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# RECEIVERSHIP

# NEWS



## How To Be In Two (Or More) Places at Once: Solving the Problems of Multi-State Receiverships

One of the more complex areas of receivership law – “Issues in Multi-State and Multi-National Receiverships” — was the topic of a recent seminar presented by the Los Angeles / Orange County Chapter of the California Receivers Forum. Some 35 persons attended the program, produced at the new offices of Buchalter Nemer in downtown Los Angeles.



Tackling multi-state receivership issues for the CRF LA/OC Chapter were (L-R) panelist Jose Sanchez, Esq., moderator Michael Wachtell, Esq. and panelist Kirk Rense, Esq. (standing) and Peter Davidson, Esq.

Mike Wachtell, Esq. of Buchalter moderated the noontime program and contributed his expertise on issues that have arisen in cases he has handled. Peter Davidson, Esq. of Moldo Davidson Fraioli Seror & Sestanovich LLP spoke on issues arising in federal multi-state receiverships. Kirk Rense, Esq. addressed law pertinent to state court receiverships where property or business operations of the entity in receivership is/are located in several states. Jose Sanchez, Esq., Trial Attorney with the Los Angeles Office of the United States Securities and Exchange Commission, fielded questions regarding regulatory receiverships spanning more than one state.

### FEDERAL RECEIVERSHIPS

Mr. Davidson advised that the situation is more ordered for federal court multi-state receiverships than receiverships ordered by state courts. 28 U.S.C. Section 754 is the federal statute that addresses important aspects of federal multi-state receiverships and governs the receiver's ability to control property in different federal districts.

This statute requires that copies of the complaint and order of appointment must be filed in each district where property identified to the receivership estate is located within a short time – ten days — of appointment. Failure to do so divests the receiver of his or her jurisdiction and control over the property located therein. A miscellaneous case must be opened to accommodate such a filing, Mr. Davidson advised, and the copies filed must be certified.



*28 U.S.C. Section 754: "Receivers of property in different states."*

*"A receiver appointed in any civil action or proceeding involving real property, real, personal or mixed, situated in different districts shall, upon giving bond as required by the court, be vested with complete jurisdiction and control of all such property with the right to take possession thereof."*

Continued on page 3...

# Publisher's Comments

BY ROBERT MOSIER, PUBLISHER\*

**I**n this issue, we feature one of the many continuing education programs made available throughout the year to receivers and professionals who practice in support of the receivership area.

The focus of the program was on multi-state receiverships. It is always a challenge when a receiver is appointed by the California Superior Court over an entity with properties or assets in other states. Will the other states recognize and enforce the authority of the California Court and its Receiver?

This particular seminar was held in downtown LA at the law offices and training center for Buchalter Nemer. A distinguished panel, including an attorney from the Enforcement Division of the U.S. Securities and Exchange Commission (providing expertise on multi-state regulatory receiverships), provided valuable commentary on the multi-state process.

This issue introduces a new feature – anecdotal insights from our former California Receivers Forum chairpersons. Former State Chairperson Edythe Bronston provides the inaugural article — a unique account of how she fared as a receiver charged with completing two made-for-television movies. This was not your usual run-of-the-mill receivership.

Our current State Chairperson Jim Lowe is the subject of this issue's receivership professional profile. Jim hails from Clovis, California (I think that is somewhere north of LA), and is a valued member of the CRF. We think these features provide our readers with valuable insights –personal and professional – into key members of the receivership community.

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We hope you enjoy the issue. If you have feedback, or would like to write an article, please contact either Kirk Rense (Editor) or myself – our contact information is presented to the right. Thanks for reading.

RPM

## All Past Issues of The Receivership News Now Available on The California Receivers Forum Website—[www.receivers.org](http://www.receivers.org)

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- Prompt Filing and Paying Receivership and Personal Tax Obligations (Fall '05)
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\*Robert P. Mosier is a Southern California trustee and receiver and principal of Mosier & Company, Inc., a firm that has specialized in managing and turning around troubled companies for more than 25 years.



Robert P. Mosier

Mr. Rense is a lawyer specializing in insolvency and in representing court-appointed fiduciaries, with more than 20 years' experience. He was a journalist before attending law school at the University of Southern California Law Center. Kirk is a California Receivers Forum, LA/OC Chapter Board Member.



Kirk Rense



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"He shall have capacity to sue in any district without ancillary appointment, and may be sued with respect thereto as provided in section 959 of this title.

"Such receiver shall, within ten days after entry of his order of appointment, file copies of the complaint and such order of appointment in the district for each district in which property is located. The failure to file copies in any district shall divest the receiver of jurisdiction and control over all such property in the district."



Virtually no reported cases construed this 1948 statute until the 1990's, Mr. Davidson said. He directed the audience's attention to SEC v. Vision Communications, 74 F. 3d 287 (D.C. Cir. 1996), which holds that when a receiver fails to file the required pleadings in the foreign jurisdiction within ten days of his date of appointment that failure deprived the district court of jurisdiction over the defendant. The opinion stated, in dicta, that a solution to the problem is for the original appointing court to reappoint the receiver, starting the deadline to file running anew.

Mr. Davidson suggested that the fact that some later cases had picked up this dicta was no guarantee that the suggested re-appointment procedure would be upheld if challenged. "Nothing in the statute talks about reappointment," he advised, and commented that if Congress wanted to give the receiver more time to comply it could have done so. He cited Lamie v. United States Trustee, 540 U.S. 526, 124 S. Ct. 1023, 1030 (2004) for its holding that where a statute's language is plain, the sole function of the court, at least where the disposition required by the text is not absurd, is to enforce it according to its terms. Nor is it clear whether the receiver, the plaintiff, or both have authority to seek such reappointment.

