RECEIVERSHIP NEWS

Winter 2024 • Issue 82

In Custodia Legis

A Publication of the California Receivers Forum

Interview with Honorable Judge James F. Rigali

By Kevin Singer*

Recently, I had the honor of interviewing the Honorable Judge James F. Rigali, who is a Judge for the Superior Court of Santa Barbara County, Santa Maria Cook Division.

Below are excerpts from our interview.

Question ("Q"): What were some of your fondest memories growing up?

Answer ("A"): I grew up in a home with 11 siblings. I have fond memories of playing in the neighborhood. We played traditional sports like football, basketball and baseball. But we also played kick the can for hours and rode bikes for miles.

Q: As an attendee of the University of Notre Dame, what was your major and what activities were you most passionate about while attending college?

A: In college I studied Economics which at the University of Notre Dame is part of the college of liberal arts. As such we not only studied the business side of the discipline but the philosophical aspect as well.

Continued on page 3...

It's a Bird! It's a Plane! It's a RECEIVER!

By Mia Blackler

On September 19, 2024, California receivers soared (in person and over Zoom) with an update on receivers' quasi-judicial "superpowers." The panelists included a receiver, **Jake Diiorio** with Stapleton Group, Inc. (now part of J.S. Held), **Blake Alsbrook**, a receiver and partner with Ervin Cohen & Jessup LLP, and **Mia Blackler**, a partner with Lubin Olson & Niewiadomski LLP.

The presentation was a lively discussion covering the legal bases for a receiver's powers and authority in California, recent updates on the affirmance and expansion of Receivers' quasi-judicial immunity, the kinds of superpowers a receiver enjoys and best practices when using them.

First, the panel discussed recent precedent that reaffirmed a receiver's quasi-judicial immunity: that in carrying out their duties and responsibilities, a receiver

Continued on page 6...

Inside

Receivership "War" Stories: Planes, Trucks And Automobiles – The Exploits Of A State Court Receiver 7

How to Conduct a UCC-9 Sale 11

Real Estate Auctions 12

Professional Profile: Meet the "Illest" Man in the Receivership World, Oren Bitan 16

Ask The Receiver 18

The List 20

Heard in the Halls 22

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 Receivership "War" Stories, I was reminded of how difficult receivership cases can be and how resourceful receivers handle such cases. I hope you find these stories interesting and informative. Thanks to **Steve Donell**, **Gerard Keena**, and **Richard Munro**.

Kevin Singer interviewed **Judge James F. Rigali** who studied economics at the University of Notre Dame before obtaining his joint Law and MBA degree at Santa Clara University. Judge Rigali, currently a Judge for the Superior Court of Santa Barbara County, provides his general thoughts and answers specific questions regarding receivership appointments.

Mia Blackler provides a synopsis of the CRF program presented by herself, **Jake Diiorio**, and **Blake Alsbrook** updating receivers' quasi-judicial "superpowers." If you missed this program's live presentation, you can access it On-Demand at Receiver's Academy.

Todd Wohl could not put his pen down. He gives us two articles this issue, one addressing Real Estate Auctions and one explaining conducting a UCC-9 sale.

This issue's member profile features **Oren Bitan**. Oren is a member of the CRF Board and an attorney with Buchalter chairing its Receiver, Fiduciary, and Trustee Group and co-chairing its Los Angeles Litigation Department.

Our regular columnists, **Peter Davidson** and **Ryan Baker**, continue to keep us up to date. Peter answers critical questions regarding lawsuits against receivers. Ryan gives us the latest news including CRF Officer changes in the New Year.

Thanks are also due to our advertisers. Please acknowledge their contribution to this publication by utilizing their services.

We are always looking for articles from our members. The deadline for submission for our next issue is February 15, 2025. It is a great way to share your experiences, gain exposure, and promote our mission to provide a forum for open communication and education.

If you missed any issues of *Receivership News*, downloads for most of back issues are available on CRF's website: crf.memberclicks.net/receivership-news-articles. Readers are encouraged to cite, copy, and use Ask the Receiver and *Receivership News* articles and information.

Please enjoy this issue and the holidays.

Receivership News
Published by
California Receivers Forum
PO Box 10
Manhattan Beach, CA 90267
714-632-6800 • Receivers.org

Publisher
Dominic LoBuglio
dominic@lscpa.net

Co-Editors
Blake Alsbrook
balsbrook@ecjlaw.com
Michael Muse-Fisher
mmuse-fisher@buchalter.com

Associate Editor
Craig Collins

Associate Publishers
Mia Blackler
Kevin Singer

Contributing Columnists
Ryan Baker
Heard in the Halls
Peter Davidson
Ask the Receiver

Officers
Michael Muse-Fisher
Chair
Benjamin King
Chair-Elect
Mia Blackler
Treasurer
Ryan Baker
Secretary
Gary Rudolph
Program Chair
Dominic LoBuglio
Immediate Past Chair

Graphic Design & Layout
R.R. Altamirano, LLC

Production Services
Group Concepts

Web Services
Group Concepts

Michael Muse-Fisher

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

Co-Editors' Comments

By Michael Muse-Fisher* and Blake Alsbrook*

Blake Alsbrook

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

Blake said it is my turn to write the co-editor's comments, so here we are.

As the young kids say – I had to google this – this issue is bussin' (as a little parenting tip because *Receivership News* is full of parenting tips, if you want your kids to stop using new slang, the trick is to use it at home… constantly… until you, as the uncool parent, make the word uncool by association).

Now, back to the Issue. It is difficult for me to know where to begin as this Issue is jam packed with phenomenal material. The interview with the **Honorable James F. Rigali** (Superior Court, Santa Barbara) is a must read. Peak behind the curtain of an excellent jurist, as Judge Rigali shares a bit about his upbringing and education, as well as some of his thoughts on receiverships.

Peruse further into the issue and you'll get to meet **Oren Bitan**, one of the most "rizzed" out (I don't think I used that right) members of the CRF. I have been fortunate to have known Oren for over 15 years, and even I learned a lot about him that I did not know beforehand. He truly took the time to make this an incredible profile, and it is a great read from start to finish.

Next, find **Todd Wohl**'s articles as he shares some useful insights into real estate auctions and UCC-9 sales. Every receivers should know these sale processes inside and out, and now you get to learn from one of the best in the business.

Go into the trenches as, for the first time, we are introducing a segment called "War Stories," where top receivers in the field retell their involvement in receiverships that were difficult, bizarre, outrageously successful, or all of the above. This segment includes "war stories" from the following receivership heavy-hitters, **Steve Donell**, **Gerard Keena**, and **Richard Munro**. I am certain you will enjoy!!!

Additionally, one of our esteemed members, **Mia Blackler**, provides a recap of the September 19, 2024 receivership panel that explained the various "superpowers" that a receiver has in the exercise of the receiver's duties. Mia, **Blake Alsbrook**, and **Jake Diiorio** were the panelists, and if you were not fortunate enough to have attended in person, you can always access a video recording (for MCLE credit) through the CRF website.

Finally, a special thanks goes out to **Peter Davidson** and his always incredible "Ask the Receiver" segment where he discusses the "Barton Doctrine," as well as **Ryan Baker** for his always enjoyable, Heard in the Halls.

Sit back, relax, and dive into the world of receiverships. You deserve it.

Judge Rigali…

Continued from page 1.

Q: Was there a specific reason you chose to attend -University of Notre Dame undergraduate?

A: I followed in my father's footsteps. My dad graduated from there in 1948.

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

A: I was born with a speech impediment so although I spoke a lot I did not imagine myself as an attorney at an early age. I received speech therapy in grade school and by high school I was becoming more comfortable with public speaking. However, I was not particularly focused on becoming an attorney.

Q: I see you continued on at Santa Clara University and were enrolled in their joint Law and MBA degree program. Was that your top pick for school and why did you choose to enroll in this joint degree program?

A: The harsh winters of South Bend Indiana helped convince me to decide to want to go to graduate school in California. I have relatives who went to Santa Clara and so I was familiar with the place. The joint program was appealing because I had not yet decided whether I was going to make my living practicing law or using my law degree in business.

Q: During your time at Santa Clara University, was there a professor who made a lasting impact on you and why?

