



# NEWS

A Publication of the  
California Receivers Forum

## Loyola VIII Celebrated California Receivers Forum's 25 Years of Elevating the Receivership Practice

BY JEANNE B. SLEEPER\*

A sell-out crowd of participants started Loyola VIII in Newport Beach at The Pacific Club dinner January 23, 2020 featuring Dr. Christopher Thornberg, founder of Beacon Economics, who delivered a historical review and forward-focused thoughts on the California economy. His message on that day was: good news for your investments. Bad news as of that date: it's unlikely there will be a plethora of receivership cases. What a difference seven weeks make, as Covid-19 virus has spread around the world. Many of us are now working from home to try and stay well, while watching an economic train wreck unfold. Lost jobs, shuttered businesses, plunging retirement savings and daily bad news make the start of 2020 seem like a long time ago. This article recaps the Loyola VIII event as it happened in January.



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Dr. Christopher Thornberg

## Post-Judgment Receiverships: A Refreshing Discussion at the Loyola VIII Symposium with the Honorable Edward B. Moreton (LASC Dept. 44)

BY MICHAEL J. MUSE-FISHER\*

A post-judgment receiver can be an extremely effective tool for a judgment creditor. Especially when the judgment debtor goes to great lengths to hide assets through schemes and artifices in the hopes of "wearing out" the judgment creditor, believing that at some point the creditor will simply give up. However, whether because practitioners are unfamiliar with post-judgment receiverships, or because creditors are fearful that post-judgment receivers will be too expensive, *this potent tool is often underused or overlooked.*

The right to a post-judgment receiver is authorized by statute [See e.g., Code of Civil Procedure § 708.620 and Code of Civil Procedure §§ 564(b)(3),(4)], and has been approved in numerous California cases. See e.g., *Olsan v. Comora* (1977) 73 Cal.App.3d 642; *Crocker National Bank v. O'Donnell* (1981) 115

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Robert P. Mosier

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

# Publisher's Comments

BY ROBERT P. MOSIER, PUBLISHER\*

During CRF's twenty-five year history, I have enjoyed watching the organization grow from a fledgling organization in Los Angeles (a group of receivers that included **David Pasternak**) meeting with the writs and receivers judges along with a small group of receivers in Orange County that had the vision of a professional organization for receivers that offered continuing education. Their common purpose was to raise the bar of professionalism and standardization of procedures for all receivers throughout the state.

The common thread that helped bring these two groups together was stalwart receiver and lawyer **Edythe Bronston** who was one of the receivers meeting with the judges in L.A. and who accepted an invitation of the Orange County receiver's group to meet with this tiny group (**Bob Warren, Bob Mosier, Doug Moorehead, Taylor Grant**). What followed was a merging of the two groups, and that eventually led to the first Loyola Symposium at the Loyola Law School campus in 2000.

We have come a considerable distance during the past 25 years with the recent culmination of Loyola VIII. This year's conference was every bit as on-point as its seven predecessors with meaningful panels, active audience participation and a true learning experience and exchange of ideas and concepts. The Friday night keynote speaker was **Dr. Christopher Thornberg** who strongly advocated "no recession." But now receivers will likely get to deal with something no one saw coming: a virus-induced recession. Will it be the same as a financially-induced recession like the weak home mortgages that lead to the 2006-09 downturn? Who knows where this one will lead?

Another important aspect of the Loyola series, beyond the important education component, is an opportunity to socialize and discuss the ways of receivership with other receivers from around the state. You will see a lot of pictures in this issue that capture this important aspect of the conference.

In this issue, you will have an opportunity to revisit all of the subjects discussed at Loyola VIII as well as review a summary of social aspects of the conference. I will end with a final comment on the growing list of accomplishments of the past 25 years - this newsletter has become a good vehicle for keeping our membership and judges informed of our progress as an organization and the many fine points of receivership law.

A special acknowledgement to **Jeanne Sleeper** and JBS Associates who have guided the California Receivers Forum to a position of prominence for the past two-and-one-half decades.

