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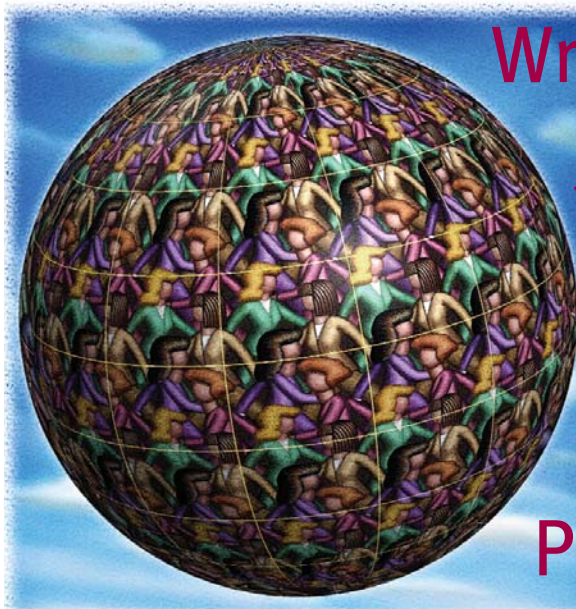
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RECEIVERSHIP

NEWS



LA PROVISIONAL REMEDIES SECTION



Writs & Receivers Judges Provide Personal Insights to the Application and Pleading Process

BY EDYTHE L. BRONSTON, ESQ.*

Many topics of particular interest to the receivership community were discussed by jurists from the LA Superior Court Writs and Receivers and Attachments Departments with members of the LA County Bar Association's Provisional and Post-judgment Remedies Section at its December 2, 2004 semi-annual breakfast encounter at the Dorothy Chandler Pavilion. Judges Dzintra Janavs and David P. Yaffe and Commissioners Bruce Mitchell and Victor Greenberg provided valuable tips and guidance to the group, including:

Ex Parte Hearings: Movants who wish judges to devote more than a nominal amount of time to an ex parte hearing should come in on days when regularly noticed hearings are not held. For Dept. 85 (Judge Janavs) even numbered days are best for ex partes, while odd numbered days are best for regularly noticed motions. For Department 86 (Judge Yaffe) odd numbered days are best for ex partes, while even numbered days are best for regularly noticed motions.

Orders: All remedies sought must be set forth in both the order to show cause and the temporary restraining order. Judge Janavs commented that having them in only one document contravenes CRC 359 (c) (that sets out a form OSC and a TRO) and CRC 379 (that details explicit requirements for an ex parte application and order).

Evidence: Declarations regarding business records cannot just recite the conclusory language of Evidence Code Section 1271. A detailed description based upon the declarant's personal knowledge of exactly what comprises the steps taken "in the ordinary course of business" and how it is that the declarant knows of the specific steps taken in the particular circumstances must be provided to the court. Commissioner Greenberg commented that judges often ignore the endless stream of evidentiary objections — usually made by junior associates who under questioning often cannot articulate a good reason for the objection. The jurists stressed that pertinent objections should not

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Continued from page 1.

be buried in a sea of nonsense, where they likely will never be seen.

Bonds: Counsel seeking a receiver must present to the court an estimation, with evidence, of the rents or other revenue which will likely pass through the receivership estate.

Substance of Pleadings: The manner in which the judges review ex parte applications is instructive. Judge Yaffe stated he never reviews the facts set forth in the points and authorities. He first reviews the proposed order, then the supporting declarations. He looks at the points and authorities if there is a legal issue raised.

Judge Janavs has a different approach, first reviewing the complaint, then the proposed order, then the supporting declarations. She also requests a courtesy copy of all proposed orders so that she can make notations on her own copy.

Form of Pleadings: Since bluebacks are no longer permitted, the judges suggested counsel use tabs on pleadings to make it easy for the court to separate documents.

Filing issues: LA Superior Court has lost 600 employees this year to budget cuts. Although the Clerk's office insists that all documents are being timely scanned, counsel are advised not to depend on pleadings being timely delivered to the Department (or to be delivered at all). Judges Janavs and Yaffe and Commissioner Mitchell still want counsel to file directly in their Departments, 85, 86 and 59, respectively. Commissioners Mitchell and Greenberg strongly suggest that courtesy copies of the pleadings (stamped "Courtesy Copy") always be delivered directly to Departments 59 and 66.

The PPJR Section plans its next "Breakfast With the Experts" for early summer.

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Receivership To The Rescue: Reviving Failing Companies With A Consensual Receivership

BY ROBERT MOSIER*

(Part one of this feature addressed why a company would go into receivership voluntarily. This concluding portion outlines the steps a consensual receiver will take after appointment to maximize the chances for a successful revival.)

