



# NEWS

A Publication of the  
California Receivers Forum



## Interview with Judge Richard L. Fruin, Jr.

BY KEVIN SINGER\*

Recently, I had the honor of interviewing the Honorable Judge Richard L. Fruin, Jr. who is a well-known and highly respected Judge for the Los Angeles County Superior Court.

Below are excerpts from our interview.

**Question (“Q”):** Where were you born and raised? What were some of your fondest memories growing up?

**Answer (“A”):** I was a Navy brat. My father was a Navy doctor. I grew up on military bases in various states. My memories include long-distant car trips—parents, four children and our dog—visiting my grandfather’s farm in Illinois. As a teenager, I was a page in the U.S. House of Representatives and otherwise worked on Capitol Hill in Washington, D.C.

**Q:** As an attendee of the University of Pennsylvania, what areas of study and activities were you most passionate about in your undergraduate studies?

**A:** I matriculated to UPenn as an architecture student, but I changed my major to economics, and took most of my classes in the Wharton School. I was on the crew and fencing teams.

*Continued on page 4...*

## The CRF’s Partnership with the California Bankruptcy Forum Continues

BY KYRA ANDRASSY\*

In May, the California Receivers Forum continued its partnership with the California Bankruptcy Forum by organizing three panels on receivership issues at the annual California Bankruptcy Forum in Santa Barbara.



Panel on the use of Bankruptcy Code in equity receiverships kicked off the conference. L-R: Kathy Phelps, Brad Foster, and Matthew Pham.

**Kathy Phelps** of Raines Feldman Littrell LLP, **Brad Foster** of FTI Consulting, and **Matthew Pham** of Allen Matkins Leck Gamble Mallory & Natsis LLP kicked off the conference on Friday with a lively panel on the

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# 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.*

As I read through this issue's articles, I continue to be impressed by the talent in our membership.

Our regular columnists are always an interesting read. **Peter Davidson** is a master in receivership law. Ask the Receiver continues to keep us abreast of prominent cases affecting receivers. **Ryan Baker**'s column Heard in the Halls reports on the changes at Stanley Mosk's Writs and Receivers Department and the mergers of prominent insolvency firms.

We have two articles covering education programs recently presented by CRF. **Kyra Andrassy** produced three education programs that CRF presented at the California Bankruptcy Insolvency Conference in Santa Barbara. Her article provides a recap of these initiatives, which cover the use of the bankruptcy code in equity receiverships, commercial real estate receiverships, and the different types of receiverships, illustrating how and when they are used.

If you missed our program on AI presented by **Richard Munro** and **Ashwin Rangan**, be sure to read their article Artificial Intelligence - 9 Things You Should Know to embrace AI and enhance the effectiveness of your receiver practice.

**Oren Bitan** and **Danielle Mayer** pose the question When Does Seeking the Appointment of a Receiver Make More Sense Than Bankruptcy? I thought the answer was always, but apparently it is not quite that simple.

Once again, **Kevin Singer** presents an interview with a judge. This issue features **Judge Richard L. Fruin, Jr.**, a well-known and highly respected Judge of the Los Angeles Superior Court.

We proudly feature a profile of **Douglas Wilson**, a long-time supporter of CRF. His prominence as a receiver is unsurpassed. The story of how he achieved such success since his first receivership assignment in 1990 is fun and interesting.

I want to acknowledge the wordsmanship of our editors **Michael Muse-Fisher** and **Blake Alsbrook**. I want to thank our advertisers who make this publication possible: BUCHALTER; DAWGS VACANT PROPERTY SECURITY; DOUGLAS WILSON COMPANIES; ERVIN COHEN & JESSUP LLP; GEFFEN REAL ESTATE; PERRY GROUP; PLAYA VISTA PROPERTY MANAGEMENT INC; NATIONAL FRANCHISE SALES; ERIC SACKLER & ASSOCIATES, and THE SEYMOUR WEINBERGER GROUP.

If you missed any issues of *Receivership News*, downloads for substantially all of our issues are available on CRF's website: <https://receivers.org/receivership-news/receivership-news-issues/>. As Peter Davidson suggests in his column, "Readers are encouraged to cite, copy, and use Ask the Receiver and Receivership News articles and information."

Please enjoy this issue and have a wonderful summer.



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# Co-Editors' Comments

BY MICHAEL MUSE-FISHER\* AND BLAKE ALSBROOK\*



Michael Muse-Fisher

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

Summer is now in full swing, and we here at *Receivership News* believe it to be our duty to provide the best poolside reading material in the nation, if not the world, to our members. So here it is: Put down that cold Mai Tai and pick up **Ryan Baker's** newest gossip about the seismic shifts going on at Stanley Mosk Courthouse! More a historical biography type? Stop grilling those dogs and read about the rise to fame of two legends: **Hon. Richard L. Fruin, Jr.** and our own **Douglas Wilson**, who are both featured heavily in this issue. And, for you self-help buffs, jump into a hammock and let **Oren Bitan** and **Danielle Mayer's** article help you cool off and learn why receivership is so much better than bankruptcy.

As an aside, for those of you who missed our Spring issue of *Receivership News*, I wanted to congratulate my Co-Editor, **Michael Muse-Fisher**, for being anointed Chair of CRF. Huzzah good sir!! After his appointment to that lofty and demanding role, however, Muse promptly departed for Barbados, which is where I understand he is now summering (and working hard in preparation for Les Voiles de Saint-Tropez Regatta, where he will be in the fall)... (in case his clients are reading this, I made that all up). Given Muse's ongoing sabbatical, he asked that I write the Co-Editors' comments for this sizzling summer issue, and I was happy to oblige. A huge thanks to all of the folks who pitched in to make this installment possible.

-Blake



Blake Alsbrook

\***Blake Alsbrook** is a Partner of Ervin Cohen & Jessup, LLP. He is a receiver and counsel for prominent receivers.