RPM

# Editor's Comments

BY KATHY BAZOIAN PHELPS\*

Working tirelessly right alongside **Jeanne Sleeper** for the past 25 years is RN's very own publisher, **Robert P. Mosier**, who received the Robert C. Warren Memorial Award at Loyola VIII. We can't thank Bob enough for his service and dedication to CRF, and the award reflects our gratitude for his leadership.

This issue of RN has some great reading about different types of receiverships. **Michael Muse-Fisher's** article about The Post-Judgment Receivership discusses this under-used type of remedy. **Blake Alsbrook** writes about Problem Property Receiverships and a new way of thinking about them.

Please also get to know **Ryan Baker** in our professional profile in this issue. And, stay up on the latest receivership news in *Heard in the Halls* by Michael Muse-Fisher.

Kathy



Kathy Bazoian Phelps

**\*Kathy Bazoian Phelps** is a partner at Diamond McCarthy, LLP, Los Angeles, and the co-author of *The Ponzi Book: A Legal Resource for Unraveling Ponzi Schemes*. She frequently represents receivers and trustees.



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### Beacon Economics Says...

Dr. Thornberg's PowerPoint illustrated "where we were in January 2020" with the analytic capabilities of Beacon Economics, and his engaging presentation style kept the audience with him for 75 minutes of detailed economic information. He concluded the presentation with two slides:

<b>BEACON ECONOMICS: THE GREAT DISCONNECT</b>	January 23, 2020
<b>What we ARE worried about:</b>	<b>What we SHOULD be worried about</b>
The number of jobs	The number of workers
Who pays for healthcare?	What are we paying for?
Tax levels	Tax structure
Income Inequality	Wealth inequality
Funded Govt. liabilities	Unfunded Govt. liabilities
Business investment	A lack of public investment
Inflation	Slowing lending
The cost of housing	The supply of housing

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### BEACON ECONOMICS: THE BIG PICTURE

January 23, 2020

#### Positives - It will be a good year

- GDP growth outlook for 2020: 2%+
- Labor markets to remain tight
- Rising wages to put pressure on profits
- Exports, business investment continue to grow
- Inflation to remain constrained
- Interest rates still low
- Lending constrained, but commercial markets steady
- Debt level stills safe
- Where people move (want to move) will drive regional growth

#### Negatives - Problems Growing

- Labor shortages will be an issue
- Will the Fed continue to loosen or un-invert the yield curve?
- Equity markets behaving oddly in a bubble
- Federal deficit widening sharply
- Bank lending still constrained
- Signs of excessive risk taking
- Political uncertainty to dominate
- Critical policy issues remain undiscussed
- Miserabilism warping our sense of reality



Friday morning at the Renaissance Newport Beach, the 140 participants began an engaging day with breakfast and moved right into substantive programming. Loyola Symposium co-chairs, **Mia Blackler** and **Dominic LoBuglio**, along with **Red Griswold**, 2019 California Receivers Forum State President, offered opening remarks and thanks. **Richard Ormond**, California Receivers Forum State Projects Director, championed Loyola VIII from start to finish and shared in the main stage responsibilities throughout the day.

Designing, planning and executing Loyola VIII involved a team who worked about 18 months and reimagined Loyola. Shortening the Symposium from 2.5 days to 1.25 days, allowing 30-minute connection breaks in between hour programs, engaging the audience, aka the “sages in the seats,” expert-hosted discussion roundtable lunch, keynote speakers, continuous coffee, meeting areas with lots of natural light and the ability to get outside, all combined to create a high energy, experiential meeting with receivership practice ah-ha moments and new statewide relationship building.

The education sessions pulled in experts from around the state in the many professional segments working on receivership matters. Leading the education planning were Co-chairs **Michael Davis** and **Michael Muse-Fisher** with Education Co-chair Emeritus, **Joel Weinberg**.



Joel Weinberg



Kevin Singer, Ryan Baker and Nich Wilson

Very special thanks go to the many companies that made all of this possible with their investment as sponsors, advertisers, speakers and participants. **Kevin Singer**, **Ryan Baker** and **Nich Wilson** recorded the highest

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## LOYOLA VIII...

*Continued from page 4.*

level of sponsorship ever at a Loyola Symposium. The extras that contributed to this being a memorable event were possible because of their commitment to fundraising, and the industry answering the call for advertising, exhibits and sponsorship.