A: Cynthia Mertens was my Real Property Law professor. I credit her with steering my interest in becoming an attorney who spent a large portion of my private practice as a real estate attorney.

Q: After graduating, you worked with the law firm Burke, Williams and Sorensen, your own firm Henbury & Rigali, and then Kirk & Simas. What kinds of matters did your practice focus on?

Continued on page 4…

Continued from page 3.

A: In Los Angeles I worked primarily on litigation matters relating to municipalities. In Santa Maria my focus was on real estate matters. I did also practice in the general civil litigation space.

Q: In addition to your legal career, you co-owned Palm Realty in Grover Beach with your sister. How did this company come to be, and are you still involved in the company? Did you learn anything from this business that has helped you in your legal career?

A: My real estate venture with Palm Realty was something I did with my sister who lives on the Central Coast. It was done with the idea that she would make a career out of it. When she chose the teaching profession the endeavor faded.

Q: In 2005, you were appointed to be a Superior Court Judge. Since your 2005 appointment, what types of cases have you been primarily handled?

A: I had a felony criminal trial department assignment for five years. I have had a general civil department assignment for the last fifteen.

Q: I see you were the Director of the Santa Maria Rotary Club. How did you get involved in this organization and what is their primary mission?

A: I was introduced to Rotary by friends. Rotarians had as a goal to help eradicate polio from the globe. It seems Rotary substantially succeeded in that ambitious aim. Due to conflicts of interest that kept surfacing in commercial litigation in my courtroom I eventually dropped my club membership.

Q: You previously served on the Santa Barbara County Human Services Commission. How was that experience, and what type of community projects did you help with?

A: Working in county government as a volunteer to study and direct funding to competing non-profit organizations was a great way to learn about the County as a whole. What I learned ended up coming in handy when I ran for judge in a countywide election.

Q: What are your general thoughts on appointing court receivers?

A: As a judge I don't come to a case with any favor or disfavor for any process. I am certainly not opposed to appointing receivers nor do I think requesting one is all that is needed to satisfy the requirements that one be appointed.

Q: What are some of the factors that persuade you to appointment of court receiver or partition referees?

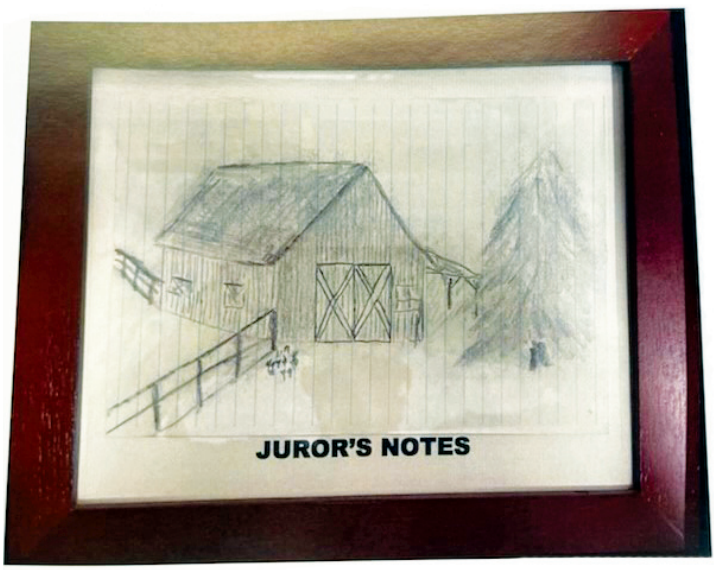
A: In addition to the requirements of the code the most important factor is that the appointment is judged by me to be a step towards resolution. While taking one step back to move forward is often an appropriate way to describe the large amounts of work a receiver must be allowed to plow into a case in the early stages, the appointment must embody hope for a path forward. I never want to add layers of personalities onto human problems unless the benefit far outweighs the costs.

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

A: I prefer receivers who have great working relationships with their attorneys. A good receiver with unhelpful counsel is not much help. Similarly, a good attorney with an overburdened receiver is not much help. I prefer receivers who attend hearings with their attorneys which is usually pretty easy to do over Zoom for non-evidentiary hearings. An attorney who is a receiver should act like a receiver at hearings and not just another layer of lawyering.

Q: What are your thoughts on ex parte motions to appoint a receiver?

A: In reality getting a receiver involved always takes time, lots of work by all involved and most good receivers want to think for a minute about the case they are being asked to take. Thus ex parte decisions can safeguard cash flow



This note left by a juror is prominently displayed in Judge Rigali's office

Continued on page 5...

Continued from page 4.

quickly while unnecessarily casting the matter in fast drying concrete that might not be a good match. I prefer to make orders to protect cash flow and assets promptly and allow the adverse parties to meet, confer and participate in the process of selecting and vetting a receiver. This allows the receiver through counsel to come onto the scene in the least hostile environment possible. Of course it is most often not all or nothing, so I invite the attorneys to make their best choice knowing I will do the same.

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

A: Arguments that the receiver can do the work without having to adopt any adversarial party's position on the merits to perform receivership work is persuasive. If I am just putting the receiver in position to make a decision that needs to be made, then maybe that is a decision I should just set a hearing about and make it.

Q: What is the most common mistake you see in motions to appoint a receiver?

A: It is frustrating when the court and parties work in rush mode to get orders impacting receivers handled only to find out there are technical problems with undertakings, bonds, sureties and insurance. These are areas where I see common problems.

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

A: Every case is different, but I always start with wanting the receiver's input since she is the one with the experience to do the work and to know the applicable reporting standards in the applicable commercial space. The key for me is to have all parties receiving timely information.

Q: What is your position on receivers bringing ex parte motions when there are urgent issues that could impact the receivership estate?

A: Such ex parte applications are welcome.

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

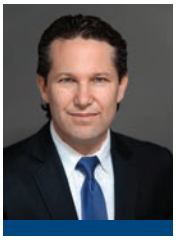
A: Always. If the case is going well and a rapport has been built up then the attorney need not always appear on Zoom. The attorney should always be on stand-by Zoom if needed. As cases progress the receiver often needs the attorney less and less.

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

A: Please be civil.

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

A: I have six adult children. Two live together in San Francisco. Two live together in Washington D.C. and one lives in Cleveland. As such my wife and I leave our 6th child, our son, at home to care for the pets and we travel to see family for our chosen hobby.



Kevin Singer

**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.*

Continued from page 1.

CRF "superpowers' program panelists from L-R: Jack Diiorio, Blake Alsbrook and Mia Blackler.

enjoys immunity from personal liability for their actions similar to the immunity afforded a judge. The decision in *Holt v. Brock* (2022) 85 Cal.App.5th 611, review denied (Mar. 15, 2023), confirmed that quasi-judicial immunity extends to receivers (and partition referees), and that there is no civil liability for its actions action, even if malicious or corrupt, taken in its role as receiver pursuant to the appointment order. *Id.* at 622; *see also Trump v. United States* (2024) 144 S.Ct. 2312, 2332 ("[d]etermining whether a former President is entitled to immunity from a particular prosecution requires applying the principles we have laid out to his conduct at issue. The first step is to distinguish his official from unofficial actions.")

The exception to the rule is that a receiver remains liable for unprotected actions outside of the appointment order such as defamation (statements to the press), physical assault and battery, and theft. In addition, the immunity enjoyed by a receiver does not avoid potential liability from tax obligations arising from the receiver operating a business, or for losses to the receivership estate based upon the receiver's neglect, misconduct or mismanagement. *See Stewart v. State of Calif.* (1969) 272 CA2d 345, 348; *Vitug v. Griffin* (1989) 214 CA3d 488, 496; *Southern Calif. Sunbelt Developers, Inc. v. Banyan Ltd. Partnership* (2017) 8 CA5th 910, 926. Furthermore, a receiver may be personally liable if the receivership estate is insolvent and the receiver pays any receivership debt before paying federal government claims, including any tax claim. See 37 U.S.C. § 3713.