## A Fond Farewell and a Heartfelt "Thank You" to two Departing Judges From the Los Angeles Superior Court Writs and Receivers Departments

The Los Angeles Superior Court (Stanley Mosk), is unique in California in that it has three (3) dedicated writs and receivership courts. One can chalk this up to the sheer size of the Los Angeles Superior Court system – it is not only the largest superior court system in California, it is the largest in the nation.

For eight years, the **Honorable Mary H. Strobel (ret.)** has presided as a judge in the writs and receivers department (Department 82), and for nearly seven years, the **Honorable Mitchell L. Beckloff (ret.)** has presided as a judge in the writs and receivers department (Department 86). Sadly for us practitioners (but maybe not for the Judges), Judge Strobel and Judge Beckloff recently retired, on June 12, 2023, and April 5, 2024, respectively. Judges Strobel and Beckloff epitomized the role of Judge. They were both extremely thorough, considerate, and well versed in the various legal

and factual issues thrown their way. Moreover, they did not shy away from making difficult decisions. Even if they ruled against you, you know you received a full and fair opportunity to be heard, and that the Judges' decisions were reached after a full consideration of all the facts and legal issues.

Over the years, the California Receivers Forum has been fortunate to have Judge Strobel and Judge Beckloff share their wisdom and judicial guidance as panelists and contributors to *Receivership News*. We will deeply miss their role as Judges, but all is not lost. They have joined Signature Resolution to take on roles as a mediator, arbitrator, judge pro tem, and judicial referee. Notwithstanding their new roles, we are hopeful that Judge Strobel and Judge Beckloff will not be strangers to the California Receivers Forum. Thank you for all that you have done, and all the best to your new adventures.

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**Q:** Was there a specific reason you chose to attend University of Pennsylvania undergraduate?

**A:** I went to Pennsylvania because it offered a broad curriculum and also because it was close to home (we then lived at NAS Lakehurst, New Jersey).

**Q:** Did you know from an early age that you were going to pursue law?

**A:** No, I wanted to be an archaeologist, then an architect, but law was always in the back of my mind.

**Q:** I see you continued on at the University of California, Berkeley School of Law. Was that your top pick and was there a professor who made a lasting impact on you and why?

**A:** Yes, Berkeley was my pick as a law school. It was a premium education, and at that time very inexpensive. Perhaps Dean William Prosser, the torts guru, was my most memorable professor.



Judge Fruin volunteering at the Roundhouse Aquarium in Manhattan Beach. This facility educates children about the marine environment.

**Q:** I see you were one of the founders of the Roundhouse Marine Teaching Center in 1979 and continued as the Director for over 40 years. How did you get involved in this organization and what is its primary mission?

**A:** We live near the beach. I thought we should have a nearby aquarium to learn about the marine environment.

**Q:** In 1995, Governor Pete Wilson appointed you to be a Superior Court Judge. Did you have an opportunity to meet the Governor and what were your impressions of him?

**A:** No. I interviewed with Governor Wilson's judicial appointments secretary (John Davies).

**Q:** Since your 1995 appointment, what types of cases have you been primarily handling?

**A:** I was four years at the Compton Courthouse doing criminal, six months as a pro tem on the Court of Appeal, 2nd Appellate District, Division 7 and then 22 years in the Mosk Courthouse presiding as an individual calendar judge doing civil litigation. I am also certified to conduct cases under the California Environmental Quality Act.

**Q:** In 1996, you began teaching legal classes at Compton high school. What inspired to take on this endeavor and was it rewarding?

**A:** Compton High School was close to the Compton Courthouse. I wanted Compton students to experience and understand our justice system.

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**Q:** In 1999 you were a co-author of Judicial Outreach on a Shoestring: A Working Manual. What is this book about, and what inspired you to take on this project?

**A:** Judicial Outreach—explaining the work of the courts to audiences—has been a special interest. At the time, I was chair of the ABA's (American Bar Association) Judicial Division and was inspired by outreach programs developed by judges in other states. The book described the outreach programs, so that readers could imitate the programs in their communities.

**Q:** Has you seen changes in the Judiciary over the years and what are some of the positives and negatives?

**A:** Yes. Diversity has increased female and minority representation on the bench. Judicial education is better. The improvements in electronic research and communication has improved the quality of judicial services.

**Q:** What are your general thoughts on appointing Court Receivers?

**A:** Being able to appoint Court Receivers is often essential to obtaining a fair judicial result.

**Q:** What are some of the factors that persuade you to appointment of Court Receiver or Partition Referees?

**A:** I use Receivers to resolve property disputes by arranging the sale of the properties at a fair price.

**Q:** What qualifications do you like to see in the receivers that you appoint to your cases?

**A:** Understanding the legal requirements of selling properties under court supervision, having actual experience in selling properties, and being able to work with contentious attorneys.

**Q:** On motions to appoint receivers, what types of arguments tend to be most persuasive to convince you to appointment a court receiver?

**A:** Find a good receiver and stick with him or her.

**Q:** Once you have appointed a receiver, how much communications and updates would you like to receive from your receiver?

**A:** The communications between the court and a receiver varies case-by-case. Usually I rely on the recommendation made by receivers after they have viewed the property and met with the principals.



*Judge Fruin receiving his high school diploma from then Vice President Nixon in 1957.*

**Q:** When do you want to see receivers who are not attorneys to retain counsel?

**A:** Only when the circumstances require the application of unusual statutory procedures.

**Q:** What is the one piece of advice you would like to share with anyone that is going to appear before your Department?

**A:** I need parties to tell me the true facts—be accurate, have support, and think about what practical options are available.

**Q:** What do you like to do when you are not working as a Judge?

**A:** Swim, read books, write in a diary, visit grandchildren.

Thank you for taking the time to participate in this interview with Receivership News.