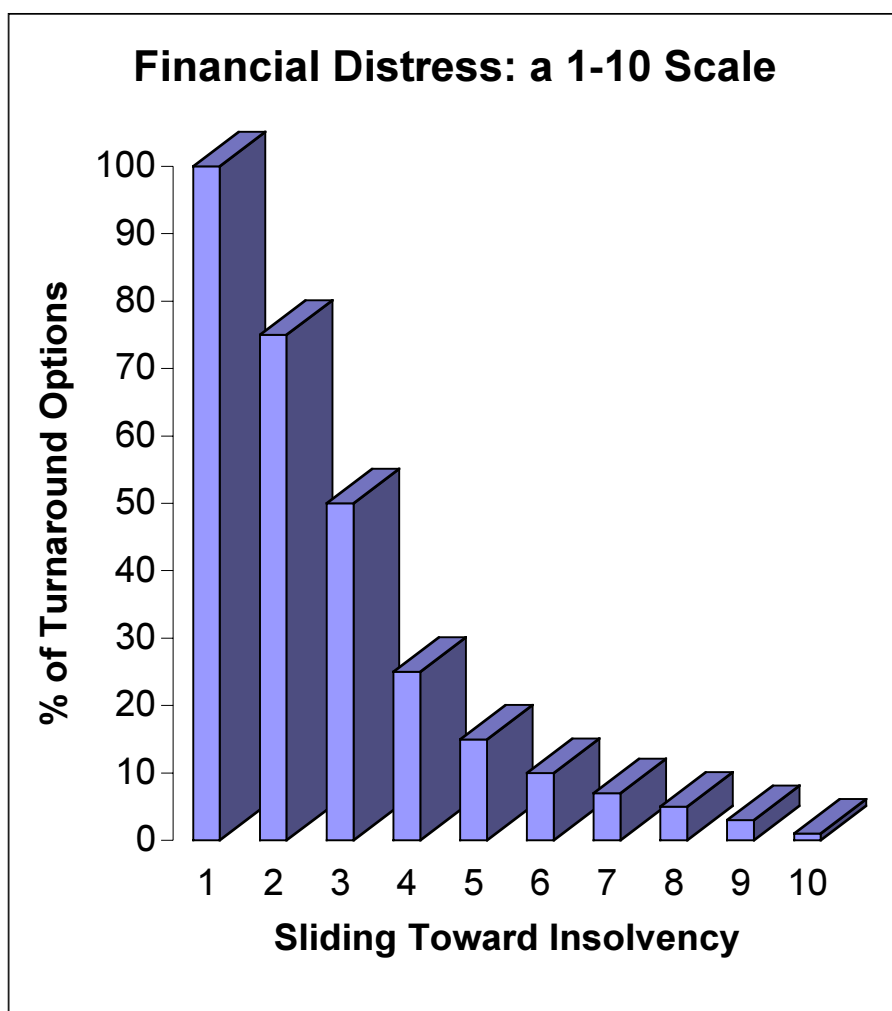
The number and variety of options available to a receiver in an attempted consensual turnaround rapidly diminish as the company slides toward liquidation. The following chart shows insolvency on a 1-10 scale along the bottom of the chart (the “x” axis).

During the early stages of financial difficulty, management usually remains in charge and exercises typical options, such as replacing a president, vice president or selling a division. If this doesn't work, the bank or banks holding the secured debt generally recommend association of a

traditional turnaround firm to aid management (or to replace it). Assuming that this doesn't reverse the company's declining performance, the next step (generally around five on the above scale) is the commencement of collection litigation by the secured or unsecured creditors, or both. At this point management is embattled and has generally lost all credibility. As the company's financial woes force it into the judicial system, one of the remedies available to secured creditors is to seek the appointment of a receiver. This usually occurs around points six or seven on the bottom axis. If management is intent on maintaining complete control of the company, a next step often is filing a petition under Chapter 11 of the Bankruptcy Code (where a receiver, if already appointed, may or may not be kept in place by the court). The last step on the decline into oblivion (number 10) is shut down and liquidation.

Note that this progressive (regressive?) scale shows a full range of rehabilitative options available in the early stages of financial trouble. However, as time passes and the company's situation worsens, the number of options available drops off rapidly. By the time of judicial intervention, step five or so, the hypothetical scale suggests that the options available to management to turn around the company's fortunes (and probability of success) are only one fifth of what they were during the early stages of the insolvency. And note how quickly they approach zero.

In evaluating future options, and where the company is likely to end up in this process, it is helpful to consider the nature



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of the business and or its economic sector. If the industry sector in which the troubled company participates is healthy and growing, the potential for a successful turnaround is far greater (for example, a troubled cable installation company operating in an environment where the entire nation has to be re-wired with two-way cable). If the industry sector is shrinking or headed for extinction (many high-tech companies in 2001, for example), the prospect for a successful turnaround is diminished. Key concerns include the underlying reasons for the business's financial woes and existing management's ability (and willingness) to take direction from a receiver.