Next the panel discussed that quasi-judicial immunity principles may be expanded to a receiver's professionals, such as its attorneys, accountants, brokers and property managers. *See Micha US LLC v. Benchmark Healthcare Consultants LLC*, 2022 WL 2867183 *4 (E.D. Mich. 2022); *Blacktail Mountain Ranch Co., LLC. v. Jones*, 611 Fed. App. 430 (9th Cir. 2015); *Smallwood v. U.S.*, 358 F. Supp. 398 (E.D. Mo. 1973). But be aware of *Antoine v. Byers & Anderson, Inc.* (1993) 508 U.S. 429, 435-436, fn. omitted, noting that "[w]hen judicial immunity is extended to officials other than judges, it is because their judgments are 'functionally comparable' to those of judges—that is, because they, too, 'exercise a discretionary judgment' as a part of their function."

The panelists then discussed the kinds of superpowers receivers enjoys under their umbrella of quasi-judicial immunity, including the powers to (1) reject, assume and/or or value executory contracts and leases both pre-and post-receivership appointment, (2) strip liens from property in order to allow a sale free and clear of liens to ensure marketable title (*see County of Sonoma v. Quail* (2020) 56 Cal.App.5th 657), (3) create sales and bidding procedures, (4) borrow money against the estate by issuing receivership certificates which prime other lenders with a "super-priority" lien position when the receiver borrows funds on behalf of the estate to fulfill its duties and responsibilities, and (5) avoid certain trappings of litigation such as discovery and trial because the receiver is an agent of the court and not a party to litigation.

The panel closed by weaving in their recommended best practices to embrace the above-described immunity principles by building language into the receiver's appointing order and not simply relying on the statutory language set forth in Code of Civil Procedure § 564 and California Rules of Court, rule 3.1179. This may include expressly identifying the power to borrow and confirming the receiver's super-priority lien position, and specifically describing the receiver's powers relating to contracts with the power to enter into, modify and, if necessary, reject them. The panel also suggested dispositive motions when faced with an attack on the receiver's immunity, and it recommended strategies to move quickly to close a receiver's sale when there will be insufficient funds to satisfy all outstanding liens.

If you were unable to attend, you can access the video of the panel (and obtain MCLE credit) by going to the California Receivership Forum's Receivers Academy website, https://crf.mclms.net/en/.

**Mia S. Blackler is a partner in Lubin Olson's Litigation, Commercial Litigation, Real Estate Litigation, and Employment service groups, and she is the chair of the Creditor's Rights, Receiverships, & Insolvency service group, with an emphasis on commercial, real property, and financial institutions litigation in state and federal trial and appellate courts.*

Mia Blackler

Receivership "War" Stories

Receivership News asked three receivers to provide stories of challenging cases. The following stories submitted by three experienced receivers illustrate the difficult problems they faced and the solutions they created to solve them.

Planes, Trucks And Automobiles – The Exploits of a State Court Receiver

By Steve Donell*

Steve Donell, President of FedReceiver, Inc. had an interesting state court case that took him across the country and into Canada, hot on the trail of the assets that defendants had transferred or concealed. The case originated out of his appointment as receiver in an action filed by a secured lender due to a $10,000,000 loan default. The case was to be a relatively simple matter of taking possession of millions of dollars of inventory which served as collateral for the loan, located in a large warehouse in Ontario, CA. At the time of takeover, Defendants were trucking away large volumes of inventory in big rigs which were lined up in the parking lot of Defendants' warehouse. Possession of the warehouse was finally obtained after a tense standoff with the truckers, as well as Defendants' principals and employees, which ultimately required police intervention. That is where the "fun" started.

After getting access to Defendants' warehouse and computer records, it was determined that the vast amount of remaining inventory had been trucked to Ohio days before the receiver's appointment. Thereafter, one of the receiver's agents in Ohio observed the inventory (generators) being removed from a large warehouse, in violation of the Appointment Order. Like before, the agents were met with 100% resistance by the employees in Ohio who allowed shipments to continue and kicked the Receiver's agents off the premises. The game was on.

The same day as he received reports of defiance in Ohio, the Receiver retained local Ohio counsel. Immediately thereafter, the Receiver's counsel filed a no-notice, ex parte

Continued on page 8...

Continued from page 7.

Complaint in the Ohio Court seeking Temporary, Preliminary, and Permanent Injunctive Relief and Recognition of Out-of-State Court Orders (the "Recognition Order"). The Ohio Court granted the request. The Receiver flew to Ohio, hired security and took over the Ohio warehouse a couple of days later. There was little remaining inventory and no employees to be found. Most computer records had been deleted, but a few obscure records were found, indicating that a couple of days before, vast quantities of inventory had been trucked to a suburb in Indiana, so the Receiver got into his rental car and headed to Indiana!

With cell phone blazing away, he hired local Indiana counsel. The next morning, the Receiver's Indiana counsel filed a no-notice ex parte Complaint and attended the hearing at a tiny, obscure courthouse with local counsel appearing as he was advised that the Indianapolis law firm he hired might be viewed as too fancy for the local judge in the jurisdiction where the Indiana inventory was located).

The Court granted the request. A few hours later, he arrived at the Indiana warehouse which was a large facility with numerous "tenants." A friendly office manager at the facility, after reviewing the Indiana Order confided that he was two days too late. The inventory had just been removed and had been trucked to a location an hour east of Chicago. A quick U-turn to the airport and the Receiver was on a plane that same day to Chicago.

The next morning, after having the Illinois facility manager served with the California, Ohio and Indiana Orders from the previous day, he arrived at the Illinois warehouse. The warehouse manager said the Defendants had been there about an hour earlier with trucks lined up to remove the inventory. The onsite manager waived the order in front of them and refused to allow the Defendants to release the inventory (the Receiver got lucky with such a cooperate landlord). The Receiver then hired truckers to truck vast quantities of inventory back to California.

But it wasn't over.

The Receiver also learned that other inventory had been sent to Wisconsin. So the Receiver hired local counsel in Wisconsin, obtained a no-notice ex parte Recognition Order and with the aid of local law enforcement, took possession of the Wisconsin inventory and a lot of cash. One week later, the Receiver discovered evidence of a Canadian connection to Defendants. He promptly hired local Canadian counsel and obtained a no-notice "Initial Recognition Order" issued by the Canadian Court. A later order permitted the sale of all inventory in Canada. After sequestering and sale of the inventory, the receivership was subjected to numerous attacks by Defendants and or their affiliates including an attempt to sue the Receiver and filing motions to intervene in CA. Hurricane Katrina had just devastated parts of the county and generators were a hot commodity. The inventory was sold pursuant to court order but only after going through an arduous process to procure warranties for the inventory.

Post-script: one defendant fled to China, and eventually another defendant was criminally prosecuted and spent many years in prison.

Such is the life of a receiver....

Steve Donell

**Stephen Donell,* *President of FedReceiver, Inc., current board member of CRF and Past President of NAFER is a state/federal court receiver, partition referee, provisional director and interim trustee with 35+ years of experience working within the fiduciary community.*

Continued on page 9...

Continued from page 8.

The Hurdles of Health and Safety Receiverships

By Gerard Keena*

This "War Story" involves two properties at 1039 and 1049 Claire Avenue in Sacramento, California over which Gerard Keena (the "Receiver") was appointed as a health and safety receiver. The properties were in deplorable condition, littered with hazardous materials, unpermitted & unfinished structures, junkyard conditions, and numerous neglected animals.

For nearly a decade, the City of Sacramento was unable to gain voluntary compliance from the property owners, who ignored government oversight. Initially, all the Receiver's efforts to rehabilitate the properties were thwarted by the owners' interference and multiple bankruptcy filings, which indefinitely delayed the State court proceedings.

Despite these challenges, the Receiver persevered in both the Bankruptcy Court and the State Court. Through sheer determination and personal expenditures, the Receiver hired expert legal counsel in both State and Bankruptcy courts who ultimately applied enough pressure on the defendants and the Bankruptcy Court to carry out the original mandate: rehabilitating the properties and resolving the decade-long public nuisance. This included demolishing illegal structures, renovating a mobile home, removing hazardous waste, and ensuring the properties met safety and health standards.

However, the owners' repeated bankruptcy filings along with the Bankruptcy Court's resistance to recognize the Receiver's State Court role as a Health and Safety Receiver made it incredibly difficult to persevere. Nevertheless, the Receiver was able to navigate the enormous legal and practical obstacles resulting in a successful receivership.

Ultimately, both the State and Bankruptcy Courts acknowledged the Receiver's significant efforts and expenses, including legal fees incurred during the bankruptcy proceedings. After two and half years, the Bankruptcy Court finally dismissed the bankruptcy. The

Continued on page 10...

