunch with us every day and doing movie reviews while eating bagels every Friday. I have never worked harder or learned so much, and I am forever grateful for that opportunity and what it taught me. In addition to swearing me in as a lawyer, he also officiated my wedding.

After my clerkship, I joined what was then Albert, Weiland & Golden, LLP, which then became Weiland, Golden, Smiley, Wang Ekvall & Strok, LLP after Theodor Albert joined the bench. In 2014, that firm split and I joined Smiley Wang-Ekvall, LLP, where I remain today.

I started my practice representing chapter 11 debtors, creditors' committees, chapter 7 and chapter 11 trustees, and litigants in bankruptcy cases, also representing the occasional assignee or state court receiver. About five years ago, Robert Mosier called and asked if I wanted to try my hand with a federal equity receivership, representing him as the receiver in a regulatory enforcement action brought by the Securities and Exchange Commission. Representing federal equity receivers is now as much of my practice as bankruptcy cases. I love receivership work, especially in federal court where we draw on the Bankruptcy Code when the result would be equitable and look elsewhere for guidance when it would not be. I find the work to be interesting, creative, and rewarding.

Influenced by mentors like Judge Ryan and Lei Lei Wang Ekvall who impressed upon me the importance of getting involved in the legal community and being a leader, I have been involved with a number of organizations including the California Receivers Forum, and presently serve on the

Kyra and family in Cancún, Mexico.

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boards of the National Association of Federal Equity Receivers, the Los Angeles Bankruptcy Forum, and the Southern California chapter of the International Women's Insolvency & Restructuring Confederation.

My family has lived in the Seal Beach area for almost thirty years. When not working, I enjoy cooking, travelling, and going to restaurants and concerts. Our sons are 18 and 20 and go to Arizona State University and the University of California, Berkeley, so we find ourselves on quick trips to Phoenix and the Bay Area with some regularity. I like to say that instead of being empty nesters, we are bird launchers. We will see if they return to the nest. In the meantime, without kids at home, we have been going to lots of concerts. The next few on the calendar are Chris Stapleton, the Teskey Brothers, and Nathaniel Rateliff. In January, we will be seeing the Mood Lifters: A Tribute to Rush, featuring CRF's own Ben King on guitar, at the Tiki Room in Costa Mesa. Occasionally, my work world and personal life collide!

Kyra, Michael and their sons at Chichen Itza.

The fifth family member, Milo.

Ask The Receiver

By Peter A. Davidson*

Q I was involved in a now-closed receivership. I want access to some of the records of the entity that was in receivership and some emails and information I believe was sent to the receiver or her counsel. I contacted the former receiver. She said the entity's records she had have been destroyed and if I want emails or information she or her counsel have, I would have to subpoena them and pay for the cost of locating and producing the items. Is this appropriate?

A Probably. It depends on what the order approving the receiver's final account and report, or other orders, state about record retention and production. A receiver is not public storage. Once the case is over, the receiver should not be obligated to keep, maintain or produce records or information obtained from the entity or property in receivership, or generated during the case. At the end of the case, the receiver should ask the court to instruct the receiver concerning disposition of the receivership's records, both physical and digital. In some cases, it may be appropriate to turn them over to the defendant (for example, when the defendant cures a default or settles with the plaintiff). In other cases, it may be appropriate to turn them over to the plaintiff (for example, in government enforcement or fraud cases, or in partnership or corporate disputes when the plaintiff is successful). In many cases no party wants the records and it is appropriate for the court to order the receiver to abandon them. In such cases, the receiver needs to determine whether he or she can simply throw them away or whether they need to be shredded or otherwise destroyed. The receiver should also ask the court to authorize the receiver to reserve funds for such purpose or direct one or more of the parties to advance funds for such purpose.

Even if the receiver has destroyed the records obtained from a receivership entity or generated during the case, the receiver and the professionals are likely to have their own records relating to the case, hard copies and/or digital. Once the case is over, and the receiver has been discharged, the former receiver should not have to bear the burden of searching for or producing requested documents or information. It is, therefore, appropriate for the receiver to ask the court to provide, in the order discharging the

receiver, that anyone seeking information or documents from the receiver, or the professionals, must pay for the time and cost of production. The Eighth Circuit in *United States v. Kelly*, 70 F4th 482, 487 (8th Cir. 2023) approved a district court order which required requesting parties to pay the costs that would be incurred by the former receiver producing records.