The skeptic may ask: "Since existing management caused the problem, why is it advisable for a receiver to leave management in place (while taking control of the finances)? Isn't this leaving the proverbial fox in the hen house?" Not really. It must be remembered that the goal of the receivership is to improve creditors' recovery by turning around the

business. The appointment of a receiver is a temporary remedy.

An allied question is "Why can't the receiver operate the business alone?" The answer is that the receiver usually can, but seldom with the level of expertise and knowledge possessed by existing management. A receiver can bring in substitute management, but the concomitant learning curve requires time and consumes money — time and money the company no longer possesses.

The consensual turnaround receiver's first agenda item is to build a cash reserve. The receiver must impose/obtain an informal hiatus on payment of the pre-receivership bills of both secured and unsecured creditors. Though this may force the company to a cash-on-delivery operating basis, creating a cash reserve is essential for a company to operate.

Next, the receiver has to impose cost reductions — cutting all but essential expenses. This will likely include layoffs, reductions in salary, closing nonessential

unprofitable operations, and eliminating all perks — including those boats, planes and fancy cars the company CEO thought essential.

The time to develop a secured creditor repayment plan comes after (1) the company has accumulated a one-month's supply of cash (to handle short-term emergencies), (2) revenues begin improving, and (3) the cost reduction plan is stabilized.

This must be a sensible payment plan that can be met while alternative financing for the now-stabilized business is sought. How quickly this can be achieved will generally depend upon the strength of the balance sheet and the ability of management to grow revenues. Once the secured creditor repayment plan is in place it is time to focus on the accumulated unsecured debt. The payment concept is the same as for secured debt, except that a cents-on-the-dollar payment plan is an option. The key to success is showing creditors that they will ultimately recover more under such a plan (and retain a paying client) than they would if the company failed and was liquidated. Once these payment plans are in place, initial payments are made, the business is stabilized and, perhaps, new long-term financing has been obtained, the receiver may seek to return control of the business to existing management.

Here is a quick real-life illustration. Bank grants Company a \$3 million working credit line, secured by its rolling stock, inventory, accounts receivable, and general intangibles. Company, which sells aftermarket large-frame computers — used IBM computers and those of other manufacturers, is doing well. Its founders are three former IBM executives — two "techie" who were in technical support and a third who was in sales. Initially it was a match made in heaven. Sales soared, and the Company had a very bright future.

The two techies became overwhelmed with their success, however, and wanted to start a new business that emphasized providing contract services, rather than sales. After an extended negotiation, the

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ASK THE RECEIVER

By PETER A. DAVIDSON, Esq.*

Have a receivership question you want answered? E-mail it to pdavidson@resllp.com and your question and the answer may appear in an upcoming column.

Q

Before the Commercial Code was amended a few years ago, it provided that a receiver becomes a lien creditor over personal property in the receivership estate and can avoid unperfected security interests in such property. I can't find that provision in the amended code. Does it still exist, and if so where is it?

A

The concept of a receiver becoming a lien creditor upon his appointment, with the ability to avoid unperfected security interests in property of the estate, still exists in the amended Commercial Code; it's just harder to find than it used to be. Before the Code was amended, the provision that a receiver becomes a lien creditor over personal property of the estate was found in California Commercial Code §9301. With the implementation of the amended Commercial Code in 2001 that clear provision was eliminated and separated into two different parts of the Code.

California Commercial Code §9102(52)(E) defines a lien creditor as, among other things: "A receiver in equity from the time of appointment". That section coupled with §9317(a)(2) gets the result you are looking for. Section 9317(a)(2) provides a security interest is subordinate to the rights of a person that becomes a lien creditor before the earlier of the time that the security interest is perfected or a financing statement covering the collateral is filed.

So, like old Commercial Code §9301, the new Commercial Code does provide that a receiver becomes a lien creditor at the time of his appointment and his lien position is superior to any unperfected security interest at the time of his appointment. In other words, the receiver takes ahead of judgment lien creditors where the judgment lien was not perfected with the Secretary of State prior the receiver's appointment and trade creditors whose security interests were not perfected prior to the receiver's appointment.

Q

I am not a lawyer but you heard that the notice one has to give to file a motion in Superior Court has changed, as has the time for opposing a motion and filing a reply. Is this true and why was the notice period changed?

A

Yes, unfortunately, what your heard is true. Effective January 1, 2005, California Code of Civil Procedure §1005 was amended to provide that a moving party must file and serve his motion at least 16 court days, instead of 21 calendar days, prior to the hearing on the motion. Therefore, in calendaring any motion you must determine what is a court date. Court days do not include weekends or days when the court is closed, for example national or state holidays.