*\*Kevin Singer is the President of Receivership Specialists with offices throughout the Southwest. Mr. Singer has been a Court Appointed Officer in over 550 cases in the last 24 years.*

*Kevin Singer*





Panel on commercial real estate receivership. L-R: Daniel Miggins, Meagen Leary, and Krista Freitag.



Bay Area Receivers Group. L-R: Danielle Mayer, Gerard Keena, and Ori Blumenfeld.

use of the Bankruptcy Code in equity receiverships. Despite the 8 a.m. start time, it was standing room only as they talked about when the Bankruptcy Code is useful in equity receiverships and when it is not. They described the utility of drawing on the Bankruptcy Code for such things as claims procedures, the sale of assets, the allowance of secured claims, and the approval of settlements. However, the equities of a receivership are sometimes at odds with the Bankruptcy Code. As an example, the panelists discussed how the Bankruptcy Code's distribution methodology is generally disfavored in equity receiverships, where investors are often prioritized over other unsecured creditors. In federal equity receiverships, you can draw on the Bankruptcy Code when it would further the equitable goals of a receivership and ignore it when it would not.

Following that panel was a timely panel on commercial real estate receiverships, with **Krista Freitag** of E3 Advisors, **Meagen Leary** of Duane Morris, and CRF board member **Daniel Miggins** of Hilco Real Estate. With the pressures on commercial real estate in an environment with high interest rates, vacant office space, and a difficult regulatory environment, commercial real estate

receiverships are proving to be a useful tool in certain circumstances. The panelists discussed when receiverships can be helpful and when there might be preferable alternatives. Meagen Leary, who typically represents secured creditors, explained how she counsels her clients holding defaulted loans against commercial real estate. Daniel Miggins shared his perspectives and explained how the utility of a receivership will depend on the type of loan and the class of property. Krista Freitag gave the receiver's perspective, including the advantages and disadvantages of a receivership and the limitations of what a receiver can do. Given the rise in commercial real estate receiverships, the topic was a useful one.

On Saturday, early risers **Danielle Mayer** of Buchalter, **Ori Blumenfeld** of Levinson Arshonsky Kurtz & Komsky, LLP, and CRF board member **Gerard Keena** of Bay Area Receivers Group spoke about the different types of receiverships and how and when they are used. They discussed the role of a receiver in different situations and the fiduciary obligation owed by a receiver, who is typically considered an agent of the court. They discussed how receivers can be useful in business disputes, battles over ownership and disposition of real property, cases involving fraud, and the enforcement of judgments, to name just a few. The panel was a great introduction to the world of receiverships.

The California Receivers Forum looks forward to continuing this partnership with the California Bankruptcy Forum in the years to come.



\*Kyra Andrassy is a partner with Raines Feldman Littrell who does insolvency and receivership work. She is a board member of the California Receivers Forum.

Kyra Andrassy

# Artificial Intelligence – 9 Things You Should Know

BY ASHWIN RANGAN\* AND RICHARD MUNRO\*

Artificial Intelligence (AI) and its latest evolution into generative AI represents a seminal moment in the history of technology. Many people are excited by the prospect of a future where humankind is assisted by infinitely knowledgeable machines, rendering a powerful and potent combination. Equally, many people fear the ramification of AI and risks to property, intellectual property and reputation. Some of these negative connotations have been shaped by dystopian tropes including books, like “2001: A Space Odyssey” written by Arthur C. Clarke in 1968 and the Terminator series of films, each depicting a future where humankind is controlled by cybernetic organisms, or Cyborgs.

How should receivers and fiduciaries approach AI – glass half empty or glass half full?

We submit that receivers and fiduciaries should embrace AI and its potential applications enthusiastically. We advocate that AI is meant to be used, especially to define and develop new applications for handling tedious analytical work. AI applications promise to do such work much quicker and more accurately. Such applications can expose revealing data insights and trends, particularly where fraud is involved.

Here are 9 things that you need to do and know, to embrace AI applications and enhance the effectiveness of your receiver and fiduciary practice.

## 1. START USING GENERATIVE AI (GEN AI)

Gen AI is easily accessible today. These are called “models”, in the AI vernacular. You can use free models, like

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Anthropic with its conversational interface called Claude, or PerplexityAI, or OpenAI with its ChatGPT conversational interface... just to name a few. The key is to get started. Using Gen AI is the easiest way to experience it.

## **2. BE BOLD**

Gen AI is only a tool. Admittedly a very advanced tool, but a tool nonetheless. It does not judge you for how you use it. And, no one is an expert at using this tool. In fact, gaining expertise is so hard that it has been given an exotic name – Prompt Engineering. So, when prompted to interact with the conversational interface, be bold. Ask those edgy questions you are yearning to ask. You are likely to be amazed by the answers. Use different modes of prompting including words, pictures etc.

## **3. BE CLEAR IN ASKING FOR WHAT YOU WANT**

The “Gen” in Gen AI stands for “generative”. In other words, the machine is generating outputs. The way it does so is by associating words, from your prompting inputs to the vast engines it runs in the background. The more context you give the machine, the better it knows how to associate your prompts with its knowledge databases in the background. Precision in your requests is likely to generate better quality results.

## **4. BE CLEAR IN HOW YOU WANT TO SEE THE OUTPUTS**

Gen AI models are increasingly multimodal. They can

take text inputs and deliver image outputs, image inputs and deliver full-motion video outputs, and full-motion video inputs to create text output. When you provide inputs, specify how you want to see the output.

## **5. TRUST GEN AI BUT VERIFY OUTPUTS**

Understand what you are asking Gen AI models to do to ensure a higher quality and accurate response. If you smell anything fishy in the answers you receive, validate results from other sources. In fact, verification is always a good idea. Remember that Gen AI is “generative.” It is using word association to deliver ‘best-fit’ answers. It does not know good from bad, right from wrong, legal from illegal, moral from immoral...