Receivers should consider including the following language in their final account and report orders to cover this issue:

"If anyone contacts the receiver, an employee of the receiver, or the receiver's professionals; or the receiver, his employees, or the receiver's professionals are served with subpoenas or court orders, that require attendance and/or preparation or production of information and/or documents, for any purpose whatsoever, related to the receivership, the assets or entities in receivership, or the services of the receiver, his employees, or his professionals in this matter, including, but not limited to, discovery, deposition, hearing or trial, the requesting party or entity shall pay, in advance, the estimated fees and costs associated with the requested services and/or production, portal to portal."

Q I am a defendant in a receivership, where the receiver has moved to sell my property. If the court approves the sale, I want to appeal. My attorney says an order approving the sale cannot be directly appealed and I will have to wait until the end of the case, which could be years from now. Is this correct?

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A It depends on whether your case is in federal or state court. In the Fifth Circuit case *SEC v. Barton*, 2023 WL 4060191, the defendant appealed the district court's order approving the receiver's sale of the defendant's home, for the purpose of recouping funds for defrauded investors. The Circuit held the order was a non-appealable interlocutory order and dismissed the appeal. 28 U.S.C. §1292 (a)(2) states appellate courts, in receivership cases, only have jurisdiction over appeals from: "Interlocutory orders appointing receivers, or refusing orders to wind up receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other disposal of property." The Circuit held since the order was not an order appointing the receiver or refusing to windup the receivership, the order was not appealable. It was simply an order entered in the normal course of a receivership. "We consider generally the sale of real property in the ordinary cause of a receivership." *Id.* In so holding, the Circuit assumed that the language: "or to take steps to accomplish the purposes thereof," in the statute refers to "refusing orders to wind up receiverships," and is not an independent basis for appellate jurisdiction. The Ninth Circuit concurs. In *SEC v. American Principals Holdings, Inc.*, 817 F.2d 1349, 1350 (9th Cir. 1987) it explains: "The paragraph is not a model of clear expository writing. The ambiguity is whether the language means "orders to take steps," as appellant urges, or "orders refusing to take steps," as appellees urge. The appellees' interpretation, however, requires less grammatical torture of the statute than the interpretation offered by the appellant." The Circuit also references a prior opinion and Wright & Miller, that the statute is written to permit interlocutory appeals from orders that refuse to take steps to accomplish the purpose of the receivership, not steps to accomplish the purposes of thereof. *Id.* at 1351. *But see, United States v. "A" Manufacturing Co*, 541 F.2d 504 (5th Cir. 1976) (permitting an appeal from a receiver's sale). The Fifth Circuit in *Barton, supra,* simply ignores its own prior decision in *"A" Manufacturing,* which seems to be an aberration.

The situation is different if your case is in California state court, where the general rule is orders approving a receiver's sale are appealable. One of the leading cases, *City of Riverside v. Horspool*, 223 Cal. App. 4th 670 (2014) *(Horspool)*, points out that, at first blush, [p]rocedurally, the order approving the sale of the property is not appealable because such an order is not included in the list of appealable interlocutory orders found in Code of Civil Procedure section 904.1." *Id.* at 683. However, the *Horspool* Court found such orders are appealable for a few reasons. Many courts and practitioners cite its conclusion that "an order approving the sale of assets is final and appealable" as the law. While that is sort of true, that is not exactly what the court said. It said: "Thus it has been held that an order approving the sale of assets is final and appealable as a final determination in a special proceeding." *Id.* (emphasis added). All of the cases the court cites for this statement were *special proceedings.* Indeed, *Horspool* itself was a special proceeding: a Health and Safety Code, nuisance abatement case. "As a general rule, a special proceeding is confined to the type of case which was not, under the common law or equity practice, either an action at law or suit in equity." *Tidewater Associated Oil Co. v. Superior Court*, 43 Cal. 815, 822 (1955). See, Cal. Civ. Proc. Code §§ 22 and 23.