Continued from page 9.

ruling granted the Receiver's request for a lien on the properties to secure unpaid fees and costs which totaled nearly a half million dollars. Both Courts ultimately ruled that the Receiver's actions were necessary and justified.

The result was only achievable through effective legal counsel, as well as perseverance and personal expense. The receivership ensured the properties were rehabilitated in a manner that protected public health and safety, demonstrating the effectiveness of the Health and Safety receivership as a legal remedy. Similarly, the unending procedural and substantive hurdles underscored how success cannot be achieved without the necessary experience and resources.

Gerard Keena

**Gerard Keena* *is an experienced professional with over 19 years of asset management experience with specialties in property management and business transactions. He is experienced in real estate and business evaluations, negotiations as well as financial and market analysis. Gerard is the President of Bay Area Receivership Group.*

Creating Value Quickly Out of Thin Air in an Equity Receivership

By Richard Munro*

The Situation: Invenz, Inc. by its CEO Richard Munro (the "Receiver"), was appointed as an equity receiver over an operating engineering design and installation company with locations in California and Michigan. The Receiver's case arose from a partnership dispute between plaintiffs (3 members) and a single defendant member about a $3,000,000 loan allegedly taken out without member approval and various allegations of breach of fiduciary duties et al. Adding complexity, another receiver was appointed in a related San Diego case trying to recover millions of dollars from the Receiver's receivership estate, arising from alleged proceeds of a criminal enterprise allegedly perpetrated by some members.

The Receiver's immediate initial forensic analysis in the first four (4) weeks following his appointment showed that the Company was insolvent, it had never been profitable since its formation (indeed, it lost over $3,000,000 in the prior three (3) years alone), and was wracked by internal dissension and litigation between the ownership parties resulting in chaos and complete dysfunction. The Receiver also found that the plaintiff-parties had all resigned from the Company three (3) months before his appointment which resulted in the removal of the Company's largest operating division – including client projects, relationships, skilled employees, revenues and related intellectual property – being transferred to an entity controlled by a relative of one of the plaintiffs.

This resulted in a significant loss of Company revenue and corporate opportunity, as the remaining engineering design division was not generating sufficient cash to breakeven. In short, the Company was set to run out of cash approximately 8 weeks following the Receiver's appointment creating an insolvent receivership estate.

The Receiver's analysis further identified potential multimillion dollar claims that the receivership estate had against both the plaintiffs and defendant arising from past acts including removing corporate opportunity and advances and repayments to and from the defendant and the Company.

The Solution: After assessing potential multimillion dollar receivership estate claims against both the plaintiffs and defendant, the Receiver auctioned the claims between the plaintiffs and defendant. After several rounds of bidding and counterbidding between the parties, the defendant emerged the winner by paying the receivership estate a cash sum, assuming millions of dollars of Company debt, and agreeing to assume all employees and related obligations, subject to court approval.

The Receiver immediately filed an ex-parte sale motion for court approval which was heard and granted in a week and the deal closed one (1) day after court approval, and only seven (7) weeks after the Receiver's appointment.

The Result: This deal resulted in the receivership estate retaining all accounts receivable with very little accounts payable, cash in the bank, and millions of dollars of Company debt being assumed by the defendant. Quick action by the Receiver and its counsel immediately created a solvent receivership estate which quickly grew into a large cash balance after payment of liabilities, which was available to meet competing claims from a bank and the other receiver after the claims were adjudicated by the Court.

Richard Munro

**Richard Munro, CEO of Invenz, Inc., current board member of CRF, is a state and federal court equity and post judgment receiver in complex cases, a provisional director, a CRO, and a Trustee in Trust cases, with 35 years of experience in corporate restructuring and fiduciary appointments.*

How to Conduct a UCC-9 Sale

By Todd Wohl*

A secured transaction is a transaction that is secured by real or intangible assets. When a borrower defaults on a loan with a secured asset attached, a lender may be able to conduct a public or private sale of the asset if the agreement falls under the Uniform Commercial Code, which is known as a UCC Sale or Article 9 Sale.

Selling collateral is a reliable way for lenders to protect their assets, but for many lenders, especially those conducting a sale for the first time, the process can seem overwhelming. Understanding how UCC sales are defined and enacted gives lenders a head start when beginning this process.

What is a UCC Article 9 Sale?

The Uniform Commercial Code, or UCC, is the national legal framework that governs commercial business transactions. Like many national codes, the UCC is not federal law, and individual states are not bound to it. However, fifty states and the District of Columbia have uniformly adopted the framework in their official laws to ensure commercial business transactions are governed securely and consistently across state lines, although some states have additional or fewer provisions in their version of the commercial code.

The Uniform Commercial Code is divided into eleven articles that comprehensively govern all areas of commerce, including leases, sales, bank deposits, collections, letters of credit, bulk sales, and other areas. Article 9 of the UCC specifically covers secured transactions.

Secured transactions can have a wide variety of collateral, such as automobiles, furniture, equipment, and others. Article 9 specifically concerns personal property, and does not pertain to transactions involving real property, which are governed by non-uniform state law.

A UCC sale, or Article 9 sale, is the public or private nonjudicial auction of secured collateral after compliance with state notice requirements. For lenders enacting a foreclosure, a UCC property sale is the final stage in the process before asset recovery.

How to Conduct a UCC-9 Sale

UCC sales and asset recovery can be a complex task for a lender enacting it for the first time.

Issue Notice of Sale: Before every UCC sale, the lender must give reasonable notice. This gives proper notice to the debtor, as well as any potential buyers. What constitutes "reasonable notice" is typically clearly defined by state law to avoid any nuance in disputes. In a foreclosure, states dictate how long the Notice of Sale stage lasts, what notices should be sent and to which parties.

Determine Commercial Reasonableness: Before a lender can conduct the UCC sale, they must determine that a sale is a reasonable solution to satisfying the default. Commercial reasonableness is not strictly defined, but factors including the sale price of the collateral, the manner of the sale, and the type of the collateral itself can be factors that a court considers when deciding the reasonableness of a UCC sale. Our experience having been on both sides of the transaction for sellers, we suggest a minimum of three weeks of advertising and marketing with the sale to take place in the fourth week. Using a national publication with both digital and print coverage such as the Wall Street Journal should be a consideration when evaluating exposure for the sale. This is in addition to search engine optimization, targeted behavioral advertising, email ads, website listing, industry trade publications and direct sales. Parties must consider the risk versus the reward when determining the marketing budget for the sale.

In a foreclosure, repossession of the property itself by the lender usually stands as full or partial satisfaction of the debt.

Sale type. The type of sale to be used for Article 9 is more likely than not to be an auction. The auction format may be live in situ, via Zoom, or sealed bid/tiered sealed bid. Each bidding platform provides pros and cons which the auction company and the parties should consider carefully. Additionally, consider a bulk sale versus a category sale to best suit the objectives of the parties.

Qualifying buyers/bidders is often overlooked when setting the terms of the sale. Proper qualification will create equality for all bidders participating as well as eliminating non-performance of purchase and sham bidders.

Apply Proceeds: After the sale has been conducted publicly or privately, the proceeds are applied to any costs and fees associated with enacting the sale and then applied to the collateral. Proceeds then go to any junior interests and then the lender.

*__Todd Wohl__ *is the Senior Partner of Braun International, BraunMIMX and Premiere Estates International Realty Organization. He is a specialist in valuation, brokerage and auction of Real Estate, Business Assets and Partnership Interests. Todd has valued, and sold over $2 Billion of business real estate.*

He is known as a court expert for real estate dissolution, sale and strategy situations for Fortune 100 companies, Trust companies, Fiduciaries, Probate, Family Law, Bankruptcy and Receivership courts.

Todd Wohl

Real Estate Auctions

By Todd Wohl*

In a shifting market, real property auctions are catching on with owners who want a quick sale and buyers hoping to find a bargain. Did you know that one in every three properties sold was sold utilizing the auction method of marketing by 2022, according to a National Association of Realtors study?

Fueling the auction trend too is the higher comfort level most Americans feel as a result of using internet auction services, which have legitimized auctioning as an acceptable form of commerce to the masses. The Internet allows them to search for properties all over the world, take virtual tours of properties they're interested in and participate in auctions remotely – all from the comfort of their computer.