The source of federal court supplemental jurisdiction over multi-state receiverships is found at 28 U.S.C. Section 1367, Mr. Davidson said.



Section 1367. Supplemental jurisdiction.

"(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve joinder or intervention of additional parties."



Mr. Davidson commented that this statute provides for subject matter jurisdiction over cases or disputes related to the receivership, so that such cases can be brought before the receivership court rather than in state court or a different district court. Two cases that have held that this ancillary jurisdiction to the main case gives additional district courts jurisdiction are Haile v. Henderson National Bank, 657 F.2d 816, 822 (6th Cir. 1981) and Scholes v. Lehmann, 56 F.3d 750 (7th Cir. 1995).

Mr. Davidson advised that once real property is seized by a receiver, 28 U.S.C. Sections 2001, 2002 and 2004 govern its sale, including in foreign jurisdictions. Subsection (a) of that statute provides, in part, that property in the possession of the receiver or receivers appointed by one or more district courts shall be sold at public sale in the district wherein any such receiver was first appointed, at the courthouse of the county, parish, or city situated therein in which the greater part of the property in such district is

located, or on the premises or some parcel thereof located in such county, parish, or city, as such court directs, unless the court orders the sale of the property or one or more parcels thereof in one or more ancillary districts.

The procedures for conducting a sale are rather elaborate, he added, and suggested that the appointed receiver consider obtaining a modification of the prescribed sale process from the appointing court.

Mr. Sanchez commented that he has not encountered the problem of recording the appointing pleadings in the various states since typically bank account assets are being sought and banks don't usually require such multi-state registration when complying with federal turnover orders. The SEC does expect its receivers to be familiar with the procedure and to comply, however. He added that in a couple of SEC cases the original court found that persons in other jurisdictions had sufficiently close association with the defendant entity to allow personal jurisdiction to attach, which would not be defeated by any failure to record appropriate pleadings in the applicable foreign jurisdictions.

STATE COURT RECEIVERSHIPS

Procedures are far less certain for state court receiverships, Mr. Rense said. Whether or not and when it is necessary to obtain the appointment of an ancillary receiver in a jurisdiction foreign to the appointing court the are principle issues.

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Continued from page 3.

Several sections of the monumental A Treatise on The Law and Practice of Receivers (Third Edition) by Ralph Ewing Clark, LL.D., published by the W.H. Anderson Company in 1959 deal with the authority of receivers appointed in state and federal district courts over the receivership entity's property and business assets located in other states and jurisdictions *when access to courts of the foreign jurisdiction is sought*.

There are many reported decisions on the topic for an interesting reason — receivers used to occupy center stage in corporate insolvencies: in the absence of national bankruptcy provisions for insolvent corporations many states had unique (often contradictory) statutory schemes dealing with the issue. Receivers raiding assets of receivership entities located in other states often prompted legal challenges, resulting in reported decisions.

The leading case holding that the control of a receiver over property of the entity in receivership is confined to the territorial boundaries of the appointing court is Booth v. Clark, 17 (How) (US) 322, 328, 15 Led 164 (1854), which holds that a receiver has no extraterritorial rights of official action. The appointing court had no ability to confer authority to enable him to go into a foreign jurisdiction and take possession of the defendant's property, the decision states. See, also Ward v. Pacific Mutual Life Insurance Company, 135 Cal. 235 (1901), expressly adopting the U.S.

Supreme Court's reasoning; and the somewhat more recent case, Melvin v. Carl, 118 Cal. App. 249, 4 P.2d 954 (1931), also adopting this language.

But many states do afford a foreign receiver the privilege of appearing in state court to deal with assets as a matter of comity. This was articulated in a California Appellate Court case, Wright v. Phillips, 60 Cal. App. 578 (1923), where a receiver appointed by a Washington State court over an insolvent corporation sought to bring suit in California to avoid a transfer of corporate real property located in California.

"Receivers appointed under a jurisdiction other than that of the state forum may be permitted to sue in a stranger state as a matter of comity only. That this privilege of comity will be extended, wherever the rights of local or domestic creditors are not prejudiced, is now the general rule in the United States [citations omitted].... Each state, of course, establishes its own policy on the subject." [emphasis added.]

The American Law Institute sets this out more formally in the Restatement of Torts, Second, in 1971, as follows:

Section 406: When Foreign Principal Receiver May Sue on Claim of Estate

A Foreign principal receiver may maintain an action upon a claim of the estate of which he has been appointed receiver unless there is within the state of the forum a local receiver or unless such suit would prejudice the interests of local creditors.

The desire of courts to protect the creditors of their own states is understandable. This "local creditor" complication to the doctrine of comity was discussed at some length by the California Supreme Court in Ward. V. Pacific Mutual Life Insurance Company, 135 Cal. 235 (1901), where an Illinois receiver and a California resident sought the same funds. The court held:

"All the rights and powers of the plaintiff in the premises, as receiver, are derived from the statute of Illinois, and are confined to the territorial jurisdiction of that state; the statute in question has no force in California. It is true that a receiver appointed under the laws of one state will sometimes be allowed, by comity, to maintain a suit involving property in another state, where there are no claims or interest of the citizens of the latter state to be considered, but not where there are conflicting claims of domestic creditors to the property or fund who are pursuing their remedies under the statutes of the other state."

