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MORE THAN ONE WAY DEPARTMENT

The Consensual Receivership: Improving the Odds for a Financially Successful Remedy



BY ROBERT P. MOSIER*

Is it really possible to convince embattled management to stipulate to the appointment of a receiver to take financial control of a troubled company? The answer to this and related questions, and the results that can be obtained in such a receivership may surprise you.

This is a “consensual receivership,” one where (among other things) existing management remains in place, but operates under financial and operational controls established by a court-appointed receiver. The reason for such a receivership? Improved operating results – management refocuses on running the business (under the receiver’s overview), while the presence (and actions) of the receiver reestablishes company credibility in the minds of its secured and unsecured creditors, and even its equity holders.

All of this is, of course, contrary to the conventional wisdom that upon appointment a receiver should immediately “clean house” – sweep out all of those persons believed to be responsible for any fiscal shortfalls or other business problems presaging the appointment of a receiver. This clean-sweep approach is certainly popular and is standard procedure for many receivers. Mass removal of management certainly is appropriate (arguably mandatory) in a regulatory receivership, where management is accused of having violated federal or state regulatory statutes, of having defrauded investors, or where company assets have been converted or squandered. Retaining prior management in such a case generally impedes the work of the receiver, and may even result in additional statutory violations. But even in regulatory receiverships selective retention of some personnel to help identify and locate assets may be advisable, depending on the level of cooperation of the defendant and its employees.

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Automatically cleaning house at the commencement of a case is clearly not the optimum way to manage selected receiverships, however. Prime situations for consensual receiverships include: (a) a troubled operating company that is a turnaround candidate; (b) a business embroiled in an ownership dispute, where partners or equity owners are being cut out of the financial picture; and (c) a company dissolution, where the business can't be turned around and is the victim of an economic downturn. In each of these cases, using existing management often brings value to the receivership estate and improves recoveries for both secured and unsecured creditors and, sometimes, even for equity holders.

What are the ingredients for successful creation and use of a consensual receivership? Here are a few non-exclusive requirements:

- An underlying lawsuit
- A cooperative plaintiff
- Supportive plaintiff's counsel
- A Defendant that buys into the receivership option
- A business that is a good candidate for a turnaround

The first requirement for the consensual receivership is perhaps the most easily fulfilled – getting the lawsuit filed. Lawsuits typically aren't filed until less extreme attempts to remedy the existing problem have failed. The best consensual receiverships are pre-planned, where the filing of the lawsuit and the appointment of a receiver by consent of the parties occur simultaneously. This is not a requirement, however. Even where an action amenable to a receivership is already pending, the intervention of a court-appointed neutral with turnaround experience may provide new opportunities for the company and its creditors.

In the case of a collection action, why should a plaintiff bank that is already suing on a defaulted loan sponsor a receiver's appointment and allow use of its receivables and inventory collateral in the receiver's attempt to turn the business around? This is the financial institution's judgment call. If the answers to these questions (or at least some of them) are "yes," then the option for pursuing a consensual receivership exists. Some in-house special asset groups won't have the fortitude or patience to allow a turnaround to be attempted — but some will.

The bank will have to believe that its recovery is likely to be greater with the intervention of a consensual receiver than without, and that the participation of existing management of the troubled company (under proper supervision) will enhance the recovery process. The bank will have to be willing to wait a little longer to see some positive results on this defaulted credit. Can the receivership process be "backstopped" so that the institution's position does not significantly deteriorate if the process falters? Yes, intelligent controls may be placed on the receiver's use of the bank's collateral.

To orchestrate a consensual receivership plaintiff's counsel has to be willing (and able) to work with the defendants and their counsel early on, as workout alternatives are explored, in order to keep the relationship from degenerating into a spiteful one. This often is not easily accomplished. Many financial lawyers believe that projecting an aggressive, single-minded "mean and ugly" (my term) image is the best way to achieve their client's (the lender's) agenda. Disappointment for all concerned may well be the end result where a plaintiff's lawyer's combative style clashes with the cooperative principles of a consensual receivership. Having the right counsel representing the plaintiff can be key.

Why would a defendant's management team ever give up financial (and perhaps operational) control of a company, turning over the core components of the operation to a receiver? The answer is the same for the defendant as it was for the plaintiff – an improved result for all concerned. The passage of time in a deteriorating situation typically results in the defendant losing credibility with its lender and trade creditors. Too many promises that were not (often could not) be kept cause these parties to become skeptical of management. A manifestation of this worsening relationship is where the lender tightens the financial reins, denying the company any fiscal flexibility to fund a recovery effort. The appointment and presence of a consensual receiver may provide fresh credibility and buy some badly needed time and fiscal breathing room. If the Internal Revenue Service is about to seize a business for failure to pay payroll taxes, the appointment of a receiver may prevent the IRS from making its seizure.