To make things more difficult, the legislature did not change the number of days that must be added if your motion is served by mail. That remains 5 calendar days. Therefore, if you file a motion it must be filed and served at least 16 court days prior to the hearing, and if your motion is served by mail, 5 calendar days must be added to that. Opposing papers are now due 9 court days, instead of 10 calendar days, prior to the hearing, and reply papers are now due at least 5 court days instead 5 calendar days before the hearing.

A recent article in the Daily Journal pointed out that you can run into difficulties in calendaring your motion depending on whether you first count the 16 court days or first count the five calendar days and whether you count backwards from the hearing date or forward from the date of service. If you run a little test you will see that you end with different hearing dates. While there is no case law directly on point, since the statute was just amended, prior law indicates that the proper method of determining the date for calendaring a motion is to count backwards from the hearing date.

Since C.C.P. §1013(a) states a period of notice "shall be extended five calendar days, upon service by mail" one should count back from the hearing date 16 court days and then 5 calendar days, if service was by mail.

As to why the legislature amended the statute, the legislative history indicates the legislature was concerned that C.C.P. §1005 was silent about the correct method for calculating the deadline for service and filing of motion papers when the deadline falls on a Saturday, Sunday, or Holiday and was concerned that the existing statute permitted parties to manipulate the length of time for service by filing motions on certain days of the week. It hoped the new statute would clarify the law, reduce gamesmanship, and eliminate ambiguity about the proper deadlines for filing motions by using court days instead of calendar days.

Of course, as indicated, its goal of eliminating ambiguity and creating clarity missed the mark. Indeed, this is the 10th time since 1980 that the legislature has amended C.C.P. 1005 in hopes of eliminating gamesmanship and creating clarity. Given the results of the latest amendment it is probably not the last time this section will be amended.

*PETER A. DAVIDSON, an attorney with Rein Evans & Sestanovich LLP located in Los Angeles, is a receiver and an attorney who specializes in representing receivers in state and federal court.



Peter A. Davidson

Continued from page 4.

two techies agreed to sell their share of the Company to the salesman for \$5 million – \$1 million in cash and a secured note (subordinated to the Bank’s secured credit line) for \$4 million. The Company could afford the projected payments over time at its then current operating levels.

With the former partner techies out the door (and with them the checks and balances on company operations they had provided), the salesman finally was able to implement creative programs that he had long dreamed of. Even more important from his perspective, he gave the sales force raises, increased bonuses while decreasing performance requirements, and implemented a more liberal expense policy. Predictably, profits began to sag, and the salesman (who was not a finance guy) soon lost financial control of the Company. The Bank’s line of credit was consumed, and soon moved into default. The alarmed salesman’s attempts to undo the liberalized

compensation packages failed: all his experienced salesmen and saleswomen walked out the door, leaving the company in even more precarious straits.

The Bank filed suit for possession of its collateral – the inventory and A/R – and sought imposition of a receiver to protect it. After two meetings with the Company’s principal – the former salesman – a consensual receiver was appointed. The president/salesman was delighted to turn over financial control (of the sinking ship) to the receiver and refocus his energies on selling used computers – his specialty. Both the Bank’s counsel and the Company’s counsel agreed on the plan.

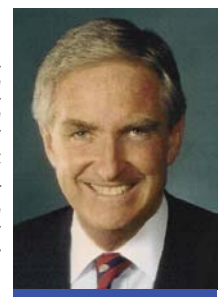
A quick assessment of the Company’s prior successes compared with the current dismal financial outlook told the story and suggested the solution. The principal difference was the absence of the two techies, and the strategy they had

contributed to the company’s prior operations. After a couple of phone calls and a few in-person meetings (with and without counsel present), the consensual receiver’s pitch to the group was easy: either the techies returned and resumed their place in management (the trio again managing the company), or the techies would lose their \$4 million subordinated note, the salesman would lose the Company, and the trade creditors would likely be shut out by the Bank, leaving them with the sole option of bringing suit on personal guarantees.

As you might guess, after a brief negotiation the deal was put together. Both the Bank and the trade creditors were thrilled with the prospect of a return to profitability. The deal worked. Within one year the company moved back into the black, became current on the Bank debt, and paid unsecured debt. The consensual receiver was discharged and the Bank gave the Company its “Borrower of the Year” award at the end of the first 12 months of the successful turnaround.


This case illustrates the difficulties and rewards of a consensual receivership. The challenges of convincing the Bank to hold off on its collection efforts and of convincing current management to surrender financial (and operational) control were difficult to achieve. There are other illustrative cases, some more difficult, some less. But all underscore the point that the consensual appointment of a receiver and corresponding retention of management while the receiver controls the purse strings can pay a big dividend – one that is generally much greater than that achieved by automatically dismissing current management and slugging it out with other creditors in a dark room.

*ROBERT P. MOSIER is a Southern California trustee and receiver and principal of Mosier and Company, Inc., a firm that has specialized in managing and turning around troubled companies for more than 25 years.