Local cases on point also include Clarkson Co., Ltd. v. Rockwell Ontern. Corp., 441 F. Supp. 792 (N.D. Cal. 1977) (a private receiver under Canadian law was permitted to bring suit in California as a matter of comity in view of lack of showing of prejudice to rights of local creditors); and Muth v. Educators Security Inc. Co., 114 CalApp3rd 749, 170 Cal. Rptr. 849 (1981) (where it was held that a domestic creditor has a right to attach real property, and no rule of state comity or of law requires a court of California to set aside that right in deference to a foreign receiver claiming under the laws of another state).

Mr. Rense stated that if legal proceedings must be initiated in a foreign jurisdiction, the receiver should bring suit and request

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# ASK THE RECEIVER

BY PETER A. DAVIDSON, ESQ.

Have a receivership question you want answered?  
E-mail it to [pdauidson@mdfslaw.com](mailto:pdauidson@mdfslaw.com) and  
your question and the answer may  
appear in an upcoming column.



Peter A. Davidson



I have heard receivers are sometime appointed in criminal cases. Is that correct? What is the authority for appointing a receiver in such cases? Should I be lobbying my local district attorney from more work?



When I am appointed receiver is there anyone in particular that I need to notify?



There are two different statutes which authorize the appointment of a receiver in criminal cases. Penal Code §186.11 provides for the appointment of a receiver, at the request of a prosecuting agency, where a complaint or indictment charges a person committed two or more felonies, a material element of which is fraud or embezzlement, which involve a pattern of related felony conduct and the pattern of related felony conduct involves the taking of more than \$100,000.00 (known as the “aggregated white collar crime enhancement”) and it is necessary to preserve property or assets for the payment of restitution to victims or fines imposed by the section.

The petition for the appointment of the receiver must alleged that the defendant has been charged with two or more qualifying felonies, is subject to the “aggregated white collar crime enhancement” and needs to identify the criminal proceeding and assets and property to be affected by the order.

One interesting aspect of the statute is that notice of the petition needs to be served by personal service or registered mail on every person who may have an interest in the property specified in the petition and must be published for three (3) successive weeks in a newspaper of general circulation. The receiver appointed under this section can upon motion sell the property he is appointed receiver over. The statute also provides how the assets the receiver takes possession of are to be distributed.

The other section which authorizes the appointment of a receiver in criminal cases is Penal Code §186.6. It provides for the appointment of a receiver to take possession of, care for, manage, and operate assets and property where the assets are subject to forfeiture due to “criminal profiteering activities” as defined in Penal Code §186 et seq. This section also has certain notice requirements requiring notice to be provided to interested parties.

There is almost no case law regarding the appointment of a receiver under these sections. One reported decision, decided late last year, concerned how claims to the funds the receiver has taken possession of are to be handled. *People v. Semaan*, 35 Cal. Rptr. 3d 382 (2005). The Supreme Court granted review earlier this year and, therefore, that decision is now of no precedential value.

Another recent case is *People v. Stark*, 31 Cal Rptr. 3d 669 (2005). The case has a general discussion of Penal Code §186.11 and its purposes. The case focuses on the receiver’s sale of assets in a criminal receivership case. The court notes that no case law has been developed under the criminal statute since it was enacted ten years ago and that the law governing sales by receivers in civil actions should govern sales by receivers in criminal actions.

With regard to your final question, you probably should lobby your local district attorney to make more use of this remedy. In both cases discussed above, the receiver was able to liquidate a number of valuable assets and distribute funds to the defrauded entities.



There are a number of statutes which require a receiver to notify certain agencies of the receiver’s appointment. In particular, California Revenue & Taxation Code §18650 requires the receiver to notify the Franchise Tax Board of his or her appointment. Similarly, Internal Revenue Code §§6036 and 6903 require a receiver to notify the Internal Revenue Service of his or her appointment; as does California Unemployment Insurance Code §1090. IRS Form 56 may be used to provide such notice. Alternatively, one easy way of providing the notice is to prepare a pleading notifying the agencies of the appointment and the property over which the receiver has been appointed. This has the advantage of containing the caption of the case the receiver was appointed in and the case number. In addition, by treating it as a pleading you can attach a proof of service so you can establish when notice was given and file the pleading in the case so the court and the parties know you have complied with this requirement. ■

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## Multi-State Receiverships...

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standing as a matter of comity to prosecute the action. So long as the rights of local creditors aren't prejudiced, there is an excellent chance the local courts will not interfere. In major cases where there is a great deal of property and it is safest to assume that access to local courts will be necessary, taking steps to register the receiver and receivership in the foreign jurisdiction – and perhaps to seek appointment of an ancillary receiver (discussed more fully below) — should be undertaken.

### THE NATURE OF THE RECEIVERSHIP MAY CONTROL WHETHER APPLICATION FOR AN ANCILLARY RECEIVER IS NECESSARY.

The situation may be different where the receiver may be said to be a statutory assignee (or so-called “quasi-assignee”) and invested with the rights of the entity over which he has been appointed. This may be the case for a receiver appointed by the state over a domestic insurance company or insolvent state-chartered bank, for example, and when receivers are appointed in exercise of a state's statutory corporate dissolution scheme. See, 3 ALR 262, “When Receiver Of Corporation Deemed To Be Vested With Title To Assets So As To Entitle Him To Sue In A Foreign Jurisdiction” (1918), with subsequent annotation at 29 ALR 1495.

It has been held that such a receiver can sue in his own name in other jurisdictions as a matter of right. The rationale given in these cases is that a corporation is a creature of legislation, must act through its agents, and the statutorily appointed receiver may properly be said to be its representative in active operations. “If a legislature creating the corporation makes a receiver the successor



Enjoying the program (and superb box lunches) were Tom Coleman, Esq. (Law Office of Thomas Henry Coleman) and Edythe Bronston, Esq. (Law Offices of Edythe L. Bronston). Buchalter Nemer hosted the program.

in title to the corporation's property, then such title must be recognized in a foreign state or jurisdiction.” Clark on Receivers, Vol. 2, Section 591(o) citing to, inter alia, Clark v. Williard, 292 U.S. 112, 78 L.Ed.1160, 54 S. Ct. 615 (1923).