In Australia and New Zealand, where auctioning is the dominant method of selling real estate, buyers do not view auctions as a last-chance route to sale. While buyers in North America have thought that auctions are only for distressed or tainted properties, most properties sold at auction today get there because sellers chose to sell them that way so as to attract the highest possible sale price.

The auction process also changes the way negotiations are typically handled. With the auction method, buyers are focused on winning the bid, and beating out other buyers and not on beating up the seller. With the auction method, buyers push the price up against each other with no ceiling, instead of negotiating against the seller who has already pre-set the ceiling.

Types of Auctions

Those of you who frequently handle business asset auctions are likely already familiar with the typical auction methods. The types most commonly used are: Open Outcry (or English Auction) and Sealed Bid.

- Open Outcry: This is the type of auction most familiar to Sellers. The crowd gathers and the auctioneer calls out buyers' bids. The excitement builds until the high bidder is "knocked down" by the auctioneer, the contract is signed and the property goes into final escrow. Open-outcry auctions may also permit buyers to bid by telephone, proxy and online. The asset most suited to Open Outcry is one that is similarly valued by the buying community and where open competition of bidding will serve to drive up the price. This generally includes residential, commercial and industrial properties of all shapes and sizes (as well as machinery, equipment and other types of personal property). The Open Outcry works best when there is a large pool of potential buyers to tap in to.
- Sealed Bid and Tiered Sealed Bid: All bidders submit their offers to the auctioneer by a certain date, without

Continued on page 13...

Continued from page 12.

knowing the bids of other participants. Here, the buying public may value the property differently among themselves. One buyer may have a particular use in mind for which he is prepared to pay a certain price while another buyer will have a different use and price point. A sealed bid insures that each will submit his best and highest bid. The sealed bid works best when there is a limited pool of potential buyers to tap in to.

In either of these types of auctions, the seller has two methods they can use to sell the property: Absolute and Reserve.

- Absolute - sold to the highest bidder without reservation of price but at the terms and conditions set by the Seller. An absolute sale is the strongest selling message to the buying community. It attracts purchasers from the greatest geographic area. Buyers can justify their time and efforts to inspect, bid and buy knowing there is no question the property will be sold. The more participants, the higher the price received.
- Reserve - A reserve sale means the Property will be sold at any price equal to or greater than the agreed reserve (minimum bid) at the terms and conditions set by the Seller. A reserve price provides the seller with a floor, but the reserve price must be market competitive. In a declining market there is always the real danger of setting the reserve price too high.

Reasons and Benefits from Selling Real Estate at Auction

There are many reasons why you would choose to sell real estate at auction aside from wanting to achieve the highest possible sale price. Many of these also apply to sales of personal property.

- When a transparent sale process is required - An open outcry auction allows for full public disclosure and

Continued on page 14...

Continued from page 13.

participation with no portion of the process concealed from view. This can be particularly beneficial for trustees or situations involving ownership disputes. Buyers also love the transparency of auctions. Unlike the traditional way of selling real estate — in which buyers first make a bid, sign a sales contract, then pay for the inspections, and renegotiate the price — auctions let them do their due diligence before the sale.

- When time is of the essence - This includes properties that must be sold by a certain date, probate sales, trust, bankruptcy, divorce, inheritance, and partnership dissolution sales. The benefit here is that the seller has a date certain by which the property is sold and money received. Additionally, the shortened period for an auction program can save a seller three to six months' additional costs of taxes, insurance, maintenance, etc.
- When release of liability is required - Properties with unique circumstances for which the seller wishes to be relieved of any and all liabilities, such as potential environmental hazards or structural defects. In other words, the property is sold "as is, where is".
- When simply listing the property has not attracted buyers or resulted in a sale - auction programs can offer an expansive marketing, advertising and promotional campaign to attract the largest pool of buyers and subsequently the highest possible price. This typically goes well beyond what a normal listing broker would do.
- Avoid commissions - In an auction, the seller usually pays zero commission. All commissions are paid by the buyer via a Buyer's Premium.

Use of Real Estate Auctions in Receivership, Bankruptcy and Other Situations

In a recent auction sale, the owners had resisted realty agents' frequent overtures over the years to list their property. Upon the death of the owners, the trustee opted instead to sell by absolute auction. One month before the auction, the trustee received multiple offers of $2.9 million. The trustee decided that to preserve transparency and fairness, as well as having a non-contingent sale, it was best to continue with the auction. The property went to the highest bidder for nearly $3.5 million – a 21% higher sale price than the highest pre-auction offer. This result, a 21% higher sale price, is common with absolute auctions.

Sellers pay no commission when selling real estate at auction – an important benefit. As with business asset auctions, most auctioneers charge a Buyer's Premium, typically ranging from 4% to 8% of the sale price for real properties. This Buyer's Premium is used to compensate buyer's brokers if they bring a successful buyer to the auction. In many auctions, the property is currently listed by a broker. These brokers partner with the auctioneer and when the property is sold, they get a portion of the Buyer's Premium.

The relationship between an auctioneer and a seller is similar to that between a broker and client. The auction contract does establish an agency relationship between the seller and the auctioneer. A reputable auction company should hold an auction license and a real estate broker's license. Real estate auction companies must have extensive valuation expertise to educate the seller on the true value range of the property.

Continued on page 15...

Continued from page 14.

To ensure a commercially reasonable sale, attract a national and/or worldwide audience, and obtain top price for the property, the auction company should be able to provide an extensive marketing, advertising and promotional campaign. This includes advertising in local and national publications, direct mail campaign, using strategic alliances with internet search engines, listing on local and regional listing services, alliances with prominent brokers nationwide, cable television advertisements, online video tours of the property and, in some cases, television and radio.

An experienced real estate auction company will have a bidder's qualification procedure that will ensure that all bidders arrive on auction day financially pre-qualified and with a deposit for at least 10% of the expected sale price. This guarantees that all participants are serious buyers with the ability to close the transaction and quickly provide money for the seller and/or creditors.

Unlike foreclosure auctions on the courthouse steps, many auction sales do not require an all cash sale on the day of the auction. Final payment can be set for as much as a 30 day period following the auction date. This enables the buyer to obtain standard financing that provides the buyer the ability to pay the highest possible price.

So, let the bidding begin.

**Todd Wohl* *is the Senior Partner of Braun International, BraunMIMX and Premiere Estates International Realty Organization. He specializes in the valuation, brokerage, and auction of Real Estate, Business Assets, and Partnership Interests. Todd has valued and sold over $2 Billion of business real estate. He has been seen on FOX Television for The Complex - Malibu television show, HGTV's "Real Estate Confidential" show, The Today Show, and has been quoted in regional and national newspapers.*

Todd has provided expert witness testimony in numerous state and federal courts regarding valuation of assets for clients such as GE Capital, McDonald's, Nissan Motors, Ford Motor, and Primus Financial.

Todd Wohl

Professional Profile:

Meet the "Illest" Man in the Receivership World, Oren Bitan

I was born and raised in Los Angeles to parents who had recently emigrated from Tel Aviv, Israel. My grandparents were Zionists who moved to Israel in the 1930s from small poor villages in Poland and Lithuania. When my grandparents arrived in Tel-Aviv, my maternal grandfather helped pave the streets of Tel-Aviv as a construction worker and my maternal grandfather became a bus driver. They were each one of the only survivors in their immediate families after their entire families were murdered by the Nazis during the Holocaust. Their stories continue to influence my life, values, and professional practice. As the first person born in the United States in my immediate family, English was my second language and I only spoke Hebrew until preschool. Growing up in the San Fernando Valley, I was fortunate to have a relatively peaceful upbringing riding my BMX bike and excelling in video games and go-kart racing. The rise in anti-Semitism over the last year, however, has sent a shockwave through my family and the entire Jewish community, and reinforced the reasons my grandparents fled Europe to create a safe haven in Israel. My legal career representing court-appointed receivers has become a way to honor that history, especially in fraud and Ponzi scheme cases I work on helping bring justice and compensation to victims of fraud.