## **6. THINK ABOUT USING EMERGING AI USE CASE APPLICATIONS AND COLLABORATING IN DEVELOPING USE APPLICATIONS TO TRANSFORM YOUR PRACTICE WORKFLOW PROCESSES.**

Gen AI is steadily getting good at taking a series of tasks and transforming them into an automated series of tasks, gluing together “workflows.” Today, you can transform routine and mundane tasks, reducing, if not fully eliminating, the need for human touch.

## **7. USE AI TO SEE “HIDDEN PATTERNS”**

Advanced AI can help you with previously “impossible tasks.” For example, you can sample huge amounts of data to identify questionable transactions, uncover frauds and suspicious financial flows, gaining valuable insights into large datasets.

## **8. MANAGE RISKS FROM USING AI**

AI applications carry risks associated with false negatives and positives arising from poorly or loosely defined search parameters, sparsely populated datasets or inherent biases in datasets. Use AI wisely. Results, if not vetted and validated before further use, can easily harm reputations for brands and people.

## **9. INCREASE YOUR CAPABILITIES WITH EXISTING RESOURCES AND STAY AHEAD OF COMPETITORS**

First, we had an abacus, next we had logarithmic tables, next the slide rule, then handheld electronic calculators, most recently spreadsheets and databases running on personal computers, and now we have AI and its generative applications. Each advance was a monumental leap forward

*Continued on page 9...*



in technological enablement and capability. Each advance enabled financial and other professionals to gain a productivity edge. Early adopters gained a competitive advantage.

AI is a huge opportunity for accounting and audit professions, receivers and other fiduciaries to accelerate their capabilities to crunch big data, gleaning hitherto hidden insights from data, especially from complex, unstructured, big data.

Finally, AI is here to stay. AI represents the next seminal moment in tech history. Embrace its uses and applications or risk being less effective than competitors. Jump in today, sign up for a subscription to a major AI model and start using it. Make it safe for your teams to access and to use. Gen AI adoption is rapidly advancing. It is set to be as ubiquitous as your favorite search engine.

The question is: How far along are you on the adoption curve?

*\*Ashwin Rangan is Managing Director of The Insightful Group. Until recently, Ashwin served as Chief Innovation & Information Officer with ICANN, the Internet Corporation for Assigned Names and Numbers. ICANN is uniquely responsible for the security, stability and resiliency of the Internet globally.*

*Prior, Ashwin served as Chief Information Officer with large Fortune 500 companies, like Rockwell International, Walmart and Bank of America. Ashwin is a speaker, writer, thought-leader and consultant in subjects at the leading edge of technologies – particularly cybersecurity, quantum computing and AI.*



Ashwin Rangan

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# When Does Seeking the Appointment of a Receiver Make More Sense Than Bankruptcy?

BY OREN BITAN\* AND DANIELLE M. MAYER\*

The court appointment of a receiver can provide a viable alternative to traditional workouts or bankruptcy. A receiver is a tool that can assist creditors in recovering funds in default or help troubled companies avoid bankruptcy. A receiver can be especially beneficial where the equitable powers of the court can be utilized to maximize the value of an asset or to maintain the status quo. In these situations, a receivership may be an effective tool for creating, or preserving, value where all else has failed.

A receivership is created by court order but is not a legal action. It is a remedy in a pending action. A creditor can petition the court to appoint a receiver in order to

protect assets or a business. This is done during a pending action such as shareholder/partner disagreements, family law issues, health and safety issues, or foreclosure of a deed of trust. A receivership is a protective measure that shelters assets or a business while some other problem is tackled. The court hands over certain assets or an entire business to the receiver and authorizes his or her actions. The receiver specifically does not settle the disputes at hand (although a receiver can often help resolve specific issues).

Generally speaking, the main goals of a receivership are to: (1) protect and maintain property or assets while litigation is pending; (2) maximize profits for the benefit of the receivership estate to avoid liquidation or bankruptcy; (3) enforce compliance with government standards and regulations; and (4) if necessary, hire new management or other professionals to run the business more efficiently and profitably.

Receivers have a broad array of powers fashioned by the appointing court, based on the circumstances of the case, typically including the power to open and maintain bank accounts, enter into leases and contracts, to hire professionals as needed, and to engage in any other business activity that is deemed necessary and reasonable to ensure the maintenance of the property while litigation is pending.

Given the breadth of a receiver's potential powers, the receiver's role can include assessing a company's viability and existing debt in order to develop a strategy to repay what is owed and hopefully turn the company around without completely liquidating the company. In this scenario, the ultimate goal is to bring the business into a period of financial recovery. That said, the appointing court may empower the receiver to take possession of and sell property or other assets as a way to pay creditors and reduce debt, as well as to collect company income as part of the turnaround process.



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## CONSIDERATIONS IN SUPPORT OF A COURT-APPOINTED RECEIVER OVER BANKRUPTCY

### 1. Neutral, Court Appointed Third Party

Court-appointed receivers, as independent fiduciaries, offer professional input and a fresh perspective that the parties may be likely to trust. Because a court-appointed receiver works to preserve the company's property and other assets, both parties' interests are represented and a mutually favorable outcome can often be reached much more quickly and easily than under bankruptcy.

### 2. Greater Flexibility

When managing the assets and liabilities of a company under litigation is beyond the scope of bankruptcy, receivership is preferred. A receiver can develop and implement strategies for paying company debts or selling assets with a simpler process that is typically unavailable

under bankruptcy. Debt restructuring and improved asset management may secure more money for creditors, lenders, and owners, which can potentially save a company from liquidation.

A receiver with specialized skills can be appointed to assist the business. For example, a receivership over a large commercial property can have a receiver with real estate or property management experience appointed.

Also, a receiver may hire the necessary professionals to bring a company back into the black. These professionals can run the gamut of skills needed to run a business including, but not limited to, lawyers, property managers, real estate brokers, business professionals (i.e. CEO/CFO/CRO), tax professionals/accountants, tax advisors, healthcare professionals, or importantly professionals with specialized expertise in the industry the receivership concerns (i.e. cannabis).