A receiver may also be able to implement an informal hiatus on the making of third-party



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California Receivers Forum
954 La Mirada St.
Laguna Beach, CA 92651
949.497.3673 x 200

Publisher

Robert P. Mosier
Rmosier@Mosierco.com

Editor

Kirk S. Rense, Editor
KRense@renselaw.com
Craig Collins, CPA
Associate Editor

Associate Publishers

Kenton Johnson
Beverly McFarland
Ron Oliner
Rob Warren, III

Contributing Columnists

Alan Mirman
Heard in the Halls
Peter Davidson
Ask the Receiver
Charles F. Rosen
Taxes and the Receiver

Officers

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Consensual Receivership...

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creditor payments and an informal stay (something like a bankruptcy stay, though not as absolute or automatic) against the filing of collection actions (1) by obtaining an order requiring all potential third-party plaintiffs wishing to file an action or who wish to continue pursuing existing collection actions to first seek permission to proceed from the receivership Court, and (2) by pointing out to such potential (or actual) third-party plaintiffs that the defendant's assets are already eclipsed by senior liens, making their contemplated collection actions essentially a waste of time and money. These steps can buy valuable time for the troubled company.

What is the best way to convince management of the benefits of turning financial control over to a receiver? This generally requires a series of meetings between the potential receiver and management so they may get to know one another and develop a level of trust. The receiver must convince management that

he is going to be part of the solution rather than an impediment to the company's operation (therefore becoming part of the problem). It must be made clear that the potential receiver will be an officer of the appointing court, however, and that he or she cannot "cut a deal" or promise how things will be under a receivership. This is ultimately the appointing judge's call.

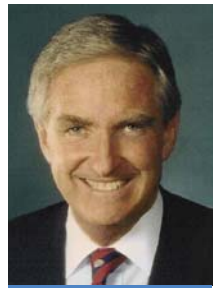
The Receiver can outline an agenda wherein (a) existing management will run the company and sell more products, and (b) the receiver will take charge of the cash flow and deal with creditors. This refocuses management's attention on business operations (usually a boost to the business) and removes from management the burden and distraction of dealing with creditors (a task management is generally ill-equipped to handle). It is a safe bet that the management that grew the business is better-equipped to grow sales than would be a new receiver, who will likely not have as sophisticated an understanding of the business or its

customer base as does the existing owner/management.

Are some businesses better turnaround candidates than others? Absolutely. A key variable is how far down the scale toward a bankruptcy filing has the company fallen. This is a balance sheet test, but if the company is in default to both secured and unsecured creditors, and is in default on its payroll taxes, a turnaround is a tall order.

(This is the first of a two-part series on uses of consensual receiverships.)

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



Robert P. Mosier



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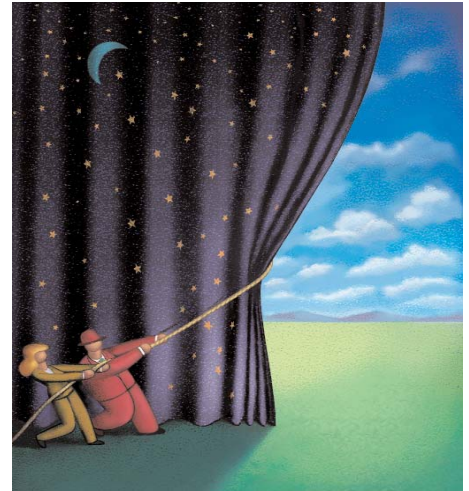
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samira@samirakermani.com
www.samirakermani.com



Heard in the Halls

NOTES, OBSERVATIONS, AND GOSSIP RELAYED BY ALAN M. MIRMAN, ESQ.

Welcome to the sixteenth edition of *Heard in the Halls*, an informal compendium of thoughts, questions and information contributed by California Receivers Forum members, and not official Forum announcements. Don't rely on any quasi-official pronouncements in this column! Send me tidbits you would like to see in future issues, such as: procedures in various courtrooms, questions on legal issues, rank gossip, firm transitions and updates on practitioners, receivers, etc. Provide your input by telephone, mail, fax, or E-mail as follows: Alan M. Mirman, Horgan, Rosen, Beckham & Coren at 23975 Park Sorrento, Suite 200, Calabasas, California 91302. Phone: (818) 591-2121; Fax: (818) 591-3838; E-mail: amirman@horganrosen.com



Here is what we Heard in the Halls at the Loyola Law School October 8-9 certification program...