What of situations where a receiver can accomplish his obligations in a foreign jurisdiction without recourse to the courts? Should he do so, by acting through the receivership entity's employees located in the foreign jurisdiction, or even more directly? It should be remembered that if his activities are challenged, the receiver runs the risk of having her or his actions set aside by the foreign jurisdiction court. This is particularly true if the receiver's actions prejudice a local creditor. See, Morlan v. Lucey Mfg. Corp., 7 F2d 494, cert. den. 47 S.Ct. 344 (1925), where it was held that receivers appointed in New York acquired no dominion over assets in California either directly or by instructions to the company's manager.

### OBTAINING APPOINTMENT OF AN ANCILLARY RECEIVER.

If informal methods to perform receivership duties in a foreign jurisdiction have failed or seem unwise, if comity is not extended by the foreign court, or if title issues preclude a receiver's sale of property in the foreign jurisdiction, it may be necessary to obtain appointment of an ancillary receiver by a court in the state where the property to be administered is situated or business is operating.

The receiver should first obtain permission from his or her appointing court to seek appointment of an ancillary receiver.

Many states have statutory schemes dealing with the appointment of an ancillary receiver where the primary receiver is a post-judgment receiver, or is charged only with taking possession of and liquidating all the receivership entity's assets. Typically in these cases a new “bill” or case must first be filed, setting out the case for relief and, in substance, asking that the assets of the defendant be gathered and, after proper liens, charges and expenses are paid, the balance be remitted to the court appointing the primary receiver. See, Conklin v. U.S. Shipbuilding Co., 123 Fed. 913 (1903).<sup>1</sup>

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But where the issue is less clear cut – perhaps where a receiver is appointed to operate a multi-state corporation pending resolution of an ongoing case, it is wise to consult local counsel to determine what procedures (if any) exist in local law to validate the foreign receiver's existence or to have a local receiver appointed. In such cases, there is always a risk that the foreign court will refuse to appoint a receiver where the primary receiver's application is challenged.

May the same person be a primary receiver and an ancillary receiver in one or more foreign states? Obviously it is best if the foreign court reappoints the original receiver, precluding conflicts and confusion. Where the company in receivership is a multi-state company, it is particularly desirable that the same person be appointed in both the original and foreign jurisdiction. See, Taylor v. Life Assoc. of America, 3 F. 465, 1880 U.S. App. LEXIS 2557 (C.C.D. Tenn. 1880). In states where there isn't a statute limiting receivers to state in-residents, it may well be possible to have the out-of-state receiver appointed as ancillary receiver as well. A review of California statutes does not disclose any requirement that a person to be nominated as receiver be a California resident. Other states may have restrictions, however, Mr. Rense added.

If an ancillary receiver is appointed, to whom is such an ancillary receiver accountable: the new appointing court or the original foreign court that appointed the primary receiver? It is clear that the ancillary receiver is under the original jurisdiction of and is responsible solely to the new appointing judge and not to the primary court in a foreign jurisdiction. Reynolds v. Stockton, 140 U.S. 254, 35 Led 464 (1891).

A related question is: from which court will an ancillary take instruction (even if the original receiver is serving in both capacities)? Logic suggests that no conflict between the original appointing order and the ancillary appointing order should arise so long as no creditors of the state of appointment of the ancillary receiver will be prejudiced. But if there is a conflict, home state chauvinism will prevail. Thus it was held in Clark v. Supreme Council of Order of Chosen Friends, 146 Cal. 598, 80 P. 931 (1905) that the rights of a local attaching creditor cannot be prejudiced by the appointment of an ancillary receiver to take charge of local property and turn it over to a foreign receiver.

### WHAT IF TITLE TO REAL PROPERTY IS AN ISSUE?

When real property of a receivership entity is located in a foreign state, if the receivership entity voluntarily makes a deed of transfer to the receiver, the receiver becomes the successor in title, and may deal with the property as an assignee/owner. This is also true where a person or entity other than the defendant holds title to such property and voluntarily transfers it to the receiver. Once the receiver acquires title, the receiver may deal with it as any individual with title could.

Whether a foreign receiver may sell receivership estate real property pursuant to court order placing that property into the receivership estate without seeking appointment of an ancillary receiver in the state where the property is located will depend upon the circumstances of the case. If title is held by a corporation in receivership, and the receiver is charged with operating the corporation, it may be that the receiver may sign as an officer of the corporation, Mr. Rense said.

If title is held by an individual, the matter becomes more problematic. A receiver should look to the laws of the particular state



Paying close attention to panelist Peter Davidson are (front L-R) Howard Grobstein (Grobstein, Horwath & Company, LLC), Ms. Ellen Phillips (Receivership Administrator, Pasternak, Pasternak & Patton) and David Pasternak, Esq. (Pasternak, Pasternak & Patton). Written materials were also provided.

where the property is located for his or her answer. There is a very pragmatic test: can a would-be purchaser obtain title insurance on a receiver's (usually "quitclaim") deed? Title insurance companies have a legal staff that will be conversant with the laws of the state where the property is located. If no willing title insurance company can be

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Saltzburg, Ray & Bergman, LLP

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dlr@srblaw.com

is pleased to announce  
his appointment as

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Vargas Furniture Manufacture

Superior Court  
County of Los Angeles

**RICHARD WEISSMAN**

Tel: 818-226-5434

rweissman@rwreceiver.com

is pleased to announce  
his appointment as

Distribution Agent for SEC v. CIBC  
MELLON, et al., a securities fraud  
action. A Claims Processing and  
Distribution Receivership.