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Can the Court Insulate a Receiver From Tax-Related Responsibility and Does a Federal Tax Lien Always Trump a State Tax Lien?

BY CHARLES F. ROSEN, ESQ.*

Let's answer a few tax questions that have come my way concerning receivership tax issues.

Q A receiver seeks and obtains an order from the court stating that the receiver does not have to prepare corporate income tax returns because of the absence of or inadequacy of corporate books and records. The receiver gives the IRS notice of the motion and the government does not object. Is the order binding on the IRS? Will the IRS do anything about it?

A In most instances neither a state nor a federal court will have valid jurisdictional authority to grant such an order. This is true even if the IRS has taken an active part in the

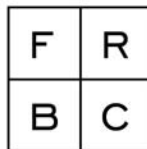
court proceedings for other tax issues. It is quite common for courts to grant receivers (and bankruptcy trustees) such "comfort" orders, but they likely provide no legal protection for the receiver. As a practical matter, if the receiver has noticed the motion to the IRS and subsequently receives the requested court order, nothing is likely to happen to the receiver. In those few reported cases where a receiver (or bankruptcy trustee, for that matter) failed to file returns or pay tax due, the IRS only pursued those receivers (or trustees) who had shown gross negligence in not doing that which was expected of a reasonable and prudent receiver. In most cases where the

government has reacted, the government is normally pursuing the matter knowing recovery will come, if at all, from the receiver or trustee's bond. But there is no guarantee about what the government will do.

Q Both the state and the IRS have liens filed against a company for non-payment of taxes. Does the IRS lien take precedence over the state tax lien for distribution purposes?

A There is no simple answer to this question. First, it is necessary to determine the nature of the property. Is it real property or an

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Chuck Does Taxes...

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interest in real property such as a long-term lease? Or is it in the nature of tangible or intangible personal property? Second, where were the state and IRS liens filed? Proper venue or improper venue? Third, if both taxing agencies have liens filed in the proper venue, who filed first? If the liens were properly filed, the general rule is 'first in time, first in right'. Thus the first agency to record its lien will win.

However, because of games the State of California was playing MANY years ago in attempts to technically 'perfect' its tax liens ahead of the IRS and because of two Ninth Circuit Court decisions and one California Supreme Court decision, the state repeatedly lost on this issue. The IRS and all three California taxing agencies (FTB,

EDD and SBE) subsequently entered into a written agreement — curiously an agreement signed by no one — that states that if there is no intervening perfected lien creditor between the recorded state and IRS liens, that the taxing agencies will compare their individual tax period unrecorded assessment lien dates to determine how to apportion the financial pie. Most of the world is unaware of this agreement, and sleeps better at night for it.

Just as important as whether an IRS lien was filed is where the tax lien was filed. Under the Internal Revenue Code and because California has adopted the Federal Lien Registration Act (CCP 2100 et seq.), an IRS lien on real property is required to be filed in the county where the property is

located, as one might expect. However, with respect to other than real property, the lien is perfected by filing with the California Secretary of State if the taxpayer was a corporation, partnership or trust; and if the taxpayer is an individual it is to be filed with the county where the taxpayer resided - or was last known to reside - at the time the lien was recorded.

A properly recorded IRS lien is perfected as to all personal property of a taxpayer no matter where the personal property is located. Thus if a receiver is selling the business of an individual and the business and individual are in California, but an IRS lien was filed in Florida at a time when the taxpayer resided in Florida, the IRS lien would prevail over a state tax lien

Continued on page 13...

J. BENJAMIN MCGREW, CPM, CCIM

Managewest, Inc.
Tel: 916-482-5100

jbmcgrew@receivertrustee.com

is pleased to announce
his appointment as

**Receiver for Westemer
Mobile Home Park**

A \$17,980 Health and Safety
receivership involving rehab of sewer
system @ 47 space
mobile home park

Superior Court
County of Sacramento

ROBERT C. GREELEY

Greeley, Lindsay Consultant Group
Tel: 916-484-4800

rgreeley@greeley-group.com

is pleased to announce
his appointment as

**Receiver for National West
Manufacturing, Inc.**

An Operating Company

Superior Court
County of Sacramento

ROBERT P. MOSIER

Mosier & Company, Inc.
Tel: 714-432-0800 x222
rmosier@mosierco.com

is pleased to announce
his appointment as

Receiver for Canoga Care Center
An Assisted Living Nursing Center
For Senior Citizens

Superior Court
County of Los Angeles and
Federal Bankruptcy Court,
Woodland Hills

J. BENJAMIN MCGREW, CPM, CCIM

Managewest, Inc.
Tel: 916-482-5100

jbmcgrew@receivertrustee.com

is pleased to announce
the completion of his duties as

Receiver for Stegall Bros.