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## Appointment of a Receiver...

*Continued from page 11.*

Further, the receiver can sell assets as necessary or enter into contracts to create cash flow, pay employees and vendors, or engage in any number of business activities necessary to make the company or assets financially viable.

The party seeking the receiver can also include other powers of the receiver in the appointment order. The order appointing the receiver is the bible of the powers and duties of the receiver and can be tailored to the needs of that particular receivership.

### 3. Less Expensive

When there are not enough funds or assets available for the insolvent company to afford filing for bankruptcy, creditors and lenders may seek a receivership. Although the receiver charges a fee for administering the business, receivership is generally considerably less expensive than funding a bankruptcy proceeding. A receiver's rates are



often lower than a bankruptcy trustee's rates, which can keep the costs down. Further, receiverships require fewer hearings, filing requirements, and fees, which translates into lower court costs and expenses for each party.

### 4. Less Publicity

A company under bankruptcy is required to file reports of their assets, liabilities, and finances with the court. Under receivership, however, detailed financial disclosures are typically not required. The California Rules of Court do not require filing of interim reports (and where Superior Court judges ask that such reports be filed, they may be redacted). Further, state court pleadings are filed in the individual county where the case is pending, meaning they are generally less readily available to the public. Receiverships, therefore, minimize negative publicity and avoid the stigma associated with bankruptcy that could tarnish a company's reputation and result in a loss of customers.

### 5. Shorter Proceedings

Bankruptcy imposes significant procedural requirements on all parties. Conversely, receiverships require fewer hearings and less documentation than bankruptcy, as mentioned earlier. The ABI Journal explains that with a receivership "there is no Section 341 creditors' meeting, no requirement to file a plan and disclosure statement, no solicitation process or confirmation hearing." Receivership thus streamlines and expedites the court proceeding, allowing all parties to reach a mutually agreeable outcome more quickly.



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## 6. Less Likelihood of Appeal

There are few orders related to a receivership that are appealable. First, the appointment of a receiver is appealable, but such an appeal can only stay the receiver's appointment where an appropriate bond is posted by the appellant. Second, a sale of assets is appealable, but, again, any such appeal does not stay the sale order unless an appropriate bond is posted. Third, the receiver's final report and accounting is appealable. Other than these events, much of the receiver's actions are not appealable, given that orders approving such action are considered interlocutory, thereby giving greater latitude to a receiver and more certainty to the parties.

There are many more options to appeal in a bankruptcy. Importantly, this can slow down the proceedings.

## 7. Advantages for Receivership Professionals

There are also a number of advantages for receivership professionals. First, it is easier for receivership professionals to get paid. The parties typically only have ten (10) days to object to interim receiver reports. Once the ten days have passed, the receiver can be paid, although all fees and costs are subject to the final report and accounting, but if the interim reports are not objected to, the ability to challenge later is that much more difficult.

Also, there is great deference paid to receivers and their business judgment. Since receivers are court-appointed neutrals, the court views them as an arm of the court. Therefore, courts are more willing to approve of the work done by a receiver. As a court-appointed receiver, it is much easier to seek instructions from the

*Continued on page 14...*

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Appointment of a Receiver...

Continued from page 13.

court ex parte, thereby reducing the time to get into court and any potential adverse impacts on the receivership estate or parties. And, as discussed supra, few actions of the receiver are appealable.

8. Downsides When Considering a Receivership

One issue, often arising out of a lack of knowledge, is buyers of assets might not place as much confidence in a state court order as a federal bankruptcy. The federal bankruptcy court can also strengthen the

protection from creditors, because there is an automatic stay in bankruptcy proceedings that benefits the debtor and a trustee.

Court availability can also be a factor. Some counties, like Los Angeles, are very impacted and noticed motions may only be available many months out. Often, bankruptcy courts have more hearings and greater calendar availability. The amount of court intervention needed should be considered when weighing a receivership versus bankruptcy.

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## PROFESSIONAL PROFILE:

# Meet Douglas Wilson: Navigating Economic Cycles



*Douglas Wilson*

I came to the West Coast from Chicago by way of Denver, and likewise made it to the receivership community through a winding avenue: real estate development. Never having taken a business or law class, my background was in design, finance, development and construction.

Born and raised in Oak Park and Glen Ellyn, Illinois, my childhood was based on a spirit of adventure. My mother, who hailed from England and was very outgoing as a pioneer skier and tennis player, flew airplanes in her 20s, which was an extraordinary calling for a young woman of her time. Starting when I was six, she and my father (who didn't fly), took our family on an annual winter trip by train from the suburbs of Chicago to the mountains of Colorado or Utah where we'd stay in a family-run lodge, and ski for two weeks, exploring a terrain and region that was vastly different from that to which we were accustomed in our day-to-day lives.

Perhaps as a result of these regular family adventures, I've always treasured a balance of family and staying involved in the many travels and activities of my own family: my wife,

Kathleen, and our three sons, Nich, Alex and Michael, and now our two daughters-in-law and four growing grandchildren. We all enjoy sports, travel and being active and I believe that if you do things with your kids that they want to do and enjoy, that provides an opportunity for them to want to be with you. To that end, we were always very focused on group activities like ski trips, fishing trips in Canada, traveling to Mexico on excursions and striking that balance my mother had always embodied between working hard and playing hard all along the way.

I graduated from the University of Denver with a Bachelor of Arts and started a job working for my first mentor, Joe Cannell, who was the owner of the Southern California-based interior design firm Cannell & Chaffin. With a focus on designing the interiors of high-rise offices, law firms and other professional settings. The firm's clientele included many of the who's who in and around Denver, from accounting firms to banks, private clubs, brokers and developers.

The leadership of many of the prominent local businesses happened to be also present on the boards of the clubs our firm designed, which taught me early the value of professional relationships and how to grow and build upon those relationships. To this day, our business continues to grow based on referrals, relationships and networks as one often leads to another.