The appealability of asset sale orders is not limited to special proceedings, however, if the order satisfies the "collateral order doctrine." *Horspool* held the receiver's sale did. "[A]n interlocutory judgment is nevertheless appealable to the extent that it requires as a collateral matter, the immediate payment of money or the performance forthwith of an act." *Horspool Id.* This statement, however, is a short-hand, incomplete, statement of the doctrine. Under the collateral order doctrine, an order is appealable if: "(1) it is collateral to the subject matter of the litigation; (2) it is final as to the collateral matter; and (3) it directs the payment of money by the appellant or the performance of an act by or against the appellant." *Marsh v. Mountain Zephyr Inc.,* 43 Cal. App. 4th 289, 297-298 (1996) [emphasis added]. An ordered sale of an appellant's property, to pay a receiver's fees, satisfies these requirements because it would "deprive her of a portion of the property or the proceeds derived from a sale thereof." *Fish v. Fish,* 216 Cal. 14,16 (1932); see also, *California etc. Assn. v. Superior Court,* 8 Cal. App. 711 (1908)(writ of prohibition to restrain receiver from selling personal property denied because the order approving the sale was appealable).

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Superficially, it might appear that the federal rule is better for a receiver. The receiver avoids having to deal with an appeal of the sale and the sale is only appealable at the end of the case, after the receiver's final report is approved and the receiver discharged. By then the affected party may no longer be interested in appealing or the issues in dispute may have been resolved. Also, because the receiver has been discharged, it may no longer be the receiver's problem. What this misses, however, and why California's rule may be preferable, is that a buyer (and more important the buyer's title company) will not know, maybe for years, whether the sale is final. Also, because the receiver is gone, the buyer may have to defend the appeal itself. Under the California rule, all parties know, within at least 60 days, if the order is being appealed, and the receiver is likely still present to possibly deal the any appeal. This certainty should make it easier for California receivers to close sales. Note: if the sale closes, before an appellant obtains a stay, the appeal may be moot. Cal. Civ. Proc. Code §917.4; *Horspool*, supra, at 685. ("Additionally, this issue is moot because the sale became final due to William's inaction in obtaining an undertaking to stay the trial court proceedings."). Federal courts agree. *U.S. v. Antiques Ltd. Partnership*, 760 F.3d 668,673 (7th Cir. 2014)("[I]n the absence of a stay, or some other circumstance that would cast a cloud over the receiver's sale...a closed sale (that is, a sale that has been executed, not just contracted for) of a debtor's assets can't be reopened.").

Peter A. Davidson *is a Partner of Ervin Cohen & Jessup LLP a Beverly Hills Law Firm. His practice includes representing Receivers and acting as a Receiver in State and Federal Court.*

Peter A. Davidson

Worker Classification

BY CHAD C. COOMBS*

Whether by mistake or on purpose, businesses may improperly treat their workers as independent contractors instead of as employees. Doing so can be very costly. Misclassifying workers may violate tax and labor laws and could be discovered in many ways, such as in a government audit or when a worker files a claim for uncollected payroll taxes or unemployment benefits.

Businesses may prefer to treat their workers as independent contractors to avoid paying for employee benefits and workers' compensation insurance, but their workers might not make the required estimated tax payments as independent contractors. Tax authorities are therefore often aggressive in cracking down on the misclassification of workers as independent contractors.

Complicating matters are differing federal and state worker classification standards. For federal tax purposes, a worker is a common law employee if the business has the right to control what will be done and how it will be done.[1] While the Internal Revenue Service has a 20-factor test,[2] it advises that its primary method to classify a worker under the common law rules is to consider every piece of information with evidence falling into three main categories:

1) Behavioral: Does the company control or have the right to control what the worker does and how the worker does his or her job?

2) Financial: Are the business aspects of the worker's job controlled by the payer? (these include things like how worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.)