*Photo by Robert Mosier*

In addition to Loyola VIII being a Receivers Forum 25 year celebration, this program was also a tribute dedicated to **David J. Pasternak** who recently passed away. David was one of the LA/OC Chapter founders, a leader, mentor and a gentleman of honor in life. **David Pasternak** and **Edy Bronston**, both Loyola Law School (LLS) grads, called on the dean of Loyola Law School in 2000 and sought the law school's support of CRF's endeavor to provide complimentary law school space for the program, lend their academic halo to our concept and help launch the program. Several years of programs were held at the law school until we outgrew their classroom size and availability.

# LOYOLA

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Dean **Michael Waterstone** shared remarks this year about the LLS commitments to preparing their graduates, not just to know law, but to be ready to practice; their student-driven appeals social justice project; maintaining the LLS high bar pass rate, high post-graduation employment rates and its commitment to professional excellence that is reflected in the substantial number of LLS alumni who are now judges. Dean Waterstone accepted the customary CRF \$5,000 donation to the Loyola scholarship fund and encouraged CRF to continue the relationship.

## Heard in the Aisles



*Zack Clement*



*Robert Tormey and Zack Clement*

## ***Federal Equity Receivership: Reorganized Railroads for 50 Years, Can Reorganize States by Zack Clement***



*Religion, politics and sex... that's what this talk was about," said Zack Clement, but the golden nugget I will always remember is Zack's comment, "Collect the estate and give it out fairly and don't forget those who will come later and also be deserving.*

**Heard at the coffee break**



*Continued on page 6...*

Continued from page 5.



Having been involved in receiver turnover situations in chapter 11 cases, the insights of the panel, especially Ms. Michelson, were helpful in analyzing post-petition preservation of assets expenditures by receivers and the impact of suspensions of chapter 11 cases.

**Chris Seymour**  
Seymour Legal, Fresno



Kevin Singer, incoming Chair, presents the Service Award to Red Griswold, 2019 President.



**“Ask the Receiver” with Moderator, Byron Moldo and Panelists, Terri Riker and Randy Michelson**

Like Peter Davidson, who has penned more than a bookful of Ask the Receiver Q & A columns, Terri Riker and Randy Michelson answered questions from Byron Moldo and the audience. They got some tricky ones - perhaps Peter is glad to have been touring in Europe.



As a longtime financial advisor and chief restructuring officer moving into the receivership space, I found the Ask the Receiver session to be particularly valuable. The panel shared real life experiences that will help me as I grow my practice to include serving as receiver. I’m looking forward to reviewing the rulings and orders that the panel is making available to the Loyola participants.

**Mike Bergthold**  
Bergthold & Associates, San Diego



Red Griswold presents the Robert C. Warren award to Robert Mosier.

**Presentation of the Robert C. Warren Memorial Award to Robert P. Mosier**

Robert Warren was a CRF and a receivership pioneer who exemplified the best in service and commitment - whether as an early CRF leader or driving one stormy night to Santa Cruz to help quickly move patients in a care facility for which he

was the receiver, as the nearby rain-swollen creek threatened to flood the facility. This statewide service recognition is awarded for the highest order of service to the Receivers Forum and the industry. CRF State Chair, Red Griswold presented the custom art glass plate to Robert Mosier, citing his 25 years of leadership, the founding of the LA/OC Chapter, championing the development of regional chapters, photographic historian, publisher and re-imaginer of the Receivership News format, and CRF liaison to the judicial community. CRF is grateful to Robert Mosier for being the 30,000 foot view guy who has always looked to the future and to where CRF needs to be headed.



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*Luncheon with Hosted Roundtable Discussions*

The decibel level didn't quite peg the meter, but reporting this session as lively and engaged is accurate.