After working for Cannell & Chaffin, I decided I not only wanted to work on designing and furnishing buildings — I wanted to build them. In the early 80s, Kathleen and I moved to San Diego to embark on a major endeavor that would satisfy that ambition and propel me into the world of development.

Through a partnership with my second mentor, John Whitney of Charlton Raynd Ventures, we developed what amounted to be the largest development of its kind in San Diego: Symphony Towers. This 1.2 million square foot, mixed-use urban site is home to not only the Symphony, but also to the University Club as well as a variety of office, event and hospitality spaces. It was a success in and of itself, and led to the founding of Douglas Wilson Companies (DWC) in 1989. What was interesting about the project is at

*Continued on page 16...*



Doug, Kathleen and their three sons on a family ski trip to Beaver Creek, Colorado.

the same time while this large-scale development took shape in San Diego, my friends back in Denver were all going broke as a result of the Energy Crisis. This very powerful lesson ultimately led me from development to the world of receiverships as I observed the critical significance of economic cycles.

In 1990, I had my first receivership assignment. It was for a roughly 25,000-square foot office building in Kearny Mesa, near San Diego. About two weeks later, I was in a meeting with a bank in Los Angeles and they asked me what I did. I told them I was a receiver, and described the assignment I was working on at the time. That was my interview for the next assignment. Today, I've done more than 1,200 assignments in 33 states with a value in excess of \$15 billion.

One assignment I talk about quite a lot involved completing a partially built office building in Washington, D.C. It was a real test of my skills and my background as someone who knows how to put together complex high-rise development projects. This particular building, "Half Street," was only 30 percent built. There was a buyer — a large, top-5 institutional life insurance company — engaged, with a deal contingent on the completion of the building to a certain set of specifications. It was during the depths of a recession, and the buyer didn't really want the deal to go through, but we made sure we built it to the specifications of the purchase agreement.

Performing the role of a developer under a carefully crafted receivership order gave me all the powers and authorities to be successful, and we completed the 500,000 square foot office building. The deal went through and the bank recovered all of its money. It was a complex and rewarding recovery.

With the booms and busts I saw throughout the 1970s, 80s, 90s and 2000s, I saw firsthand as a developer the opportunities presented by capital-rich economies as well as the extreme need during downturns for fiduciaries who are experts in not only real estate but also business and financial operations. As a developer, we are well-versed in complicated situations and know how to avoid conflict and find common ground. We learned the value of a third-party neutral who is not threatening, but can be affirmative, assertive, and who can add authority. The role of the receiver is to not be judgmental or special.

There are lots of fun and interesting stories throughout the economic cycles from office buildings to taking over ski resorts to other partially completed construction projects including residential real estate. In addition, I've taken on numerous assignments for operating companies — one was a seafood company, another was a lumber company; yet another was a major food manufacturer and distributor of



Doug enjoying an artful latte.

Italian cheese and food products with multiple manufacturing, distribution and storage facility operations. In some cases, the receiver is there to try to repair the operations and in others, the goal is to oversee a very orderly liquidation.

Today, nearly 70% of our business is in these types of workout assignments in sectors other than real estate. As a full-service platform, we deal with all kinds of issues in the world of workouts, turnarounds, operating companies and partnership disputes to provide a variety of roles ranging from Special Master to Chief Restructuring Officer and Assignment for the Benefit of Creditors. Our roots in real estate helped us develop relationships that in many cases have led to assignments the turnaround needs when the economy falters.

On whatever side of the economic cycle, I've tried to instill in my business organization a collaborative spirit and to create an environment that is not self-centered, but is built on collaboration and unity and teamwork. I also learned the value that comes with quality work.

Early in my journey to become a receiver and fiduciary it occurred to me that mentorship is a critical part of what we do. The California Receivers Forum (CRF) and other organizations throughout California have afforded us the opportunity to nurture and foster other practitioners. As a longtime participant in and sponsor of CRF activities, events and educational programs, I have enjoyed this wonderful format for the receivership community to collaborate, learn and share.

This year, Douglas Wilson Companies celebrates 35 years in business, and I am celebrating 34 years of receivership assignments. I am proud of our company's ability to never be stagnant; to bring in new and fresh talent as our business evolves and to reflect the needs of our clients.

Today, our receivership work continues in a range of matters from a near billion-dollar Ponzi scheme investigated by the SEC to the liquidation of online retail giant Zulily through an Assignment for the Benefit of Creditors (ABC). The variety of work speaks to the diversity of the firm, the complexity of the matters and the talent of our new leadership.

Over the years, I've traveled extensively for business and for pleasure, including a trip to the Yukon one year to go fly fishing in a remote location accessible only by float plane. It



*Kathleen and Doug delighting in an evening and a view.*

was an amazing adventure in the middle of nowhere. Another year our family traveled to Ireland, where two of my sons surfed off the coast in between excursions through small towns to locate and visit with extended family members from my father's side.

Throughout my career, Kathleen has been my partner in everything I've done. We've been married for 47 years and she has always been the most engaging, outgoing and supportive partner, as well as the grounding presence for our family as she approaches all things with humility and grace.

As I reflect on three and a half decades as a receiver, fiduciary and turnaround expert, I realize that like many in this community, I didn't set out to hold this role and I haven't done it alone. In growing upon the 35-year heritage of DWC, I have focused consciously on grooming a very talented team of individuals who will one day carry my legacy into the future.

As the economic cycles continue, so too will the need for our skills and presence as unbiased problem-solvers in the months and years to come.



# Ask The Receiver

BY PETER A. DAVIDSON\*

**Q** I am a receiver for a partnership. I was appointed pursuant to a stipulation between the current partners and a secured creditor. After an extensive investigation, I have sued the former managing partner and her mother to recover fraudulent transfers, for breach of fiduciary duty and for usurping partnership opportunities. They are contending, in defense, that I cannot maintain my lawsuit because my appointment is not valid, because the current partners, having purportedly wrongfully removed the former managing partner, had no right to stipulate to my appointment. Can they attack my appointment in this manner?