Growing up, I always had a passion for music. My first concert was Oingo Boingo at the Irvine Amphitheater at one of their famous Halloween shows. I loved hip hop as a kid and grew up in the golden era of the 1980's hip hop scene. I was an amateur hip-hop MC in high school and I eventually channeled my oratory skills into legal advocacy and oral argument. During college at the University of Southern California's Business School, I worked at Interscope Records after its acquisition of Death Row Records and the release of some of the greatest albums of all time. The offices of Death Row Records were across from the hall from Interscope, but before I could gain entry to deliver documents, I had to pass through a metal detector and explain the purpose of my visit. Thankfully I always made it out.

I then graduated from the University of Southern California with a Bachelor of Science in Business Administration with an emphasis in Entrepreneurship and started a job at a small film distributor named Seventh Art Releasing, quickly rising through the ranks to V.P. of Acquisitions. I always knew I wanted to be an attorney, but I wanted to work in music and film for a couple years before I entered law school. While at Seventh Art, I travelled to film festivals across the world looking for new films including Sundance, South By Southwest, New York Film Festival, Rio de Janeiro, Amsterdam, and Telluride. One of the films we released called *The Long Way Home* (produced by the Simon Wiesenthal Center and narrated by Morgan Freeman) received the Oscar for best documentary, and told the story of Holocaust survivors trying to emigrate to Israel, often on foot through the Alps trying to avoid detection by British authorities. The next year, we distributed a documentary called *The Farm* about the last chain gang prison in the United States in Angola, Louisiana, which earned an Oscar nomination. While the professional experience I gained at Seventh Art was exceptional, it was more noteworthy because it was the place I met my future wife Rachel, who has been my partner ever since.

Given my life-long affinity for music, I then pivoted my focus to music documentaries and acquired and released the seminal Radiohead documentary *Meeting People is Easy* and the electronica documentary *Better Living Through Circuitry* (featuring Moby and The Crystal Method). I then launched my own company called H.I.Q.I (Hit It 'n Quit It) Media focused on music documentaries and the creation of a travelling film festival including films featuring Radiohead, Smashing Pumpkins, Ben Harper, The Talking Heads, and

Continued on page 17...

Continued from page 16.

Peter Tosh. I toured with the hip-hop group The Roots on its Okayplayer tour as part of a documentary I was filming featuring Slum Village, and many special guests on a six week tour across the United States.

I always knew I wanted to be a lawyer advocating in Court and what I intended to be two or three years in music and film turned into eight, and I finally decided the time was right to go back to school. This coincided with a dispute one of my filmmakers had with a major record label about use of concert footage of Elliott Smith, and when the label was able to bully the filmmaker into submission because they could not afford a formidable attorney, I knew my decision was the correct one.

I started at Loyola Law School and was fortunate to receive an offer to extern for District Judge Nora Manella during my first summer, who was then sitting in the United States District Court for the Central District of California. The experience was invaluable and provided a peek behind the judicial curtain to experience the process by which judicial decisions are made including regular conferences with the judge and her full-time clerks. The judge was also gracious to give me time off for my wedding and honeymoon to Italy with my new wife Rachel. We visited Rome, Florence, Tuscany, and the Amalfi coast and the trip began our romance with Italy resulting in several more trips over the years to different regions including Puglia, Emilia Romagna, Veneto, and Umbria. Rachel and I have travelled the world since then, eventually including our two young boys.

Oren and Rachel in downtown LA overlooking LA City Hall.

My second year at law school included a Civil Rights litigation seminar, which led to an externship with the luminary Ninth Circuit Court of Appeal Judge Harry Pregerson and an internship with the ACLU of Southern California working on its Jails Project during the time it was investigating abuses of the LA Sheriff's Department in Los Angeles

Oren and Rachel in Puglia, Italy

County jails and prisons. I visited inmates at Men's Central Jail among others to hear their stories and prepare declarations, which were used in legal proceedings trying to improve conditions for inmates.

After law school, I worked in big law at Morrison Foerster, where I practiced commercial and intellectual property litigation. As a junior associate, I expected to quickly become a trial lawyer but big law had different ideas for me. My old friend and fraternity brother Jason Goldstein then told me about the law firm Buchalter, where he worked, and said it would be a great fit for me and give me the latitude and opportunities I was looking for in my legal career. It was at Buchalter where I first learned what a "receiver" was and walked into to about 50 receiverships of all shapes and sizes during the Great Recession. I was fortunate to learn from some of the best including Mike Wachtell, Richard Ormond, Steven Spector and Jeff Wruble. Every receivership brought a new cocktail story and the receivership industry was very welcoming and inclusive, especially in the California Receiver's Forum.

I just celebrated by 15th anniversary at Buchalter and am now chair of its Receiver, Fiduciary, and Trustee Group and co-chair of its Los Angeles Litigation Department. I am now helping train the next generation of receiver lawyers and continuing the tradition that was passed to me.

Ask The Receiver

By Peter A. Davidson*

Q I am a state court receiver in a case that has been disrupted by a bankruptcy filing. The bankruptcy trustee has been threatening to sue me, in the bankruptcy court, for what she claims were negligent actions and to recover alleged preferential transfers. Doesn't the trustee have to get prior permission from the state receivership court to be able to sue me?

A Yes. *The Barton Doctrine* [Barton v. Barbour, 104 U.S. 126 (1881)] provides that a party seeking to sue a receiver must first obtain leave of the appointing court to do so and, absent such leave, no other court has jurisdiction to hear a lawsuit against the receiver. It applies to any lawsuits a bankruptcy trustee may want to bring. We previously discussed the case of *In re Preferred Ready-Mix, LLC*, 647 B.R. 158 (Banks. S.D. Tex. 2022) [*Receivership News*, Issue 77, Spring 2023] where a bankruptcy trustee sued a state court receiver who, after the trustee's demand, had failed to timely turn over a debtor's assets. The receiver eventually conditioned the turnover on the trustee paying him for certain administrate expenses first. The trustee complied, but then sued the receiver for violating the automatic stay and the Bankruptcy Code turnover provisions. The bankruptcy court ruled in favor of the trustee and awarded damages of $35,000 and punitive damages of $10,000 for violating the automatic stay. The receiver appealed and the district court has now reversed. *In re Preferred Ready-Mix, LLC*, 2024 WL 1392550 (W.D. Tex. 2024). Why? You guessed it—the trustee had not obtained prior permission from the state receivership court to sue its receiver—thereby violating the *Barton* Doctrine.

It was not disputed that the *Barton* Doctrine applied or that the trustee had not obtained permission to sue the receiver. *See, In re DMW Marine, LLC*, 509 B.R. 497, 503 (Banks. E.D. Penn. 2014) ("In the bankruptcy context, it applies to actions that a third party brings against a bankruptcy trustee, as well as actions that a bankruptcy trustee brings against receivers appointed by federal and state courts."). The trustee, however, contended there are exceptions to the *Barton* Doctrine that were applicable. There are two exceptions to the *Barton* Doctrine. The first is the business exception, which can apply when the claimed damages arose from the receiver's operation of a business. 28 U.S.C. § 959(a). It did not apply because the receiver had not been operating a business. It also could not apply

because the federal statutory exemption only applies to federal receivers. The second exception is the *ultra vires* exception. The trustee contended the receiver's actions were ultra vires because he refused to timely turnover the assets, after he had notice of the bankruptcy and had received a demand to do so. The district court disagreed. It found the ultra vires exception "exceptionally narrow" and has been limited only to "the actual wrongful seizure of property". The trustee has appealed to the Fifth Circuit.

The district courts limitation on the extent of the ultra vires exception is consistent with the holdings of other courts. *See, In re DMW Marine, LLC, supra.* at 507. ("Over the years, courts have curtailed the scope of "ultra vires" exception to the *Barton* Doctrine. While no court has said as much definitively, it may be no exaggeration to state that the exemption applies only in cases in which a receiver wrongfully seizes or controls non-receivership property."). The DMW court goes on to explain that one of the core purposes of the *Barton* Doctrine is to prevent interference with the receivership court's control over receivership property. "Because a judgment against the receiver in his capacity as receiver would be satisfied out to the receivership property, the effect of a suit brought without leave to recover such a judgement would be 'to take the property of the trust from [the receiver's] hands and apply it to the payment of the plaintiff's claim, without regard to the rights of other creditors or the orders of the court which [was] administering the trust property." *Id.* at 506. quoting *In re VistaCare Group, LLC*, 678 F.3d 218, 224 (3rd Cir. 2012) (quoting *Barton* 104 U.S. at 128-29). It also notes that the doctrine is even stronger when suit is brought in federal

Continued on page 19...