- Loyola II was a major success. Sold out; great statewide attendance; significant participation by judicial officers and regulatory agencies. No more kudos are needed for Edy Bronston, Conference Chair but, kudos anyway!! ...
- The new Chapter chair in the Bay Area is Bruce Cornelius, of counsel to Belzer, Hulchiy & Murray in Lafayette. Bruce's practice focuses on representation of lenders and Receivers. More news on upcoming programs for this Chapter in our next edition ...
- Robb Evans is participating in the 22nd Cambridge International Symposium on Economic Crime held at University of Cambridge, England. This is his fourth year at the annual symposium, which includes world-wide participants from banking and finance, law, commerce, and government. Kent Johnson, 2004 co-Chair of the LA/OC Chapter, is a principal in Robb Evans & Associates ...
- It was no surprise that a major focus of the panels at Loyola II was the subject of economic viability of receiverships, and the importance of running a solvent estate. The judicial panelists at Friday's lunch program all agreed that whether the Court is an Independent Calendaring or a Writs and Receivers court, the trend is for Judges to question whether the case merits the expense of and is appropriate for a receivership. Word to the wise – include this showing in your initial application ...
- We know that Rule 1903(b) of the California Rules of Court prohibits the Receiver from making any agreement with the Plaintiff regarding various financial issues. Does this Rule prohibit the Receiver from confirming with Plaintiff or Plaintiff's counsel that Plaintiff will reimburse the Receiver if the Estate has insufficient funds to cover the expenses of administration? Your comments, please ...
- Comment overheard – that LA/OC Chapter should present programs in the Pasadena or Inland Empire area to attract Receivers and counsel from those areas. Email me if you agree or disagree ...

- Here's an odd story, which reminds the Receivers among us to keep a high profile, even in our older, less active cases. Doug Morehead, of the OC region of the LA/OC Chapter was at a meeting to close a deal to purchase some real estate. To his surprise, one of the agreements included a signature line for a Receiver, although the buyer was unaware of any receivership, and no one had involved the Receiver in this transaction. No contact, no approval, no participation of any type. Wisely, Doug called a "time out" until this problem was resolved. Remember – a Receiver holds the property of the Estate in custody for the Court, and a sale of property under such custody needs the Receiver's consent (not to mention Court approval, if the Order then in existence doesn't already cover this situation) ...
- More announcements, news from other Chapters, movin' and shakin':
 - ❖ Just to keep us on our toes, Department 59 and 66 of the Los Angeles Superior Court are swapping courtrooms. The reason is to make the jury facilities in the present Department 66 available for the eminent domain cases which are heard by Commissioner Mitchell, who now presides in Department 59.
 - ❖ Edythe Bronston, Chair of Loyola II, and 2005 CRF State Chair announces that she has moved her office, around the corner in Sherman Oaks, to 14156 Magnolia Blvd, Suite 200, Sherman Oaks, CA 91423. Her other contact info remains the same [phone is (818) 528-2893; fax is (818) 528-7445] ...
 - ❖ Congratulations to Ted Albert of Albert, Weiland and Golden, who has been selected to serve as the newest bankruptcy Judge in California's Central District.

ALAN M. MIRMAN is a partner in the Calabasas law firm of Horgan, Rosen, Beckham & Coren, LLP, and specializes in Creditor's Rights. His practice includes aspects of provisional remedies, representation of receivers, litigation, loan and lease documentation, and similar matters.



Alan M. Mirman

Can a Receiver Obtain Business Records When a Fifth Amendment Right Against Self-Incrimination Is Asserted?

BY RICHARD WEISSMAN, ESQ.* AND CAROL A. WEISSMAN, ESQ.*

Assume a receiver has just been appointed over Acme Corporation in a civil enforcement action brought by a state or federal regulatory agency. The order of appointment authorizes the receiver to take possession and control of all of Acme's assets, its ongoing business enterprise and all its business and financial records (expansively defined to include documents, computer hardware, software and all computer based records, floppy disks, CD-ROMs, computer passwords and access codes, etc.). The receiver then serves the order on Acme's president, Mr. Smith, and demands immediate turnover of and access to the financial records.

Mr. Smith refuses, and the attorney for both Mr. Smith and Acme states that her clients are exercising their respective Constitutional rights against self-incrimination under the Fifth Amendment, which rights (it is asserted) preclude the receiver's obtaining Acme's records. The attorney also discloses that some of Acme's records are now in her possession (having been delivered by Mr. Smith). She asserts an attorney-client privilege in refusing to turn over these documents.

Is the Receiver sunk? Are these insurmountable Constitutional protections afforded to Acme and to Mr. Smith? Does

the Fifth Amendment privilege against self-incrimination prevent the receiver from executing his duties set by the Court? Does the attorney-client privilege apply under these facts? The short answer is: No, no, no and no!

IS THERE A CORPORATE PRIVILEGE?

May the receiver enforce the court's order granting him possession of the corporation's financial records against Acme? Absolutely. A corporation is not afforded any right or privilege against self-incrimination by the Fifth Amendment.

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Hale v. Henkel, 201 U.S. 43, 75 (1906). The Fifth Amendment privilege against self-incrimination is a personal right, reserved only to a "natural person", who must directly assert the privilege. **Bellis v. United States, 417 U.S. 85, 89 (1974).