**A** Orders and judgments can be attacked in two ways. Directly, by writ or appeal, or, sometimes, collaterally. A collateral attack attempts to avoid the effect of an issued order or judgment. Collateral attacks are disfavored because the law wants finality of orders and judgments. This is especially true regarding orders appointing receivers. Orders appointing receivers are directly appealable. Cal. Code of Civil Procedure § 904.1(7); *Raff. v. Raff*, 61 Cal. 2d 514, 518 (1964). To directly appeal, one must be a party or an intervener. Collateral attacks on receivership orders are only permitted if the appointing court lacked jurisdiction to make the appointment, which is rarely the case. *Mines v. Superior Court*, 216 Cal. 776, 780-81 (1932) (“[T]he court had jurisdiction to appoint a receiver, it is not now possible to argue that it was in error in making the order...the contemplated action of the court below must be tested by the principles governing collateral attack, and it is only where the orders are totally void that collateral attack is permissible.”); *Mesnager v. DeLeonis*, 140 Cal. 402, 404 (1903) (If the court had jurisdiction, collateral attack on an order appointing receiver is improper); see also, *Posey v. Fargo*, 187 La. 122, 131 (1937) (“Whenever the court has jurisdiction of the subject matter and of the necessary parties, its actions in regard to the appointment of a receiver, whether erroneous or not, cannot be questioned in a collateral proceeding... The fact that a receiver is appointed by consent does not render his authority subject to collateral attack in another jurisdiction...” [citations omitted]). These same rules apply in federal court. *Pacific Coast Pipe Co. v. Conrad City Water*



*Co.*, 245 F. 846, 848 (9th Cir. 1917) (rejecting an attack on a receiver’s appointment) (“We are discussing the power of the court to act, not the wisdom of its actions. If the state court erred in its findings of fact or conclusions of law, or improvidently exercised its discretion, those are considerations for an appellate court; with them we are not concerned. On the face of the record the court had jurisdiction and in a collateral attack upon its judgment we are not at liberty to inquire further.”).

Therefore, because it appears the court that appointed you had jurisdiction to do so, the defendants cannot collaterally attack your appointment in your lawsuit against them. The prohibition on collateral attacks applies in other contexts. For example, defendants cannot defend against the appointment of an ancillary receiver by challenging the validity or wisdom of the foreign receiver’s appointment, nor can an appointment be attacked by creditors of the entity placed into receivership.

**Q** I have a client who owes money to the IRS. While I know the IRS likely has a tax lien, my understanding was it just waits until a taxpayer’s property is sold and then gets paid out of escrow. Instead, here, the IRS has filed suit and is asking the court to appoint a receiver to take my client’s property and sell it. I thought receivers can’t be appointed if there is an adequate remedy at law, which would be the case here, since the IRS

*Continued on page 19...*

could get a judgement for what it contends it is owed and then attempt to collect on its money judgment. The US Attorney on the case disputes this, saying the IRS has a statutory right to have a receiver appointed. Why don't the general rules concerning a receiver's appointment apply?

**A** The general equitable rules concerning the need for a receiver don't apply because there are specific statutory provisions allowing the IRS to obtain a receiver to enforce its lien or protect its interests. A federal tax lien arises when any "person" liable for any federal tax fails to pay the tax after demand by the government. 26 U.S.C. §6321. The lien is automatic and "silent" and is effective from the date the tax is assessed. The IRS often records a Notice of Federal Tax Lien, but that is not needed for the lien to attach. The Notice is only to notify possible purchasers or transferees and to obtain

priority over later secured creditors. Tax liens are not self-executing. The IRS must either bring suit to foreclose the lien under 26 U.S.C. § 7403 or assert administrative levy under 26 U.S.C. § 6331.

26 U.S.C. § 7402(a) gives "district courts...such jurisdiction to make and issue in civil actions...orders appointing receivers...and to render such judgments and decrees as may be necessary or appropriate for the enforcement of the internal revenue law." In cases brought to enforce federal tax liens "the court may appoint a receiver to enforce the lien, or, upon certification by the Secretary during the pendency of such proceedings that it is in the public interest, may appoint a receiver with all the powers of a receiver in equity." 26 U.S.C. § 7403(d).

*US v. Newman*, 2023 WL 6976481, \_\_F. Supp. 3d\_\_ (D. Maine 2023) highlights a situation where a receiver was

*Continued on page 21...*





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appointed to protect and foreclose an IRS tax lien. The IRS asserted the taxpayer owed substantial personal income tax and was the responsible party for unpaid employment trust fund taxes. The taxpayer's principle asset was his home, which had two mortgages senior to the IRS lien, both of which were in default. The government filed suit to foreclose its lien and moved to have a receiver appointed to take possession of the home and sell it. It claimed a receiver was needed because the mortgage holders were seeking to foreclose, which would wipe out the tax lien and, because of accruing interest on the mortgages, the equity securing its lien was shrinking every day. The court granted the motion and appointed a receiver to list and sell the home. It cited a number of circuit court decisions that: "When a request is made for an appointment of a receiver under [26 U.S.C. § 7403(d)], the Government needs only to make a prima facie showing that a substantial tax liability probably exists and that the Government's collection efforts may be jeopardized if a receiver is not appointed. Together, 26 U.S.C. § 7402(a) and 7402(d) provide courts with 'broad discretion to appoint a receiver to liquidate property subject to federal tax liens to assist the United States in collection of taxes.'" (citations omitted) *Id.* at \*5.

While the court stated there is no definition of what "substantial" tax liability in the statute means, because the taxpayer owed at least \$325,000 that would be "substantial"

under any definition. It did note the distinction between "nominal" and "substantial" damages. "Nominal damages" being symbolic and "substantial damages" being compensatory. *Id.* at\*12, fn.3. The court found the pending foreclosure was sufficient evidence that the IRS's collection efforts could be jeopardized, justifying a receiver's appointment. *Id.* at \*7.