Continued from page 18.

court and a state court receivership is involved because of federal-state comity. "Until the administration of the estate has been completed, and the receivership terminated, no court of the one government can, by collateral suit, assume to deal with rights of property or of action constituting part of the estate within the exclusive jurisdiction and control of the courts of the other" (quoting *Porter v. Sabin*, 149 U.S. 473,480 (1893).) Id. at 513 fn.10.

Q I am a state court receiver for an LLC that owns a number of apartment buildings, which I am now managing. I have been sued by some tenants and a tenant group. They have not obtained receivership court permission to sue me, which I think is required. They contend that because their claims relate to my managing the business of the LLC they do not need prior permission to sue me and have cited 28 U.S.C. §959(a). Does this federal statute apply to me—a state court receiver?

A No. 28 U.S.C. §959(a), which is an exception to the *Barton* Doctrine [*Barton v. Barbour*, 104 U.S. 126 (1881)], requiring prior receivership court approval to sue its receiver, has repeatedly been held to only apply to receivers appointed by federal courts. *See, In re Jefferson County, Alabama*, 484 B.R. 427,458-59 (Bank. N.D. Ala. 2012) (hereinafter "*Jefferson County*"); *Republic Bank of Chicago v. Lighthouse Mgmt. Grp. Inc.*, 829 F. Supp. 2d 766,772 (D. Minn. 2010); *Finnegan v. Clark*, 2018 WL 2972504 (C.D.Cal. 2018); *Freeman v. County of Orange*, 2014 WL 12668679 (C.D. Cal. 2014); *Asset Recovery Group LLC v. Cabrera*, 233 So. 3d 1173,1178 (Fld. 2017) ("28 U.S.C. §959(a) is not applicable to receivers appointed by state courts."). Indeed, the court in *Jefferson County, supra*. noted: "This Court's review of over 125 years of cases discussing 28 U.S.C. § 959 and its predecessor acts resulted in finding only one reported opinion of a court that has arguably viewed the exception to *Barton* as applicable to a state court-

Continued on page 21...

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.

AREA		PHONE	E-MAIL
Bay Area			
♦⊗●	David Bradlow	415-206-0635	bradlow@davidbradlow.com
⊗≠▲⌘❖✪	Dennis Gemberling	800-580-3950	DPG@perrygroup.com
⊗●▲⌘◗✪✛	Michael Kasolas	415-992-5806	mike@kasolas.com
♦●▲◗	Douglas Wilson	619-641-1141	dwilson@douglaswilson.com
Sacramento Valley			
♦■⊗●▲✪	Michael C. Brumbaugh	916-417-8737	mike@mbi-re.com
■●⊗▲❖◗✪✛	Scott Sackett	916-930-9900	scott.sackett@efmt.com
●⊗▲	Kenneth Weaver	916-812-8090	ken@classicrealtyconsultants.com
Santa Barbara/Ventura			
	Marcelo Bermudez	213-453-9418	mb@marcelobermudezinc.com
San Diego Area			
♦≠●▲◗✪✛	Michael Essary	619-886-4116	calsur@aol.com
✪	Jon Fleming	858-793-6000	jon.fleming@legacyreceiver.com
⊗≠▲⌘❖✪	Dennis Gemberling	800-580-3950	DPG@perrygroup.com
♦●▲◗✪✛	Richardson "Red" Griswold	858-481-1300	rgriswold@griswoldlawsandiego.com
✪	Kristin Howell	858-373-1240	kristinh@meissnercres.com
■⊗≠●♦▲⌘❖✪	Richard Munro	949-910-6600	richard@invenz.com
▲❖◗	Michele Vives	619-641-1141	mvives@douglaswilson.com
♦■⊗≠▲⌘❖	Joel B. Weinberg	310-385-0006	jweinberg@usisg.com
♦●▲◗	Douglas Wilson	619-641-1141	dwilson@douglaswilson.com
Los Angeles/Orange County/Inland Empire			
♦⊗●▲⌘❖✪✛	Blake Alsbrook	310-273-6333	balsbrook@ecjlaw.com
♦⊗●▲	Albert Altro	310-809-5064	albertaltro@traversellc.com
♦■⊗≠	Eric Beatty	909-243-7944	epb@epblegal.com
♦●▲◗	Ryan Baker	949-439-3971	rbaker@douglaswilson.com
Los Angeles/Orange County/Inland Empire			
♦■●▲⌘✪	Marc Brooks	818-519-5588	marcbrooks2021@outlook.com
	James F Davidson	949-417-5708	jdavidson@avantadvisory.com
♦■⊗≠●♦✪✛	Peter A. Davidson	310-273-6333	pdavidson@ecjlaw.com
■⊗≠●♦▲⌘✪✛	Stephen Donell	310-689-2175	steve.donell@fedreceiver.com
⊗≠▲⌘❖✪	Dennis Gemberling	800-580-3950	DPG@perrygroup.com
	Jeffery Golden	714-966-1000	jgolden@wgllp.com
✪	David Goodrich	714-966-1000	dgoodrich@wgllp.com
	Brett Hitchman	949-200-9712	leeann@hitchmanfiduciaries.com
♦■⊗≠●♦▲⌘❖✪	Byron Z. Moldo	310-281-6354	bmoldo@ecjlaw.com
■⊗≠●♦▲⌘❖✪	Richard Munro	949-910-6600	richard@invenz.com
✪	Carl Petta	626-966-4049	cgpetta@earthlink.net
	Kevin Randolph	909-890-4499	krandolph@fennemorelaw.com
♦■⊗≠●♦▲⌘❖✪	John Rey	562-500-7999	rpmqmp@aol.com
❖◗	Eric Sackler	310-979-4990	ericsackler@gmail.com
♦⊗≠●▲⌘	Thomas Seaman	949-265-8403	tom@thomasseaman.com
⊗●▲❖✪	Phil Seymour	310-612-9800	phil@swgrp.com
	Tony Solomon	310 909-5450	tony.solomon@marcusmillichap.com
♦⊗♦	David Stapleton	213-235-0601	david@stapletoninc.com
▲❖◗	Michele Vives	619-641-1141	mvives@douglaswilson.com
❖✪	Michael Wachtell	213-891-5460	mwachtell@buchalter.com
♦■⊗≠▲✪	David D. Wald	310-230-3400	dwald@waldrealtyadvisors.com
♦⊗✪	Robert C. Warren	714-863-1694	robert.warren@investorshq.com
▲⌘❖✪	David Weinberger	818-970-0915	david@swgrp.com
♦■⊗≠▲⌘❖✪	Joel B. Weinberg	310-385-0006	jweinberg@usisg.com
♦●▲◗	Douglas Wilson	619-641-1141	dwilson@douglaswilson.com
Out of State			
	Cherubim "Lizzie" Hurdle	980-330-1705	traffic.connect@outlook.com

- ♦ This symbol indicates those who completed up to 14 hours of advanced receivership education at the Loyola V, Complex Case Symposium in January 2013.
- ■ This symbol indicates those who facilitated and attended the Loyola V, Complex Case Symposium in January 2013.
- ⊗ This symbol indicates those who completed 9 hours of education at the Loyola VI Symposium in January 2015.
- ≠ This symbol indicates those who facilitated and attended the Loyola VI Symposium in January 2015.
- ● This symbol indicates those who completed 9 hours of education at the Loyola VII Symposium in March 2017.
- ♦ This symbol indicates those who facilitated and attended the Loyola VII Symposium in March 2017.
- ▲ This symbol indicates those who completed 6 hours of education at the Loyola VIII Symposium in January 2020.
- ⌘ This symbol indicates those who facilitated and attended the Loyola VIII Symposium in January 2020.
- ◗ This symbol indicates those who completed 6 hours of education at the Loyola IX Symposium in April 2022.
- ❖ This symbol indicates those who facilitated and attended the Loyola IX Symposium in April 2022.
- ✪ This symbol indicates those who completed 6 hours of education at the Loyola X Symposium in January 2024.
- ✛ This symbol indicates those who facilitated and attended the Loyola X Symposium in January 2024.