The U. S. Supreme Court has stated that it is well established that artificial entities such as corporations, partnerships, unincorporated associations (and similarly constituted entities), are not shielded by the Fifth Amendment. Braswell v. United States, et al., 487 U.S. 99, 102-107 (1988). Acme, as a statutorily created entity, has an unconditional duty to produce records prepared and maintained in the ordinary course of business if required by court order [Id.] or a subpoena for the production of records.

Acme does not possess a Fifth Amendment privilege precluding production of corporate financial records, correspondence, marketing and sales documents or the like even though such records would tend to establish that illegal activities took place. Hale v. Henkel, supra, at 75. A corporation, as a creation of

the state, is amenable to state action, and both an order and a subpoena mandating production of Acme's records are forms of state action.

The right against self-incrimination is limited to its historical function of protecting a natural person against compulsory self-incrimination through his own testimony or personal records. Bellis v. United States, 417 U.S. 85, 90 (1974). The reasoning behind denial of the Fifth Amendment privilege to artificial entities enunciated by the Supreme Court is that the corporate records are deemed public in nature, rather than private papers that would be protected by the Fifth Amendment. Bellis v. United States, supra, at 88 and 100. The Fifth Amendment privilege is inapplicable to corporations, regardless of their size (as small as one shareholder). Braswell v. United States, supra, at 104 [which decision also comments that if a sole proprietorship is involved a different inquiry is required].

The protections of the Fifth Amendment are also denied to partnerships, formal and informal

associations, and dissolved corporations and partnerships (including entities that have been through bankruptcy). Fisher v. United States, 425 U.S. 391,412. It is clear that all of Acme's corporate documents and records, in whatever form they are maintained, including computers, software files, hard drives, disks, CD ROMS and the passwords and access codes to such information are not shielded and must be produced.

MAY AGENTS AND REPRESENTATIVES OF THE CORPORATION INVOKE A PERSONAL FIFTH AMENDMENT PRIVILEGE AND REFUSE TO PRODUCE CORPORATE RECORDS?

A corporation functions only through its agents and representatives — directors, officers and employees. These agents perform the business and statutory duties of the corporation on its behalf. They prepare and maintain corporate records, and produce them if required to by subpoena or order. Bellis v. United States, supra, at 90; Braswell v. United States, supra, at 110. Generally, there is at least one person within each artificial entity who maintains possession of these records and is responsible for their preservation and maintenance in the ordinary course of business, and for their production for review as required by law. This custodian of records acts solely in a representative capacity on behalf of the corporation. Id.

A custodian may be the chief executive officer, the president, a member of the board of directors, and/or any employee formally designated as the custodian of records. The law considers a custodian's act of producing records pursuant to court order a function of the corporation, not a personal or individual act by the custodian. Id. For that reason, the custodian's act of delivering the corporate records under law is not considered to be "compelled testimony" of the individual custodian (which would be protected under the Fifth Amendment). **Fisher v. United States, supra, at 408-409, 410-411 This is the case even where the records may tend to provide incriminating evidence against the

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custodian.

In our hypothetical, Acme's counsel states that there is no one to produce the records because the individual directors, officers and employees are each asserting their personal right against self-incrimination under the Fifth Amendment. They refuse to deliver the records on the grounds that production of the documents may criminally implicate them in some way. They argue that forcing them to deliver the corporate records is the equivalent of compelling them to testify as to their personal knowledge about the documents and potentially establishing their personal guilt (or culpability) for Acme's alleged illicit activities.

This argument fails. The content of the records is not at issue because the custodian's act of producing them is not considered to be testimony as to the content of the documents. The custodian acts as a representative of the corporation: the act of production is deemed that of the corporation, not of the individual. *Braswell*

v. United States, supra, at 118. The legal reality is that Acme's directors, officers and employees serve only as representatives and agents of the Corporation and are bound by its obligations to produce the records. *Bellis v. United States*, supra, at 90. In particular, Smith, the president of Acme in our hypothetical, holds the records only as Acme's agent and custodian, not in his personal capacity. He cannot assert any personal Fifth Amendment privilege to shield the corporation from producing the documents. *Wilson v. United States*, supra, at 382; *Braswell v. United States*, supra, at 110, and others.

The Supreme Court has consistently denied a custodian's attempt to "back door" this use of the Fifth Amendment privilege. If Smith were allowed to assert a personal Fifth Amendment privilege to prevent his production of the documents on the grounds that such production constituted his testimony, it would be "tantamount to a claim of privilege" by Acme, a privilege which it does not possess. *Bellis v. United States*, supra, at 100; *Braswell v. United*

States, supra, at 110-11, 112. A custodian's production of corporate records is mandated notwithstanding any potential that they may personally incriminate him or her. *Id.*

"A custodian, by assuming the duties of his office, undertakes the obligation to produce the books of which he is custodian in response to a rightful exercise of the State's ... powers."

Curcio v. United States, 354 US 118, 123-4 (1957).