These IRS Code provisions are not the only federal statutes authorizing the appointment of receivers. For example, where the United States files a civil action on a claim for a debt there are specific prejudgment remedies available to the government which differ from state court remedies courts would otherwise look to under Federal Rule of Civil Procedure 64. 28 U.S.C. §3101 sets forth the grounds that must be met to use these remedies and contains a special "Notice" that must be give the defendant. The available remedies include: attachment, receivership, garnishment and sequestration. The government has its own attachment statute, 28 U.S.C. § 3102, which is broader then California's attachment statute. It allows attachments not only on contract claims, as in the California statute, but also "(b)(2) in an action against a debtor for damages in tort" and "(b)(4) in an action to recover a fine, penalty or tax." There is also a separate receivership statue, 28 U.S.C. § 3103. Interestingly, that statute limits a receiver's compensation to "not exceeding 5 percent of the sums received and disbursed by him...unless the court otherwise directs." 28 U.S.C. § 3103(g).

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*\*Peter A. Davidson is a Senior 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*

# 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](mailto:rbaker@douglaswilson.com).



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

- Changing of the Guard at Stanley Mosk's Writs and Receivers Department: Things have been switching up in the Writs and Receiver's Department in the Downtown Los Angeles Superior Court. In June of last year, **Judge Mary H. Strobel** retired from her post after a decade on the bench and was replaced by **Judge Curtis Kin** (profiled in *Receivership News'* Spring 2024 issue).
  - Judge Mitchell L. Beckloff, who presided over the famed Department 86 in the Writs and Receiver's department of the Stanley Mosk Courthouse, left the bench on April 5 of this year (I highly recommend *Receivership News'* profile on Judge Beckloff, Winter 2020 Issue 67). Judge Beckloff was a good friend of the CRF, having been the keynote speaker for Loyola IX. We will miss Judge Beckloff's diligence, wit, and personability! For you litigators, Judge Beckloff is now a mediator and arbitrator with Signature Resolution - <https://signatureresolution.com/neutral-CPT/hon-mitchell-beckloff-ret/>.
  - Stepping in to fill Judge Beckloff's shoes is Judge Stephen Ira Goorvitch (inside scoop: even though Judge Goorvitch replaces Judge Beckloff, he will be in Department 82 and Judge Curtis Kin will be in Department 86). Your columnist heard through the grapevine that Judge Goorvitch, while new to receiverships, is very well prepared and understands the process almost implicitly. A quick Google search also finds Judge Goorvitch graduated magna cum laude from the University of California, San Diego - no easy feat - where he was a member of Phi Beta Kappa. He received his J.D. from the University of California, Berkeley School of Law, where he was Executive Editor of the California Law Review and served on the Moot Court Board. It gets even more interesting as he worked at the SEC, Division of Enforcement from 1998-2001, prosecuting financial fraud cases. He was appointed to the bench in 2015 by Governor Edmund G. Brown, Jr.
  - Extra! Extra! Merger Announcements Here!: Congratulations are in order as two storied insolvency firms that have separately gone through mergers this year. First, effective January 16, 2024, CRF board member Kyra Andrassy and the rest of the Smiley Wang-Ekwall bankruptcy/fiduciary representation practice group joined Raines Feldman Littrell LLP, expanding Raines Feldman's Orange County office. Raines Feldman has approximately 80 lawyers and is based in Century City with offices in Orange County, Chicago, and New York. Kyra joins fellow CRF member Kathy Phelps and together they represent state and federal court receivers, with a specialty in federal equity receiverships.
  - Not to be outdone, San Diego based Sullivan Hill combined with Fennemore, effective February 1. Sullivan Hill's commercial insolvency lawyers practice bankruptcy, receivership, ABC, and out-of-court workouts, and now have access to Fennemore's nearly 20 offices across the Western US, with more than 300 lawyers across all disciplines. CRF members include Jim Hill, Gary Rudolph, Kathleen Cashman Kramer, and Chris Hawkins
- Continued on page 23...*

*Continued on page 23...*

- Get Your Face Melted by the Mood Lifters: Come see and support CRF's very own Ben King whose Rush Tribute Band – the Mood Lifters – will be playing at the Lighthouse Cafe in Hermosa Beach on Sunday, September 8. Yours truly can confirm Ben's guitar skills will leave you in awe and your mood lifted.
- CRF Makes a Strong Showing at CBF: Once again the CRF reinforced its strong partnership with CBF hosting three panels at the yearly conference held at the Ritz Carlton Bacara in Santa Barbara on May 16 through 19. Many thanks to our very own Kyra Andrassy for leading the charge and organizing the receivership-related panels at the CBF!
- Getting Updated on the Corporate Transparency Act and Its Impact on Receiverships: The CRF's Education Committee hosted another great educational panel on June 18 with panelists Susan Uecker from Uecker & Associates, Inc., Randy McCalla from Lubin Olson Niewiadomski LLP, and Scott Sackett from Fiduciary

Management Technologies extolling the nuances of the Corporate Transparency Act and how it might effect Receiver's and corporate reporting. The CRF's education series goes on a brief Summer break and will be back in September with more receivership-education goodness. Keep an eye out for CRF emails for more details!

- Spread the Word: Know someone thinking about getting started in the receivership industry? Well tell them there's already enough competition. Ahem, just kidding, instead steer them to [www.receivers.org](http://www.receivers.org) to order a past Loyola program 4-disc DVD set for \$75 teaching receivership Basics and including sample pleadings.

*\*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.*



Ryan Baker

## Receiver's Academy

is your source for On-Demand receivership education.

The curriculum includes recordings of past receivership programs and Loyola Conference education panels that you can review at your leisure by accessing "Receiver's Academy" at [www.receivers.org](http://www.receivers.org).



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