3) Type of Relationship: Are there written contracts or employee-type benefits (i.e. pension plan, insurance, vacation pay, etc.)? Will the relationship continue and is the work performed a key aspect of the business? [3]

No single fact is determinative. Rather, the entire relationship and the extent of the business's right and extent to control the worker are examined. A business may ask the IRS to determine the status of a worker[4] and in certain circumstances, obtain relief of any assessed penalties.[5]

In contrast, California recently adopted a test known as the "ABC test" to determine whether a worker is an employee or independent contractor. It started in 2018 with the California Supreme Court decision in *Dynamex Operations W. v. Superior Court and Charles Lee et al., Real Party in Interest.*[6] The California Supreme Court held that workers are presumptively employees for the purpose of California wage orders and that the burden is on the hiring entity to establish that a worker is an independent contractor. To establish that a worker is an independent contractor, the business hiring the worker must prove that all parts of ABC test are satisfied.[7]

The California legislature subsequently codified the ABC test with certain exceptions and expanded its application beyond wage orders.[8] Under the California ABC test, a worker is now generally deemed to be an employee and not an independent contractor unless the hiring entity can prove that all three of the following conditions are met:

(A) The worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

(B) The worker performs work that is outside the usual course of the hiring entity's business.

(C) The worker is customarily engaged in an

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independently established trade, occupation, or business of the same nature as that involved in the work performed.[9]

The ABC test is the default position and applies to most workers, but there are exceptions and different rules and tests that apply to some occupations, workers and contracting relationships.[10] California businesses seeking to avoid application of the ABC test by using out-of-state workers must be careful as many other states have also adopted the ABC test.

What, then, should a receiver do if treatment of a worker as an independent contractor is questionable under any applicable standard? In such case, the receiver should be extremely cautious and quickly get labor and tax law advice.[11] A receiver does not want to continue any unlawful behavior and potentially incur further penalties to the business in receivership and/or personal liability for any federal tax claims that may arise from the misclassification of workers.[12]

1 See Treas. Reg. 31.3121(d)–1(c).

2 See Internal Revenue Ruling 87-41, 1987-1 CB 296.

3 www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee (as of October 6, 2023); Internal Revenue Manual Section 4.23.5.7.1;; IRS Publication 15-A, pages 4, 6-9 (2023); and IRS Publication 1779 (2023).

4 IRS Form SS-8.

5 See, e.g., the Voluntary Classification Settlement Program (IRS Form 8952) and Section 530 Relief (IRS Publication 1976). Such relief might not be available for state tax purposes.

6 4 Cal.5th 903 (Cal. 2018).

7 Id. at pages 956-957.

8 See California Assembly Bill 5 (AB 5) enacted in 2019 and California Assembly Bill 2257 enacted in 2020 (revising AB 5); California Labor Code Sections 2775-2784; and California Unemployment Insurance Code Section 621.

9 See California Labor Code Section 2775(b)(1) and California Unemployment Insurance Code Section 621(b). See also www.labor.ca.gov/employmentstatus/abctest/ (as of October 6, 2023) and https://edd.ca.gov/en/payroll_taxes/employment-status/ (as of October 6, 2023).

10 In addition, in November 2020, California voters passed Proposition 22 which allows businesses such as Uber and Lyft to treat their drivers as independent contractors. In March 2023, the California Court of Appeals in Castellanos v. State of California, 89 Cal.App.5th 131 (2023), overturned a lower court ruling that invalidated Prop. 22. In June 2023, the California Supreme Court agreed to hear the case (pending as of this writing).

11 For further discussion of worker classification issues, see Kalinski and Perez, Walking the Tightrope of Employment Tax Law, Los Angeles Lawyer, Volume 46, No. 6, page 22 (September 2023).

12 See 31 U.S.C. Section 3713 regarding personal liability of a receiver. See also Coombs, Tax Closure, Receivership News, Issue 76, page 22 (Winter 2022). A receiver could also be civilly liable under I.R.C. Section 6672 and/or criminally liable under I.R.C. Section 7202 for failure to pay withholding taxes to the IRS.

***Chad Coombs** is chief tax counsel at Thomas Seaman Company in Irvine, CA and an expert in insolvency tax law.*

Chad Coombs

THE LIST

While there is no court-approved list of Receivers, the following is a partial list of Receivers who are members of the California Receivers Forum and have the indicated educational experience. Inclusion on this List shall not be deemed an endorsement of any of the names listed below by the *Receivership News*, the California Receivers Forum, or any of its Regional Councils. This is a paid advertisement.