Acme must find a means to comply with the order, even if it requires appointment of an alternate custodian. If so, it is incumbent on Smith to ensure that this alternate custodian has sufficient knowledge about the existence, nature and scope of the records so as to be able to properly comply with the order. Otherwise, "the solution [i.e. appointment of an alternate custodian] is a chimera." *Braswell v. United States*, supra, at 117.

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David A. Summers	925-933-2875	Davidsummers8@aol.com	•• Douglas C. Morehead	949-852-0900	doug@optimaasset.com
Robert M. Rouse	650-802-1629	brouse@wres.com	■•• Robert P. Mosier	714-432-0800	rmosier@mosierco.com
• Donald G. Savage	510-547-2247	donald.savage@worldnet.att.net	• William E. Nix	818-725-2500	uclabill@yahoo.com
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• Louis A. Frasco	818-725-2500	uclabill@yahoo.com	• Richard M. Kipperman	619-668-4500	rmk@corpmtg.com
Beth Gibson	818-346-9588	fgroup1423@aol.com	• Thad L. Meyer	858-713-9345	tmeyer@allianceturnaround.com
•• David A. Gill	310-277-0077	dag@dgdk.com	• Douglas P. Wilson	415-439-5202	dwilson@douglaswilson.com
• Gary Haddock	310-306-6789	garyhaddock@playavistausa.com	<ul style="list-style-type: none"> • 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 ■ The square indicates those who facilitated the October 2004 forum 		
• Nigel W. Hamer	818-382-7500	nigel@thehamergroup.com			
Gary R. Holme	323-466-9761	garyholme@usa.net			
• Timothy Kuhn	818-990-3700	timothykuhn@cs.com			
• Randal Lee	323-930-2671	rjlee@ccim.net			
• Richard E. Lucy	310-247-2277	relucy@crosswindcapital.net			

Fighting the Fifth...

Continued from page 7.

WHAT ABOUT DOCUMENTS IN THE POSSESSION OF ACME'S ATTORNEYS?

The fact that Acme's counsel has possession of the corporation's records (prepared by Acme's personnel and agents) does not mitigate her duty to comply with the order and to deliver the records forthwith. *Fisher v. United States*, supra, at 397, 403. The documents in an attorney's possession are not the subject of attorney-client privilege merely because they were delivered to counsel to avoid their production. If the documents are not protected by the Fifth Amendment privilege, their delivery to counsel does not spontaneously afford the documents either Fifth Amendment or attorney-client privilege protections. *Id.*, at 403, 405.

The rule is: if the records are producible by Acme, they are producible by its counsel, despite the fact that the records are delivered to counsel for the purpose of obtaining legal assistance. Only if the records are unobtainable from the client under a subpoena or other lawful order will the records be unobtainable from counsel by reason of the attorney-client privilege. Where Acme cannot avoid producing its records, neither can its counsel under the guise of attorney-client privilege. *Id.*, 403 405.

ENFORCING THE SUBPOENA OR COURT ORDER

The refusal of Acme, Smith (its president) and Acme's counsel to deliver the records requires an immediate reaction. An ex parte application to the court for the issuance of an order to show cause re contempt should be promptly brought. All

of the United States Supreme Court cases addressing these issues upheld contempt citations against recalcitrant corporate custodians and attorneys who refused to comply with production orders for corporation, partnership and association records.

It is appropriate and necessary for the Court to be made aware of any obstructionist conduct of the corporation and its agents, to enable the Court to control and direct the course of administration of the receivership. Expensive and time-delaying depositions, interrogatories and other forms of discovery open the door for the deponent or declarant to assert "personal" rights against self-incrimination as to his personal knowledge sought through these traditional

Continued on page 15...

ROBB EVANS

Robb Evans & Associates LLC
Tel: 818-768-8100
kenton.johnson@robbevans.com

is pleased to announce
his appointment

as Receiver for White Pine Trust
Corporation and Richard Matthews
A CFTC Regulatory Receivership

U.S. District Court
Central District of California
Southern Division

STEVEN K. LINKON

Routh Crabtree Olsen
Tel: 425-586-1952
slinkon@rcflegal.com

Concentrates on receivership and
bankruptcy matters in

Washington and Oregon

ROBERT P. MOSIER

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

is pleased to announce
the completion of his duties

as Class Action Receiver for
National Investors Financial, Inc.
\$110 Million / 5,600 Investor
Real Estate Investment Class Action
Recovery / Liquidation Case