U.S. District Court  
District of Columbia

**ERMEL DON DOYLE, JR.**

Sycamore Asset Management

Tel: 661-809-1235

don@sycamoreasset.com

Is pleased to announce  
his appointment as

Receiver for  
Princess Care Center, LLC, dba  
Casa Maria Health Care Center  
An operating skilled nursing facility

Superior Court  
San Bernardino County



## Multi-State Receiverships...

Continued from page 7.

found, an order from the local state court authorizing the sale by an ancillary receiver is probably necessary. And, of course, all liens against the property must be paid or formally avoided.

<sup>1</sup> In Conklin v. U.S. Shipbuilding Co. at pages 916-17, the court stated:

"Now comes the question as to the nature of the bill before me. If this were a bill asking me merely to appoint a receiver ad interim, ancillary to an ad interim receiver appointed in New Jersey, I should pay no attention to it. But in my view it is a bill asking me to assist in enforcing a final decree made by the Circuit Court for the District of New Jersey, and asking me to gather together assets, or cause them to be gathered together, so that they can ultimately be accounted for where they should ultimately be accounted for; that is, to the Circuit Court for the District of New Jersey. It is like any bill asking the gathering up of assets by an ancillary proceeding for the purpose of causing them to be remitted to be disposed of by the court having jurisdiction at the place of domicile. ■



Thirty-five receivers, accountants, attorneys and other receivership professionals attended the multi-state receivership program one of two recent LA/OC Chapter programs.

### ERMEL DON DOYLE, JR.

Sycamore Asset Management  
Tel: 661-809-1235  
don@sycamoreasset.com

Is pleased to announce  
his appointment as

Receiver for  
S and F Properties, dba  
St. Erne Healthcare Center  
An operating skilled nursing facility

Superior Court  
Los Angeles County

### ERMEL DON DOYLE, JR.

Sycamore Asset Management  
Tel: 661-809-1235  
don@sycamoreasset.com

Is pleased to announce  
his appointment as

Receiver for  
Professional Healthcare, Inc., dba  
Monterey Convalescent Hospital  
An operating skilled nursing facility

Superior Court  
Monterey County

### ERMEL DON DOYLE, JR.

Sycamore Asset Management  
Tel: 661-809-1235  
don@sycamoreasset.com

Is pleased to announce  
his appointment as

Receiver for  
Western Care Management, Inc.,  
dba  
Rehab Specialties Inn  
An operating skilled nursing facility

Superior Court  
Shasta County

### ERMEL DON DOYLE, JR.

Sycamore Asset Management  
Tel: 661-809-1235  
don@sycamoreasset.com

Is pleased to announce  
his appointment as

Receiver for  
Western Care Management, Inc.  
Applewood Inn  
An operating skilled nursing facility

Superior Court  
Shasta County

### ROBERT P. MOSIER

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

Is pleased to announce  
his appointment as

Partition Referee  
to sell 11.95 acres located in  
Laurel Canyon, Los Angeles  
In the matter of D'Errico vs. Menaldi

Superior Court of California  
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

Stipulated Accounting Referee  
to reconcile four years of cash  
activity under two trustees  
DeSantis vs. DeSantis

Superior Court of California  
Probate Division, Santa Ana

# How I Got To Be A Movie Maven and Saved Christmas (Well, Maybe I Helped A Little)

BY EDYTHE L. BRONSTON

[Editor's note: As most of you parents know, "Eloise" is one of the most beloved and recognizable characters in children's literature, charming decades of parents and daughters in a series of best-selling books by the late Kay Thompson. More than 3.5 million copies of the four books featuring the peripatetic six-year old, the most famous resident of the sumptuous Plaza Hotel, have been sold since Eloise's debut in 1955. In early 2003 two films in production starring Sofia Vassilieva as Eloise and Julie Andrews as her nanny — ultimately titled "Eloise at the Plaza" and "Eloise at Christmastime" — ran into financial complications, and a receiver was sought in Los Angeles County Superior Court to take over finances and see that the films were completed in time for their scheduled air dates. This is the first in a series of anecdotal accounts of interesting cases to be written by former State Chairpersons of the California Receivers Forum.]

The call came on my cell phone at noon on February 4, 2003, as I was walking to the dais at the Carnelian Room in San Francisco, to give a speech to the Bay Area California Receivers Forum on the new statewide rules. Pam, my office administrator, told me that the law firm of Dewey Ballantine wanted me to complete two movies and they wanted me to do it NOW. I was sure that either she'd misunderstood the message or I had. What on earth did I know about starting, shooting or completing movies? Absolutely nothing.

A call to the lawyer with whom she'd spoken, placed in the taxi on my way to the airport, confirmed that she had in fact gotten the message straight: my services as receiver were required

to finish the two "Eloise" movies which were scheduled to air on Wonderful World of Disney, the first only three months hence. I was told that there were 11 days left of shooting (in Toronto) but that there was "no need for any concern," as the director, the line producer, the actors, and the crew were a wonderful team and all I needed to do was to take control of the finances so that ABC, which had a license agreement with the producer, would be comfortable in putting more money into the production. (ABC had already paid the full amount owed under the license agreement, but had no movies to show for its money, so was perhaps understandably reluctant to deal further with the producer.)

Continued on page 13...

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# 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 CONTRIBUTED TO THIS PUBLICATION.