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Heard in the Halls: Notes, Observations, and Gossip Relayed

By Ryan Baker*

Welcome to the latest edition of Heard in the Halls. Please provide your snippets of news, questions or comments about receivership issues or the professional community by telephone, mail, fax, or email to: Ryan C. Baker at Douglas Wilson Companies, 19200 Von Karman Ave, Suite 400, Irvine, California 92612; Phone (213) 550-2242; Fax: 800-757-3668 (800-pls-don't), Email: rbaker@douglaswilson.com.

Here is what we have *Heard in the Halls* ...

- **CRF's Formation of a Referral Committee:** Periodically, our CRF administration team receives requests from attorneys and others interested in engaging receivers. But who should they refer them to? This issue was brought to the attention of the CRF Board for consideration to develop a mechanism to appropriately handle such requests. At a recent CRF Board Meeting, the Board agreed to create a committee, led by Steve Donell, that would receive inbound requests for receiver referrals and, understanding the issues and expertise needed, the committee would make a recommendation as to qualified potential CRF members who may be able to handle the assignment. To maintain the integrity of the committee, one of its main tenets is that the matter may not be referred to any of the committee members.
- **Uptick in Receiverships:** In another (un)scientific poll done by yours truly, a noted sharp uptick in receivership activity is being reported throughout the receivership industry. By no means is the activity a tidal wave, however, it may be an indication of more to come. Despite the large amount of distress being seen in the commercial real estate sector, particularly commercial office, there has not been the deluge of appointments one might expect. But attorneys are reporting that their lender clients have been approaching them more and more regarding their options for their distressed collateral. However, in this cycle lenders are – at least for now – being more hesitant to pursue their rights, mainly because an exit strategy has not yet come into focus.
- **Playing the End Game – CRF Education Panel:** The CRF held another one of its famed education panels at Loeb & Loeb, LLP's offices in Century City on October 17, 2023. Moderated by Ben King from Loeb & Loeb, LLP, the panel covered the ever-interesting and ever-pertinent topic of post-judgment receiverships—the source of their authority, how they're implemented, how they're best used, and useful strategies receivers can implement to maximize the value of a post-judgment receiverships. Panelists also included the very talented Kyra Andrassy from Smiley Wang-Ekvall, LLP, Oren Bitan from Buchalter LLP, and David Stapleton from the Stapleton Group.
- **Gearing Up for Loyola X:** Winter is coming... And before you know it, Loyola X will be here! So be sure to register soon to take advantage of the early-bird pricing. As a reminder the California Receiver's Forum will be hosting the biennial receivership conference, the Loyola X Symposium, on January 18-19, 2024. This year's theme, Riding the Economic Wave, aptly combines where the economic tides appear to be rolling, with this year's location: The Hyatt Regency in Long Beach. Mark your calendars and be sure to attend this event, get up to date with all of the latest in receivership education, and enjoy seeing friends and colleagues from around the receivership industry.
- **Loyola X Keynote:** Our very own **Bob Mosier** will be headlining with the Keynote speech at the conference. In case you missed it on the front page, this issue includes an interview with the man himself touching on some of the topics he will be covering. The conference will also be featuring many evocative and interesting panels. These will also include a dual track approach to the afternoon sessions presenting a Receivership 101 track for newer members as well as a secondary track with more advanced panels on all our favorite topics.
- **Last Chance for Sponsorship Opportunities:** The Sponsorship Committee invites you to become a Sponsor of Loyola X! There are many options to choose from to best get your message in front of members. The distress industry is picking up in activity and the conference will be the perfect spot to spread your firm's name to the distressed community. Visit https://receivers.org/loyola-x-symposium/ and click the "Sponsor/Exhibit" link at the top to review the many options available.
- **Spread the Word:** Know someone thinking about getting started in the receivership industry? Steer them to www.receivers.org to order a past Loyola program 4-disc DVD set for $75 teaching receivership Basics and including sample pleadings.

Ryan Baker

**Ryan Baker has been a Receiver for nearly 15-years and is with Douglas Wilson Companies. Mr. Baker has overseen receiverships of nearly every flavor including operating companies, rents and profits, construction, environmental contamination, regulatory, post judgment, and many, many others.*

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