Superior Court
County of Orange

THEODORE G. PHELPS

Phelps Consulting Group
Tel: 213.629.9211
tphelps@phelpsconsulting.com

is pleased to announce
his appointment

as Receiver for H & C Electric
Company, Inc.
An Operating Company

Superior Court
County of Los Angeles
North Valley District
Chatsworth Courthouse

ROBERT C. WARREN III

Investors' Property Services
Tel: 714-708-0180
rob@investorshq.com

is pleased to announce
his appointment

as a Receiver for Biddle
A Rents and Profits Receivership

Superior Court
County of Los Angeles

ROBERT C. GREELEY

Greeley, Lindsay Consultant Group
Tel: 916-484-4800
rgreeley@greeley-group.com

is pleased to announce
the completion of his duties

as Receiver for Imtech
Communications, LLC
An Operating Company

Superior Court
County of San Francisco

DAVID J. PASTERNAK

Pasternak, Pasternak & Patton
A Law Corporation
Tel: 310-553-1500
pasfirm@paslaw.com

is pleased to announce
his appointment

as Receiver for Murphy v. Noell
Capital, LLC

Superior Court
County of Ventura

EDYTHE L. BRONSTON

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

is pleased to announce
her appointment

as a Receiver for Star Light &
Hi-Lite Motels
An Operating Company

Superior Court
County of Los Angeles

DAVID L. RAY

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

is pleased to announce his appointment

as Receiver for Connecticut General
Life Insurance v. New Images of
Beverly Hills, ect. Et al. An Equity
Receivership

U.S. District Court
Central District

JAMES L. PEERSON, JR.

Peergroup Corporation
Tel: 323-954-7575

is pleased to announce
his appointment as Receiver

for Prestige Resort Development
Takeover of partially complete
fractional ownership townhouse
resort development (Big Bear)
with HOA in place

Superior Court
County of San Bernardino

ROBB EVANS

Robb Evans & Associates LLC
Tel: 818-768-8100
kenton.johnson@robbevans.com

is pleased to announce his appointment

as Receiver for Marina
Landscape, Inc.
An operating company

Superior Court
County of Los Angeles

DOMINIC LOBUGLIO

LoBuglio & Sigman
Certified Public Accountants
Tel: 310-553-8458
dominic@lscpa.net

has been engaged
as an expert witness

on behalf of several insurance
companies and pension funds in a
lawsuit alleging securities fraud
against The Prudential Insurance
Company of America and several
major broker dealers

RICHARD WEISSMAN

Richard Weissman, Inc., P.C.
Tel: 818-226-5434
rweissman@rwreceiver.com

is pleased to announce his appointment

as Distribution Agent for Leon
Jordan, et al., a Securities Fraud
receivership

U.S. District Court
Central District of California,
Western Division

DOUGLAS P. WILSON

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

is pleased to announce
his appointment

as Receiver for Shanty Creek
A Golf and Ski Resort Receivership

State Court of Michigan
County of Antrim

STEVEN M. SPEIER

Squar Milner
Tel: 949-222-2999
sspeier@squarmilner.com

is pleased to announce
the completion of his duties

as Receiver for 524 W. 6th Avenue,
Azusa, CA. A Health and Safety
Receivership involving the rehab of
a single family residence

Superior Court
County of Los Angeles
Pomona

RICHARD WEISSMAN

Richard Weissman, Inc., P.C.
Tel: 818-226-5434
rweissman@rwreceiver.com

is pleased to announce
his appointment

as Receiver for Post-Judgment
Management and Sale of
Commercial Real Property

Superior Court
County of Los Angeles

ROBERT P. MOSIER

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

is pleased to announce
his appointment

as Receiver for
Trek Industries
A Manufacturing Company
Consensual Turnaround
Receivership

Superior Court
County of Los Angeles
North East Division (Pasadena)

DOUGLAS P. WILSON

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

is pleased to announce
his appointment

as Receiver for U.S. Logistics
An Operating Company

Superior Court
County of San Diego

DAVID L. RAY

A PREEMINENT LOS ANGELES RECEIVER FINDS THAT PASSION FOR AND VARIETY IN HIS WORK ARE KEY TO A BROAD AND SUCCESSFUL CAREER

(As is the case with many members of the California Receivers Forum, David L. Ray initially became a receiver by happenstance, only to find it was the career he had been searching for. Here is a brief sketch of his professional life, in his own words.)

It's funny how one ends up doing one's life's chosen work. In my case, it probably all began when I was a CPA with a client who had a terrific idea. His idea was to sell second trust deeds with his personal guarantee of payment.

Today we know that it is sheer idiocy to guarantee such investments. Second trust deeds are a gamble at best. But in the late 1960's my client believed they were as solid as the rock of Gibraltar and saw no reason not to attract investors with a guarantee of

payment, and that is exactly what he did. Of course, second trust deeds very often go bad, and that is exactly what they did.

One day my client's counsel called, asking if I would like to be a receiver. I said, "What's a receiver?" He explained and I said, "Heck anybody could do that!" So I was named a receiver for the first time.

His counsel should have known I had a conflict and shouldn't be a receiver in that particular case of course, but it didn't seem to bother him or the judge. I, of course, didn't know any better.



David L. Ray, Esq. is a partner in the West Los Angeles law firm of Saltzberg Ray & Bergman.

When dealing with second trust deeds one must be concerned about the holders of the first trust deeds, so I found myself dealing with counsel for many banks and saving and loan associations (when there were such things). They evidently liked the professional manner in which I dealt with them and the financial problems that arose, and they were soon using me as a receiver in their cases.