A cattle and farming receivership

Superior Court
County of Colusa

ALAN MIRMAN

Horgan, Rosen, Beckham & Coren, LLP
Tel: 818-591-2121

amirman@horganrosen.com

has been retained as

counsel for Receiver Robb Evans

in the Marina Landscape and Infodisc
Global/Mediacopy Texas litigation

Superior Court
County of Los Angeles

ROBERT P. MOSIER

Mosier & Company, Inc.
Tel: 714-432-0800 x222
rmosier@mosierco.com

is pleased to announce
the completion of his duties as

**Mediator in the successful
settlement of business litigation
surrounding Naked Naked in the
matter of Lambert vs. Moore**

Superior Court
County of Los Angeles

J. BENJAMIN MCGREW, CPM, CCIM

Managewest, Inc.
Tel: 916-482-5100

jbmcgrew@receivertrustee.com

is pleased to announce
the completion of his duties as

**Federal Receiver for RRCC, LLC
dba Rio Rancho Country Club**

a 27-hole golf course and
country club receivership

Thirteenth Judicial District Court
County of Sandoval, New Mexico

ROBB EVANS

Robb Evans & Associates LLC
Tel: 818-768-8100

robb_evans@robbevans.com

is pleased to announce
his appointment as

**Receiver for Infodisc Global
Holding Inc., et al**

Superior Court
County of Los Angeles

ROBERT P. MOSIER

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Tel: 714-432-0800 x222
rmosier@mosierco.com

is pleased to announce
the completion of his duties as

**Referee for an accounting and
overseeing the sale and complex
distribution of sale proceeds
for 32 Acres in Victorville,
California for The VBP Partnership**

Superior Court
County of Orange

DAVID WALD

Wald Realty Advisors, Inc
Tel: 310-979-3850
dwald@waldrealtyadvisors.com

is pleased to announce
his appointment as

**Receiver for 100,000 square foot,
3-building office complex in
Palo Alto, CA**
A Rents & Profits Receivership

Superior Court
County of Santa Clara

DAVID L. RAY

Saltzburg, Ray & Bergman, LLP
Tel: 310-481-6700
jt@srbllaw.com

is pleased to announce
his appointment as

**Referee in a partition action
Esperanza Juarez (Soto)
vs. Jesus Soto, adv**

Superior Court
County of Los Angeles

JAMES L. PEERSON, JR.

Peergroup Corporation
Tel: 323-954-7575

is pleased to announce
his appointment as

**Receiver for Domany Select
Furniture, Inc.**
An Operating Company

Superior Court
County of Los Angeles

DOUGLAS P. WILSON

Douglas Wilson Companies
Tel: 619-641-1141
dwilson@douglaswilson.com

is pleased to announce
his appointment as

Receiver for Lincoln Plaza Hotel
An Operating Company

Superior Court
County of Los Angeles

DOUGLAS P. WILSON

Douglas Wilson Companies
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dwilson@douglaswilson.com

is pleased to announce
the completion of his duties as

**Receiver for Ilko vs. Ilko
Partnership Dispute**

Superior Court
County of San Diego

DOUGLAS P. WILSON

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dwilson@douglaswilson.com

is pleased to announce
the completion of his duties as

Receiver for USA vs. Edmundo Rubi
A Forensic Accounting and Investment
Repatriation Receivership

U.S. District Court
Southern District of California

KEVIN SINGER

Empire Brokerage & Real Estate
Services, Inc.
Tel: 310.552.9055
receiverspecialist@sbcglobal.net

is pleased to announce
the completion of his duties as

**Receiver for CMR Mortgage
vs. Union LLC**
A Rents & Profits Receivership

Superior Court
County of Los Angeles
United States Federal Court

EDYTHE L. BRONSTON

Law Office of Edythe L. Bronston
Tel: 818-528-2893
ebronston@bronstonlaw.com

is pleased to announce
the completion of her duties as

**Receiver for
Hi-Lite & Starlight Motels**
An Operating Company

Superior Court
County of Los Angeles

Andrew Zimbaldi

Alden Management Group
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**THANKS TO BOB MOSIER
AND KIRK RENSE FOR A
YEAR OF GREAT ISSUES OF
THE RECEIVERSHIP NEWS**

Longtime CRF Member Alan G. Perkins Is Appointed to Sacramento County Superior Court



Alan G. Perkins, Esq., has been appointed to the Sacramento County Superior Court.

Alan G. Perkins, Esq., a five-year member of Sacramento's California Receivers Forum Chapter and 30-year business litigator with the firm Wilke, Fleury, Hoffelt, Gould & Birney, LLP has been appointed to the Sacramento County Superior Court bench by Gov. Arnold Schwarzenegger.

The official announcement, released February 16, 2005, recounts Mr. Perkins' extensive experience in business and bankruptcy litigation and practice, as well as his substantial background in alternative dispute resolution as both an arbitrator and a mediator. RN asked soon-to-be Judge Perkins about his experiences with the CRF.