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- The bullet indicates those receivers who completed a comprehensive 16-hour course on receivership administration and procedures presented at Loyola Law School in April 2000.
- The diamond indicates those receivers who completed a comprehensive 16-hour course on receivership Administration and procedures presented at Loyola Law School in October 2004.
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# Receivers Participate in Slum Housing Symposium

A ground-breaking symposium organized to meet the urgent need for slum housing repair was presented March 4, 2006 at UCLA Law School by Bet Tzedek, in partnership with the Los Angeles Housing Department and the UCLA Public Interest Law Program. Bet Tzedek is an organization that provides free legal representation for those unable to afford counsel.

The symposium was a participatory workshop on the use of receiverships authorized by the California Health and Safety Code to improve living conditions for tenants, deter slumlord behavior and preserve affordable housing for existing mixed and low-income communities. Several members of the Los Angeles / Orange County chapter of the California Receivers Forum participated in the program, which also addressed long term prospects for increasing community and/or non-profit affordable housing corporation ownership of properties.

The symposium, unlike most, was more than a procession of speakers.

Rather, representatives from academia, affordable housing providers, city attorneys, political specialists, community and economic development specialists, code enforcement officials, community/tenant organizers, community legal service providers, private lenders/developers, public lenders/developers, and receivers gathered together to brainstorm on the efficient use of receiverships to eradicate slums and the resources for funding them should the City of Los Angeles determine it can effectively reach its revitalization goals through the use of Health and Safety Code statutes authorizing receiver-supervised rehabilitation of substandard housing. Many non-local and out of state agencies, law schools and political specialists were also represented.

The structure of the symposium was unique. The 40-plus participants were divided into three working groups (after an initial plenary session) led by Elissa Barrett, Housing Attorney for Bet Tzedek, Gary Blasi, Professor, UCLA School of Law, and Joe Schilling, Professor of Law

at Virginia Polytechnic Institute and State University. Edythe Bronston, David Pasternak and Rob Warren were the receiver representatives for each group, each of which had approximately equal membership representation from public and private, regulatory and business sectors. Each discussed key problems and issues of housing reform.

After breakout sessions the participants reconvened to summarize the findings of each group, and to look for common strategies to achieve the needed housing reform.

The symposium was the first time that such varied "stakeholders" (i.e. persons and entities with strong interests in reforming slum housing) were gathered together to address the possible use of statutory receiverships to address the problem. The brainstorming produced two working groups which have begun to strategize about a series of test cases and address how to support those receiverships with emergency and construction financing. —Edythe L. Bronston



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Continued from page 10.

By the time I arrived back in my Sherman Oaks office and telephoned the lawyer who was petitioning the court for my appointment, the papers had been virtually completed. Two days later, at a 1:30 p.m. ex parte hearing in the North Central District of the L.A. County Superior Court in Burbank, I was appointed Receiver to take possession, custody and control of all property rights and all funds, records, contracts and personal property rights related to the production of the Eloise movies.

Then it began. The same afternoon, even before I had an opportunity to post my bond and file my oath, I received two frantic calls from the line producer in Toronto and additional calls from the stars' agents and/or managers, all either advising of threats or threatening to close down the set and pull out the talent.....unless payments in the neighborhood of \$1.8 million were received.....in Canada.....within 24 hours.

It seems there was no money left for payment of the Canadian crew.....or the actors. I quickly learned that ABC in New York was willing to advance the money, BUT any loans to the Receiver had to go through me, of course, and we were dealing not only with the three hour time difference between New York and Los Angeles, and then back to New York, whereupon the borrowed funds would be wired to Toronto, but the small detail that I didn't even have a bank account opened yet!

I had NO time to petition the court for authorization to accept a loan.....NO time to get the account opened and have the funds transferred to California and back to New York.....NO time to do anything except take a deep breath, draft a really quick "Pre-Documentation Advance" letter agreement (I certainly couldn't give ABC a Receiver's Certificate at that point), and allow the funds to be wired directly to Toronto to keep the set open and the actors and crew working. It is a substantial understatement to say that I lost a few nights' sleep!

Well, despite constant arguments with the agents, writers, composer, et al, the movies got made and the Toronto set closed down on March 21, 2003. I naively thought that that all that remained to be done was to broadcast the films...but no...NOW came the post-production.

At the time I had no idea what that term meant or entailed, but I learned quickly. First, I learned (after a multitude of calls) that accountants who handle movie production are neither interested in nor competent to perform post-production accounting, which is an entirely different animal. I was fortunate to locate an extremely talented accounting firm, Audit Trail, which had extensive post-production experience and was not only able to perform all the necessary work, but its employees had the patience to educate me along the way. Audit Trail also had the space to accept the 60-plus boxes of production records that were shipped to me from Canada. I also needed to coordinate tax issues with a Canadian accounting and law firm, and work with a very talented post-production coordinator located in Los Angeles. Little did I know at the time that the ABC and Disney production people and my Receivership post-production people had "issues." After MANY meetings, some of which took place around my dining room table, we finally got the movies finished and delivered.

That left the existing sets, costumes, props, etc. to be dealt with. I cleverly planned to obtain the best possible price, probably on EBay, to reduce the balance on the \$ 6.9-plus million I had ultimately borrowed to complete the films. I soon discovered that this was complicated by the fact that the parties had contracted for an option to produce a third Eloise movie, for which all the sets and costumes would be needed. I learned to my amazement that to dismantle and reconstruct the sets would require approximately \$150,000 and to scrap them would cost \$20,000

No decision was made for months, while the little girl who played "Eloise" was

getting older and taller...and Julie Andrews' next commitments were fast approaching. Ultimately, ABC did not "green light" the project and I wound up selling the personal property to the producer, who paid all past due storage fees and took over the sets.