Continued on page 13....



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Continued from page 12.

At that time I knew of only one person in Los Angeles who was functioning as a full time receiver. At that point I thought to myself, this looks like something I would like to do. Hence, I began my career as a receiver.

I'll step back now and say a little about my family and myself. I was born in Los Angeles and went to grammar school, junior high, and high school on LA's Westside. This was the time of the Korean War, and I applied for and was approved to enter air cadet training in the Air Force. I was deferred from the draft for approximately one and one-half years while waiting to begin my training. I met my wife during that time and quickly decided that I would rather get married than fly airplanes (at that time you couldn't be an air cadet and be married). We were married, and when I returned from our honeymoon my orders to report to Randolph Field for training were waiting. I told the air force that I was no longer eligible to be a pilot cadet, and they passed along the message to the draft board. I received my draft notice within two weeks, and reported for basic training at Fort Ord in Monterey, California.

Toward the end of basic training an officer came and offered me three choices. I could remain a private and fight with the infantry in Korea, a choice that didn't sound too good to me. Or, I could go to officers' candidate school and become a lieutenant in the CIC corps. That meant that after training and getting my commission I would be sent behind enemy lines to do counter intelligence work. That also didn't sound too promising. The third choice was to be sent to Texas, to work at a special weapons base for the duration of my two-year term of duty. The only disadvantage to this choice was that I would not be able to leave the continental United States for five years after I left the army (because of the secret information I would be privy to). I had this tremendous stroke of luck because at the time I was drafted I was working at Douglas Aircraft as an assistant time study engineer (which meant I carried a stop watch). The army considered this being an engineer, when, in reality, I was a theater arts major (with a business advertising minor) in college.

When I got out of the Army, I realized that I had to get serious. With a wife and a child on the way I had to drop the fun of acting and apply myself to making a living. My father had an accounting practice and I had always had an aptitude in that

direction. I also had worked in his practice during my high school years. So, I went back to UCLA as a business major. I worked part time in my father's practice while carrying a full schedule at school.

After 2 years, I received my Bachelor of Science degree with my wife and young son attending my graduation. I took the CPA exam, was lucky enough to pass on my first try, and officially joined the practice as a partner.

The business flourished over the years, and my father eventually retired. By then I had another child, a daughter. Even though the accounting practice was very successful, it really didn't match my talents because I was really a people person. At that time accountants tended to do introspective auditing and tax work, and spent a lot of their time administrating and staying in the office.

This brings me back to the beginning of my article — my discovery of receiverships. My analysis was that doing receiverships was really more a legal function than an

accounting function, and so, after 10 years as a CPA and running a 30-person accounting practice, I decided to go back to school and become a lawyer. I worked full time as an accountant while carrying a full four-year program in law school.

Upon graduation I decided to sell the accounting practice to my partners. I started my own law firm. I retained the staff that were assisting me in my receiverships and hired another attorney and paralegal.

A milestone in my business life was when Henley Saltzburg and I joined forces, soon becoming Saltzburg, Ray & Bergman. Our firm handled all manner of business law and made good use of my expertise in bankruptcy and receiverships. I left behind rents, issues and profits receiverships, expanding into governmental enforcement, equity receiverships, and other types of receiverships that were more challenging and more interesting.

The beauty of a receivership practice is the variety of it, as most of you know. I

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have operated almost any type of retail establishment that you can name — from small retail food outlets and take-out shops to large department store type operations. I recently was receiver for a mega-dealership auto center, which was security for an outstanding line in excess of \$28,000,000. This auto park had six operating retail dealerships. This required negotiating and dealing with six different auto manufacturers, the selling and marketing of autos, providing after market products, service and maintenance, and the like.

I recently completed the receivership for one of the largest money order companies licensed by the State of California, with more than 70,000 claimants and \$30,000,000 in assets. I was able to return 170% including interest to qualified claimants. We achieved this in part by bringing actions against approximately 1,400 agents who had refused to pay what they owed the company.

One of my most unusual cases was a receivership for a plastic manufacturer, which attempted to collect on an officer's life insurance policy. It turned out that the officer/owner was murdered by his sons (also owners of the company), who needed the life insurance proceeds to continue

company operations. They were convicted and are serving prison time.

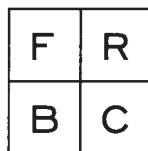
I have run factories that manufactured busses, cosmetics, textiles and textile design, jeans, that processed and packaged poultry, and that made golf clubs, to name just a few.

Probably my greatest success came indirectly because the appointing court, upon receiving my report, refused to shut down a telemarketing firm that was the subject of a governmental enforcement receivership. My report showed that the company was eminently savable, provided it ceased certain objectionable tele-marketing methods. It was a firm with more than 1,000 employees, and the court didn't want these people to lose their jobs. The court directed me to reform the company and marketing procedures, and to monitor operations to ensure that the company conducted its business honestly, fairly, and within the law. I did so. Eventually a judgment was entered against the company, which was allowed to continue operating. This was a success not only because the company continued operating, but also because it was recently sold to a large conglomerate for more than \$50,000,000.