Mr. Perkins responded that the CRF

provides a great learning resource, not only through local programs but also with the Loyola II seminar and new newsletter. Mr. Perkins co-hosted a forum on hotel and healthcare receiverships with Rob Warren at last year's two-day event at Loyola Law School in Los Angeles.

RN asked Mr. Perkins if he thinks receivers and receiverships will be useful tools for him on the bench.

"I'll have to put on my new judicial hat to answer that one," he said. "Judges are always concerned about costs, of course. But receivers can be a great way to get a handle on difficult cases and situations and can be cost-effective in a great many circumstances."

Soon-to-be Judge Perkins earned his Juris Doctor degree from the University of California, Davis School of Law, where he has also served as a part-time adjunct law professor.

Chapter President Robert C. Greeley of the Greeley, Lindsay Consultant Group said that Mr. Perkins will be missed by the receivership community.

"We'll be losing both a Chapter member and a board member, and an attorney who has an excellent understanding of the receivership tool, the bankruptcy tool and the requirements of a workout," Mr. Greeley said. "But, on the other hand, we'll be gaining a new judicial panelist for our future programs."



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that was filed later in California. Likewise, if the business assets being sold are those of a partnership or corporation, it may be necessary to determine if the taxpayer secured its charter from another state, whether it conducted business from the other state, and search public records in that state to see if IRS liens were filed there. As can be seen, the issue of what is the proper location for lien filing is fact driven..

The best advice is for the receiver to ask the necessary questions and then do the research required to determine where to search for liens. If a question of lien priority arises, the receiver should consult a tax attorney to avoid making a costly mistake.

Q What are the special rules regarding Federal tax liens?

A There are special rules for perfecting a lien — tax lien or otherwise — with respect to certain types of property. Thus

whether a lien is properly perfected depends on whether it was filed with the proper office. For example: a lien against an aircraft must be filed with the FAA in Oklahoma City; a general or maritime lien against a documented vessel must be filed with the U.S. Coast Guard in the home port of the vessel; and a lien on copyrights and patents must be filed with the Library of Congress and the U.S. Patent Office. Under the Internal Revenue Code the IRS does not by law and policy file liens with these agencies, but it follows only a general scheme for filing liens set out in the code at 26 U.S.C. ' 6323(f).

Finally, if an individual dies leaving an estate and owes Federal Estate Tax, the lien is perfected immediately upon death and a notice of tax lien is not required to be filed anywhere in order to be perfected. This is true even though an estate tax return is not required to be filed until nine months after death and even if the amount cannot be determined until the return is filed (or until

after an audit is conducted See 26 U.S.C. Section 6324). This is truly a potential trap for anyone buying property from a decedents estate.



Charles F. Rosen, Esq.

**CHARLES F. ROSEN, ESQ. of the Law Offices of A. Lavar Taylor has substantial tax expertise involving receiverships and bankruptcy. Mr. Rosen served as a bankruptcy advisor for the Special Procedures Branch of the Internal Revenue Service for more than twenty years.*



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Marilyn Bessey – A Spectacular Life Still Unfolding

(It has become a cliché to state that most persons in the receivership community arrived there by circuitous routes. But no person better personifies the truths behind such clichés than does Marilyn Bessey, whose life has been a movable feast of disparate experience and accomplishment. Here, in her own words, is a tantalizingly brief snapshot of her fascinating life.)

“The Long and Winding Road” — This title is a pretty good summation of my life and experiences so far, with plenty to go!

My forefathers, on both my Mother’s and Father’s sides of the family, arrived in Texas via Conestoga wagon. My Father’s wagon train was waylaid en route in the Dakotas, thereby accounting for my Blackfoot Indian ancestry. My Mother’s family settled in the area near today’s San Antonio. As a Daughter of the Alamo, I have taken my own children to that austere shrine to view their ancestors’ portraits hanging within the walls of the Alamo.

Both offspring of old Texas families, my adventurous parents moved further West through the early part of their marriage, eventually settling in the Southern California community of San Marino. I became involved in both photographic and fashion modeling while living in Southern California during my high school and undergraduate college years, and became active in both the New York and Los Angeles marketplaces.

Modeling provided many fascinating experiences; I had the pleasure of meeting and mingling with some of the icons of the fashion and entertainment world – Coco Chanel, John Huston, Richard Burton, Robert Goulet. One never to be forgotten experience was a job on the “Today Show” as a trapeze artist from the Ringling Brothers’ Barnum and Bailey Circus; I even performed in a benefit at Carnegie Hall alongside Martha Kostyra, now better known as Martha Stewart (she got in trouble in that show too!). But, my forever-Irish conservatism eventually prevailed: I decided life in the fashion fast lane would be short-lived, and that completing my college degree was a wiser path.