Loyola I-IV symbols have been deleted.

Continued from page 19.

appointed receiver." It goes on to point out in that one case: "The bankruptcy court simply assumed that it might apply and determined that because the Florida court receiver had never been 'empowered to operate the business' that 28 U.S.C. §959(a) was inapposite." It also notes the court never considered whether the exception only applied to federal receivers. *Id. at fn.* 29.

Jefferson County has an interesting discussion of the origin of the business exemption to *Barton* embodied in 28 U.S.C. § 959(a) and why it only applies to federal receivers. It explains that when *Barton* was decided Justice Miller dissented. He thought there should be a distinction between non-operational receiverships and operational receiverships. He also thought requiring someone to come to the receivership court to get permission to sue, which might be far away from where the claim arose, could be burdensome (remember its 1881) and it might impair the right to a jury trial, if the claims had to be adjudicated in the receivership court. His dissent led Congress to enact the forerunner of the current statute. The 1887 version was clear that it only applied to federal receivers. It stated "[t]hat every receiver or manager of any property *appointed by any court of the United States* may be sued without leave ...with respect to their acts...in carrying on business connected with the property". The *"appointed by any court of the United States"* language was retained when the statute was amended in 1911. In 1948 the statute was changed to its current version by adding "Trustees" and "debtors in possession" to the statute, but at the same time omitted this language. So that now it reads, in part, "Trustees, receivers...including debtors in possession may be sued, without leave of the court appointing them..." Despite the change, virtually all cases have held the business exemption still only applies to federal receivers, not only because that was what was intended and its history, but because of its placement in the United States Code. The court explains: "Section 959 is part of Title 28 of the United States Code, the 'Judiciary and Judicial Procedure,' and Chapter 57 of Title 28, which is the chapter for 'General Provisions Applicable to Court Officers and Employees." *Id.* at 459. It states, based on Supreme Court authority, " 'the title of a statute and the heading of a section' are 'tools available for the resolution of a doubt' about the meaning of a statute." Id. It also notes that the "appointing" language itself, added in 1948, has been glossed over because trustees are now not appointed by the court and neither are debtors in possession. Trustees are appointed by the United States Trustee. 28 U.S.C. § 586(a). Debtors in possession are a creature of statute. 11 U.S.C § 1101(1). As a result, some courts have replaced it with a requirement that the person be an officer of a court of the United States, which would include trustees and debtors in possession, but not state court receivers. *Id.* at 460.

Peter A. Davidson

**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.*

STEVE DONELL
FedReceiver, Inc.
310.689.2175
steve.donell@fedreceiver.com

Is pleased to announce
his appointment as

Receiver for
FTC v Ascend Capventures, Inc. et al.
Type of Receivership: Equity

United States District Court
Central District of California

MICHAEL G. KASOLAS, CPA
Michael Kasolas Company
Office: 415-992-5806
Email: mike@kasolas.com

Is pleased to announce his
acceptance of appointment as

Partition Referee
In re: Charles Z. Chou vs. Ken J. Chou
for the sale of a multi-family
residential building
San Francisco, CA

Superior Court of California
County of San Francisco

MICHAEL G. KASOLAS, CPA
Michael Kasolas Company
Office: 415-992-5806
Email: mike@kasolas.com

Is pleased to announce his successful
completion of his duties as

Chief Restructuring Officer
In re: Blade Global Corporation,
Debtor-in-Possession
for the administration of the
bankruptcy estate through
plan confirmation and final
administration of the bankruptcy plan
San Jose, Santa Clara County, CA

United States Bankruptcy Court
Northern District of California

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 Board Transitions in the New Year — Viva La Revolucion!:** Alas with the coming of a new year, the Board will be transitioning chair and soon, yes very soon!, we will be free of Chairman **Michael Muse-Fisher's** iron authoritarian grip! The threats of board banishment after just three unexcused absences will be rescinded and a new age will be upon us. Joking aside, our indelible leader Michael Muse-Fisher has done a wonderful and fantastic job guiding the board and CRF during the past year and I know everyone will join me and thanking him for his incredible work and congratulate him as he moves to Past-Chair. Now ascending to Chair the CRF board will be **Ben King, Mia Blackler** will be graduating to Vice-Chair, **Ryan Baker** will move in as the new treasurer (but in all honesty will look to **Dominic LoBuglio** on how it's done), **Gary Rudolph** moves up to Secretary, and the board will be voting on a new Program Chair before the end of the year.

- **Is The Receivership-Meter Ticking Upwards?:** Many members of the CRF are reporting to your columnist (I can't say this with a straight face) about an uptick in receivership and related fiduciary appointments. Some point to a potential, but likely only partial, end to the extend and pretend pandemic (too soon?) that has dogged many loans in this current cycle. But several recent and important changes point towards this shift. I'm prognosticating again, but follow me. In 2020, lenders and borrowers saw the uncertainty of the stresses being felt — offices unoccupied, hotels vacant and shopping malls unattended — and tacitly agreed to extend loan maturities pending a hopeful return to a more "normal" economic climate. Though they "pretended" longer than many expected. We've all seen rates rising which has eliminated opportunities for CRE borrowers to restructure their debt, leading to a moment when the underlying loans need to ultimately be resolved. In markets where values have fallen, fiduciaries are reporting they are starting to get inquiries as a result of these forces. But where this ultimately is heading, nobody knows.

- **Learning the ABCs About ABCs:** The CRF's Education Committee is hosting (or, by the time of this publishing may have hosted) another great educational panel on November 19, 2024 with panelists **Michele Vives** from Douglas Wilson Companies, **Chris Hawkins** from Fennemore, and **Jim Hill** from Fennemore. Hosted at Fennemore's offices at 600 B Street in downtown San Diego (or remotely via Zoom), the program will cover the nuts and bolts of Assignments for the Benefit of Creditors (ABCs), with a focus on California ABCs. The ABC process is an important topic for us all to know and be fully up to speed on as it's an option that has many pros (but also some cons) when compared to the alternatives, like receiverships and bankruptcy. Using my crystal ball, I forecast that an interesting case study will be used regarding the Zulily ABC, one of the largest ABCs in the nation, spearheaded by yours truly, Michele, Chris and Jim together. I want to give a big thanks to **Gary Rudolph**, the education

Continued on page 23...

Continued from page 22.

chair for California Receiver's Forum, for putting this educational event together and for having performed wonderfully as Education Chair this past year.

- **Jim Kramer Says BUY BUY BUY! – Stapleton Joins JS Held:** Congratulations are in order for the Stapleton Group, which recently joined JS Held. In October 2024, JS Held announced its acquisition of the Stapleton Group and simultaneously the creation of the Strategic Advisory practice. **David Stapleton** and the Stapleton Group – in addition to being a great group and excellent receivers – have been wonderful supporters of the California Receiver's Forum for many, many years helping this organization thrive. Many congratulations to David and the Stapleton Group team on the exciting news!

- **Move Over Marvel – A Recap of A Receiver's Superpowers:** The CRF's Education Committee hosted another great educational panel on September 19 with panelists **Blake Alsbrook** from Ervin Cohen & Jessup, **Mia Blackler** from Lubin Olsen, and **Jake Diiorio** from the Stapleton Group. The panelists covered important topics regarding the power to sell free and clear of liens, subordinate liens when borrowing, rejecting executory agreements, quasi judicial immunity, and many other important and insightful topics unique to a receiver.

- **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 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.*

SEYMOUR | WEINBERGER
FIDUCIARY REAL ESTATE GROUP

EXCLUSIVELY SERVING THE FIDUCIARY COMMUNITY FOR OVER 30 YEARS

RESIDENTIAL • MULTIFAMILY • COMMERCIAL

IN RECOGNITION OF HER LEADERSHIP, EXPERTISE AND COMMITMENT TO EXCELLENCE

WE ARE PROUD TO ANNOUNCE

MEGAN HUSRI

AS NAME PARTNER

swgrp.com

PHIL SEYMOUR
CEO
310.612.9800
Phil@SWGRP.com

DAVID WEINBERGER
President
818.970.0915
David@SWGRP.com

MEGAN HUSRI
Executive Vice President
310.775.7529
Megan@SWGRP.com

KELLERWILLIAMS
DRE# 00630158 | 01349349 | 02089901 | 01428774