Obviously, that kind of thinking was the reason a receiver had been put in. These

disreputable people had started divesting the doctor of his many investments — he had been terrifically successful and there were plenty of assets to divest. That receivership terminated after we got the doctor back on his medicine, recovered his many investments and placed them in a separate trust and straightened out his legal and personal affairs.

Almost every Receivership case has unique problems, situations and players, which makes each case unique. These are some of the more unusual. That's not to say that the mini horse registry case, the grape farms in Delano, the motion picture distribution company, the Beverly Hills discotheque of the 80's, the mobile home and housing tract developments, the upscale hotels and the pedestrian motels, the independent bus transit company, the securities brokerage firm, and other I have been receiver for didn't have unique and interesting problems to resolve and I truly enjoyed working on all of them for that very reason. They say that variety is the spice of life and that passion keeps one youthful; I am blessed to have had the opportunity to work and learn from every case in which I've been involved. I can honestly say that I did so with passion and care.



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Fax: (415) 291-9153

Continued from page 7.

discovery means. Direct production of corporate records upon service of the receivership order avoids such peripheral impediments. Pursuing a contempt citation that provides for a civil contempt penalty (incarcerating the agent pending full compliance with the order) may be a cost efficient and expedient tool against Acme's obstructive agent(s) and counsel.

The requisite proof elements for contempt are: (1) the order was served on the citee; (2) demand was made for production of the records being sought under the order; (3) the citee had the ability to produce the records; and (4) the citee's failure to produce the records. Once these elements are established, a contempt citation will follow.

A claim that the documents are no longer available to the citee or that they have been destroyed are dynamics beyond the scope of this article. Suffice it to say, however, that the Court does have various methods that it may employ to enforce compliance with its orders, jail time

pending compliance being one of them.

A citee's claim of "I can't" is really his legal statement of "I won't." His contention is not legally viable and the Court should support the receiver's pursuit of the records. A command to the corporation is, in effect, a command to

those who are officially responsible for the conduct of its affairs.

"As the corporation can only act through its agents, the courts will operate upon the agents through the corporation."

Wilson v. United States, supra, at 377.



Richard Weissman & Carol Weissman

**Richard Weissman is the principal of Richard Weissman PC, and serves full time as a receiver and referee for the Superior and U.S. District Courts throughout California. He is the incoming co-chair of the LA/OC Chapter of the CRF. His co-author and spouse, Carol Weissman Esq., has recently taken a position with the United States Justice Department.*



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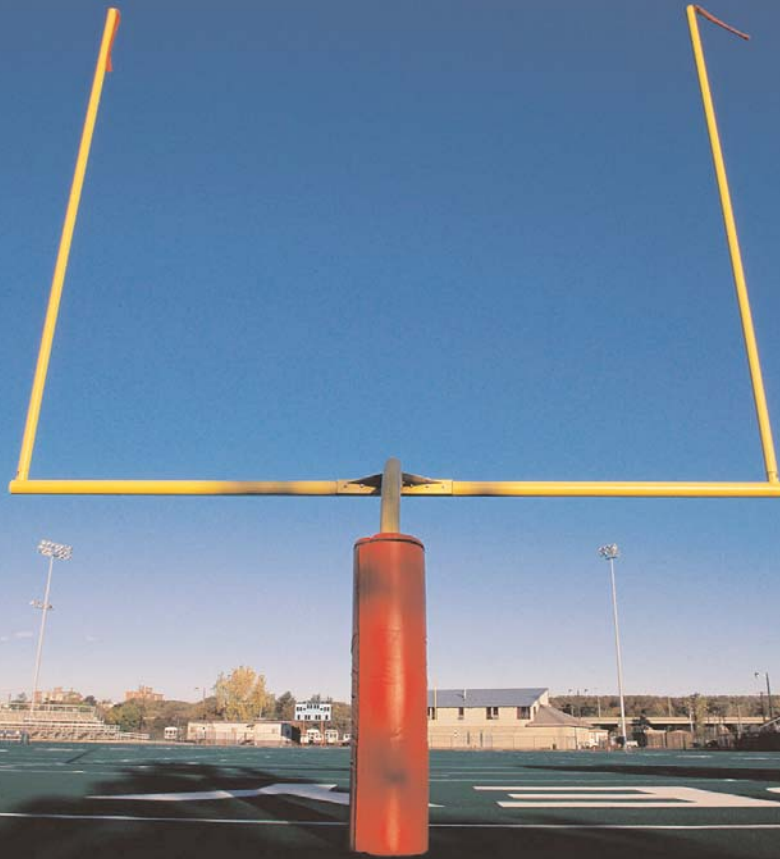
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