Upon graduating from the University of

Arizona with a BS in Consumer Education and Microbiology (I discovered late in my college career the pleasures of studying micro-organisms, the world of petri dishes and laboratory research), I married my college sweetheart and moved to Albuquerque, New Mexico. I attended graduate school there at the University of New Mexico while working with Peace Corps participants being trained and deployed from UNM.

During these years my father “Tex” Richards opened a chain of stores in Northern California that were the first mass merchandise stores in the United States (similar to today’s Wal-Mart). My husband and I returned to California and joined the family business, he in management and I as financial officer and merchandise buyer. Our two children were born during these fun years. Then my father became ill, the stores were sold, and we all moved on to different careers and life styles.

I completed my graduate course studies in Consumer Economics at UC Davis, taught college for several years. In 1983 I was recruited by a regional bank to develop a Consumer Education Banking Program for seniors. This provided my initial introduction to the world of banking as well as my introduction to my future husband, John Bessey.

Three years later I was completely entrenched in providing financial services and products to bankruptcy fiduciaries — Chapter 7, 11, and 13 trustees. Then, as a result of the creation by Congress of the United States Trustee Program, in 1995 I was given the task of developing a case management/financial management software application to be marketed nationwide to Chapter 7 Bankruptcy Trustees. I worked with my son, Scott, and his future wife, Kim, in developing the first



Ms. Bessey and her five-year-old Great Dane Isabella pose in front of a centuries’ old redwood tree at her Sutter Island residence, just a 30-minute drive from her Capitol Mall business office in Sacramento.

“BriefCase Software” application, and the world of software development became a reality for us. Our BriefCase application was extremely successful and, much to my amusement at the time, I was heralded as having “broken the glass ceiling” in the world of banking.

But with that achievement came loss, as John Bessey passed away in 1999. I left my city lifestyle for the country the following year, moving to a lovely southern “Tara” home located on the Sacramento River — the California Delta as it is called. I now live on an island that is part of a town, population 600, and have acres of pear orchard surrounding my home. We also have cherries and kiwis on Sutter Island and I make jams, jellies and pies. I love it, it is so peaceful. Yet I can be in my office on Sacramento’s Capitol Mall in less than 30 minutes. The best of both worlds.

I marketed, developed, and managed the BriefCase Fiduciary Products and accompanying services for the owning

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banks until 2002 when the President of First Bank, Terry McCarthy, asked if I knew of anyone interested in taking over (purchasing) the BriefCase product line and letting the Bank be their customer. I replied, "I certainly do," and the sale of the BriefCase product line to our Fiduciary Management Technologies, Inc. ("FTM") corporation was quickly completed.

Today, three years later, our company is active as a receiver/referee and our FMT BriefCase of products has expanded further with the development and diversification of our software applications: BriefCaseCM, available in both desktop and browser based versions, used by receivers, disbursing agents, assignees, referees, and adjustment bureaus; applications for the Chapter 13 office—"Ch13 Data Direct," "Chapter7.net," "Chapter 11 Claims Portfolio" (used in claims management, noticing, and distribution modeling for the smallest to the very largest of cases); and, finally, "The Paperless Office", a product to convert the fiduciary office into a paperless environment.

My son and partner Scott Sackett, my daughters Lisa and Kim, our FMT staff and I are consistently moving forward to develop, customize, and utilize leading edge technology to provide the most efficient, user-friendly applications for our industry.

I have many joys in life — my family and my friends. But involvement in both professional and community service-based organizations as a volunteer has also been of great importance to me. Giving back to one's community and to one's profession for the betterment of both is a principle instilled in me in my days at San Marino High School, where volunteerism was a requirement; with the University of Arizona Delta Gammas, where it was a requirement; and with the Junior League, where it is a requirement. I am the Past President of the Sacramento Valley Bankruptcy Forum, the Sacramento Valley Receivers Forum, the Sacramento County Legal Auxiliary and the Secret Service "Say No To Drugs" Program. I have been active with the Sutter Hospitals Community Board, the Cystic Fibrosis Volunteers, and the Sacramento Delta Gamma Alumnae.

My volunteer involvement continues today as President of the California Bankruptcy Forum, Treasurer of the California Receivers Forum, Chairman of the Board of the Northern California Child and Family Institute for Abused Children, and with the Leadership Council for the UC Davis Medical School.

Where will my "winding road" lead next? Admittedly, I have omitted a few detours along the way: Kitty Kelley and a birthday cake; a Rose Parade; an extortion scheme with very protective FBI agents – some good memories, some not so pleasant experiences. I look forward to the changes coming in our fiduciary industry and the opportunities they will afford our company to expand and grow. There will be new challenges, but this diversity is why I enjoy our business so much. I love the creative stimulus of new challenges, developing new solutions to new problems, and take pride and satisfaction in knowing we provide the best possible services to our clients – and finally, in the many friendships I've made in my personal and professional life.

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