The movies aired on April 27, 2003 and on November 22, 2003. My administrator, Pam Hinojosa, and I were invited to watch the sound "looping" at Warner Brothers and met the stars of the movies, Julie Andrews, Jeffrey Tambor and Sofia Vassilieva. We were introduced to them as "people who helped get the movies made."

All of the money was ultimately repaid. No, I did not get a credit. ■

*[Editor's note: the first of these films, "Eloise at the Plaza," aired on "The Wonderful World of Disney" in a two-hour time slot on April 27, 2003 on the ABC Television Network. Numerous glowing reviews were somewhat offset by a lukewarm TV Guide award of only two of five possible stars. The movie earned a respectable 5.5/10 national share, however, and the composer, Bruce Broughton, won an Emmy. Post-production on the second film, "Eloise at Christmastime," was finished in time for the film to kick off the holiday season on The Wonderful World of Disney. It aired on November 22, 2003. TV Guide termed the cast "sparkling" and gave it an additional half star rating compared with the earlier movie. It scored a respectable 5.2/10 national rating. Both films are available on DVD.]*

Edythe L. Bronston is an attorney and receiver in Sherman Oaks, California. She is a co-founder and past-president of both the Los Angeles / Orange County chapter of the California Receivers Forum and the statewide organization. She has served as receiver for many kinds of business



*Edythe L. Bronston* and has now offers substantial expertise in the production and sale of motion pictures.

# Jim Lowe's Commercial & Agricultural Receiverships & Consulting Keep Him Busy!

*(Editor's note: Jim Lowe, current President of the California Receivers Forum and the subject of this issue's professional profile, has built a receivership/consulting business in Clovis, California, smack in the middle of the State. Where is Clovis? Wikipedia has this to say: "Clovis is situated midway between Los Angeles and San Francisco, bordering Fresno, in the agriculturally rich San Joaquin Valley. Lying at the foot of the Sierra Nevada Mountain Range, which includes Yosemite, Kings Canyon, and Sequoia National Parks, Clovis has been known as "Gateway to the Sierras" since its incorporation in 1912." Sounds good to me.)*

BY JIM LOWE

Becoming a consultant and a receiver wasn't my chosen career — it chose me and I'm glad of it.

When in college I wanted to be a businessman or some sort of entrepreneur. I always found myself in pursuit of new business projects. At Fresno State University I enrolled in the Business Department, with an emphasis in marketing.

Upon graduating with a business degree in hand I started working for a loan brokerage company. At the ripe old age of twenty-two I was in charge of placing distressed loans. I found my job prosperous, yet unfulfilling. I always felt if the distressed company and/or individuals were not able to make the business prosper given the current loan situation, was I really helping the company by reworking the loans and taking out the remaining equity? The take-out loans almost always had higher interest rates attached and I knew the companies were unlikely to survive without restructuring their business.

In hindsight, I now realize that the upside to this job was that I received a good education in reviewing financial information, assessing business needs and dealing with various levels of distressed loans.

My family's farm on the west side of the San Joaquin Valley had fallen on hard times in 1995. It was quite large by most family farm standards — comprised of four partnerships, two trusts and two corporations with a total of more than six thousand acres. The farm's CPA and a few other employees had jumped ship due to the company's troubled financial condition. My father asked me if I would come out and help with the controller duties, and I agreed.

I worked for three years as controller, working on budgets, financing, legal issues, and on managing the office staff. Those years were a constant financial struggle as we had only part of the financing that we needed, and too large a debt load to service. We finally decided to sell the farm in 1997 to a Salinas area grower.

To make a long story short, the sale was not easily accomplished and the bank assigned Clifford Bressler and Associates as a receiver to help transition the farm's assets and growing crops to the new owners. When the bank told my family they would like a receiver to assist with the transition, my first question was, "What's a receiver?" I found out shortly thereafter when Mr. Bressler was introduced to us.

I don't know if there is ever a "good time" for a receiver to take over your business, but the week that Mr. Bressler was assigned to our farm was one of the most tumultuous times in my life. This was not only because the farm I had grown up on was no longer going to be a



*Taking a lake break from the hustle-bustle of Clovis, California are Jim Lowe, his wife Dawnda, son James and nine month old twins Andrew (top) and Brayden (top) and Andrew).*

part of my life. There were plenty of other stressful factors at work.

Example: my wedding with 300 guests invited was to take place the following Saturday and my wife-to-be and I were leaving the day after the wedding for a honeymoon in Australia.

Example: I had also been enrolled in graduate school pursuing an MBA for the previous year. I worked during the day, attended classes at night and studied on weekends. That fateful week I was trying to get ahead with my studying so I did not have to worry about academic things on our honeymoon.

Example: there was also the constant stress just knowing that my whole family, including me, needed to find new jobs in the near future.

And, finally, we were still negotiating the sale with the bank and the buyers, and were meeting with our legal team daily. If ever there were a probable time for a stress-related heart attack, that week (and month) was it.

Upon meeting Mr. Bressler (just a week before the wedding) I gave him a variety of business information such as budgets, equipment lists and crop maps. He and my father worked together during my honeymoon, and at some point he asked my Dad who had kept the

Continued on page 15...

Continued from page 14.

financial information in order. Shortly after my return from Australia and to my great surprise, Mr. Bressler asked me to work with him in the receivership business.

He agreed to work around my school schedule and I was intrigued by a job where one was assigned by the courts to take over various businesses. Mr. Bressler was semi-retired at the time, and no longer wanted the chore of daily management of receiverships. I, on the other hand, wanted to learn everything there was to learn about the business of receiverships. We agreed that he would help me learn the receiver and consulting business and that I would work for him for a minimum of three years.