*All Things Cannabis* by Kevin Singer, Receivership Specialists; *Impacts of Recent Published Opinions* by Shawn Christianson, Buchalter; *Pitfalls in Selling Receivership Real Estate* by Phil Seymour, The Seymour Group/Keller Williams; *Using Real Estate Auctions to Broaden Reach to Buyers & Top Sales Prices* by Todd Wohl, Braun International/Premiere Estates; *Focus on Restaurant-Nightclub-Hotel Receiverships* by Dennis Gemberling, Perry Group International; *Receiver Neutrality and Receiver Communication* by David Mark, Buchalter; *Failed High Speed Rail Construction: Is Receivership a Path to Getting Farmers Paid* by Chris Seymour, Seymour Law and *Finding Assets & Other Hidden Valuables* by Olivia Robinson, Background Intelligence; *Risky Behavior and How to Avoid Bad Consequences* by Alan Mirman, Mirman Bubman & Nahmias; *Procedural Steps for Receivership Takeovers* by Ryan Baker, Douglas Wilson Companies and *Protecting Stakeholders in Ponzi Schemes*, by Curtis Wright, and Carl Peta, Silver & Wright.

*Cannabis and Receivership: How the Inability for Cannabis Businesses to File Bankruptcy Is an Opportunity for Receivers*

Moderator, Oren Bitan and Panelists Seth Freeman and Vanita Spaulding discussed the receivership space and how the federal prohibition on cannabis businesses or filing

bankruptcy in federal courts has created a protected, albeit often wild, practice area for receivers.



*How do you explain to your family that you were really at work, but come home smelling like marijuana?*

Anonymous



*Tell someone that the cannabis companies are failing in the U.S. because the gas and oil companies in Canada are in financial trouble and no longer a source of funding for U.S. cannabis companies and they will look at you like you inhaled.*

Anonymous



Continued on page 8...



Photo by Robert Mosier



Loyola always provides current subject matter of interest or relevance to our practice. This year, I was able to attend a conference on cannabis business receiverships – something I wouldn't have thought I would ever need, but last year I was appointed as Receiver for just such a business! The panelists provided important information including the methods of valuation for sale of the business, current legislative actions, and information on taxation in this industry. It was a very helpful and productive session.

**Tom Hebrank**  
E3 Advisors, San Diego



### The Neutrality of a Post-Judgment Receiver: How Aggressive Can the Post Judgment Receiver Be?

Moderator, Michael Muse-Fisher and panelists Hon. Edward B. Moreton, Dept. 44, Los Angeles Superior Court, Lei Lei Wang Ekvall, and Jake Diiorio shared experiences and opinions on methods and tools receivers can use in attempting to collect awards post-judgment through a receivership.



It was interesting to hear Judge Moreton point out that the law says receivership is an extraordinary remedy... then follow with reference to law providing for reasonable execution of a judgment being permissible, and concluding with the comment that an issue for judges may be that the remedy can be too expensive.

“Jake Diiorio’s comment that Liquor Licenses can only be taken by a receiver, and that domain names and other IP may fall into the same section of law - that was worth the cost of my day at Loyola.

**Anonymous**



### Using Rule 66 to Unwind White Collar Crime: Federal Equity Receiverships

Kathy Bazoian Phelps moderated a panel of seasoned federal equity receivers consisting of Stephen Donnell, Michael Kasolas, and Thomas Seaman. War stories told by the receivers in the trenches were a memorable way to talk about federal receivership cases – takeover, asset sales, litigation, claims administration, and the enduring reminder that you can't always (ever?) predict what is about to happen in federal white collar crime cases.



Federal receiverships can be challenging! These receivers faced everything from shotguns to death threats as they identified assets, detected fraud, recovered fraudulent transfers, and distributed funds to victims and investors. Candid accounts of actions that didn't go exactly to plan, mixed with stories of tremendous success – riveting storytelling makes memorable education.