Mr. Bressler then introduced me to the people in the "receivership circle" in our area. Riley Walter of the Walter Law Group was one of these people. Mr. Walter helped me a great deal in learning the receivership business. He introduced me to the California Receivership Forum, and e-mailed receivership news items and additional information to me he thought would be helpful. Mr. Walter and I attended the Spring 2001 Receivership Forum executive committee meeting in Monterey, California and we asked if we could work towards starting a Central California Chapter. The Forum agreed, and the chapter has now been around for more than six years and is going strong.

Mr. Bressler and I continue to work together on various business assignments and receiverships. I also have my own business — my team helps to manage the budgets, insurance issues, bank loans, contracts, investments and key personnel for various companies. Many of our long-term clients are turned-around businesses where we were assigned as receiver or as a turnaround consultant, and the owners kept us on in a management capacity once the companies became profitable.

Most clients are in some sort of agriculture business, though we do have clients that are not agriculture-related. The agricultural businesses we manage include growers with various row crops, including cotton, melons, tomatoes, garlic and onions, as well as pistachio, almond and grape growers, a fruit dehydrator, a pistachio processing plant, and a vegetable and fruit packing facility. We are also often hired to manage and consult for dairies and livestock businesses.

Turnaround consulting is a big part of our business. My team was just hired by a large air conditioning contractor to renegotiate its contracts and streamline the business for profitability. My team and I are also starting an agricultural management division that will manage farm properties for non-farmer land holders who have purchased properties as investments.

The preceding paragraphs explain exactly why I love the business I'm in — it is so diversified. Though it is often very stressful to juggle a wide array of businesses, there is no time for boredom. I have been fortunate to have worked with grocery stores, restaurants, truck stops, pharmacies, car dealerships, food services, rents and profits, and just about every type of agriculture related business as a receivership manager with Mr. Bressler. I have also served as an agricultural expert witness.

It is also fun to work with so many different types of businesses. We were asked to take over a few of our area's Good Neighbor

Pharmacies recently. In reality we knew nothing about the pharmacy business except how to purchase medication with a prescription. We quickly learned as much about the pharmacy laws as time allowed, and hired pharmacists as part of our receivership team. Perhaps the greatest benefit of this profession is meeting so many wonderful people along the way, from all walks of life.

My wife, Dawnda, and I have been married for eight years and have three sons. James is six years old and loves wakeboarding, soccer, baseball and ninja turtles. Andrew and Brayden (Baby A and B) are nine-month-old twins and have really caused business to pick up on the home front this year. Sleep deprivation aside, they have been a true blessing to us, as we did not think we would be able to have any more children! Dawnda was on bed rest for about five months of her pregnancy. She is currently a full-time mom though she formerly was the assistant editor of seven agricultural magazines and, more recently, taught the third grade.

I am an avid outdoorsman, and especially enjoy fishing and archery. I have been competing in team and individual trap-shooting events the last three years. My family spends many evenings and weekends skiing and wakeboarding during the summer. And there is another adventure just around the corner — we recently purchased thirty-five acres along the Kings River above the north and south fork weir, and plan to build our new home on the property. ■

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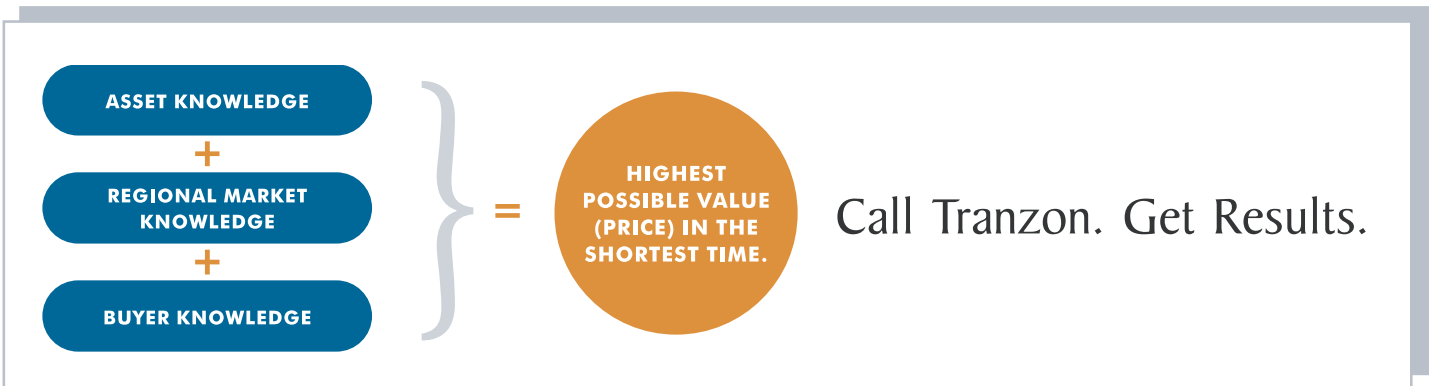
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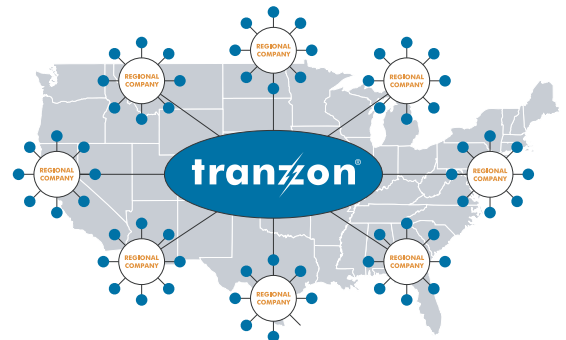
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