**Olivia Robinson**  
Background Intelligence



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**LOYOLA VIII...**

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*I have had the opportunity to attend all eight Loyola programs for the California Receivers Forum. Number eight was no exception in terms of (a) attendance (most of the active receivers in California), (b) content – on point panels that dealt with the issues receivers face in cases every day, and (c) networking – a great blend of receivers and their support groups including banks, bonding companies, real estate agents, auctioneers, law firms and other important support groups. Veteran receiver lawyers like Byron Moldo and Kathy Phelps were among a group of panel leaders who covered their respective subjects well, while fostering excellent audience participation for maximum learning effect.*

**Robert Mosier**  
Mosier & Company, Inc., Costa Mesa



**Health & Safety and the California Housing Crisis**

Panelists **Kevin Singer** and **Gerard Keena** gave actual case reality checks to moderator **Blake Alsbrook** when theoretical practice questions collided with the real world of crumbling buildings, homeless breaking into vacant buildings, crime, tenants who won't move out, and what happens when the plumbing doesn't work for months. The receiver is dealing with business and real property issues and the cases often involve people with addiction, poor health

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## LOYOLA VIII...

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and mental illnesses. Cities and counties are feeling community pressure to solve blight, fix the homeless problem and provide low cost housing, and a health and safety receivership may be a good tool to get results.



*Loyola VIII was packed full of enthusiasm with creative solutions for both experienced and new to the profession receivers. During the health and safety panel's presentation, I learned that government entities would greatly benefit from receivership education to assist them in solving their long-term challenges with real property afflicted by issues such as hoarding, illegal occupancy ... and other unsafe conditions. As receivers, we have the ability to give the cities and counties tools for managing these situations.*

**Lee Ann Hitchman**  
Hitchman Fiduciaries, Newport Beach



*Often when we think of 'Health and Safety Receiverships' we envision 'Slum Lords', 'Gangs', 'Meth Labs' and 'Criminal Activities'. What I witnessed at this talk, and realized, is the outreach and compassion our receivers show to those 'Health and Safety Receiverships' that address those individuals with mental illness and also to those who hoard'. The kindness and care that is demonstrated by our Receivers is a wonderful testament to our industry. Thanks to all who do this work.*

**Marc Brooks**  
Escrow of the West, Beverly Hills



## More Time to Connect

At the close of the Symposium, the LA/OC Young Professionals Council hosted a microbrew and boutique winery tasting on the patio. Symposium participants and the local young accounting and legal professionals were invited to join the reception.

FRES, Fiduciary Real Estate Services, hosted a Taco, Margaritas & Mariachis reception at their new offices located nearby. **Ruben Martinez** and his family's warm hospitality was a wonderful way to end the day. Ruben and Teresa are experienced receivers and musical magicians - with a mariachi trio that was very accomplished and easy to listen to as the conversations continued!



CRF State Board Meeting was held Thursday, January 23<sup>rd</sup>.  
Back row: Jeanne Sleeper (Admin), Chris Seymour (Fresno), Dominic LoBuglio (LA), Gerard Keena (Bay), Nich Wilson (San Diego) Robert Mosier (Receivership News/OC). Front row: Mia Blackler (Bay), Deborah Kincade (Admin), Kevin Singer (LA), Red Griswold (San Diego), Fernando Landa (San Diego). Participated by phone Kathy Bazoian Phelps (Receivership News/LA) and Richard Ormond (LA).

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**LOYOLA VIII...**

*Continued from page 10...*

**Congratulations to the 2020 officers:**

- Chair: **Kevin Singer**, Receivership Specialists, Los Angeles;
- Chair-Elect: **Gerard Keena II**,  
Bay Area Receivership Group, Berkeley;
- Treasurer: **Dominic LoBuglio**, Dominic LoBuglio CPA, Inc., Pasadena;
- Secretary: **Richard Ormond**, Buchalter, Los Angeles;
- Projects Director: **Nich Wilson**,  
Douglas Wilson Companies, San Diego

**A Final Round of Applause to the Entire Loyola VIII Committee**

- Richard Ormond**, Buchalter, Los Angeles
- Mia Blackler**, Lubin Olson & Niewiadonski LLP,  
San Francisco
- Dominic LoBuglio**, Dominic LoBuglio CPA, Inc., Pasadena
- Michael W. Davis**, Brutzkus Gubner Rozansky Seror  
Weber LLP, Los Angeles
- Michael Muse-Fisher**, Buchalter, Sacramento
- Joel Weinberg**, Insolvency Services Group, Los Angeles
- Ryan Baker**, Douglas Wilson Companies, Irvine
- Kevin Singer**, Receivership Specialists, Los Angeles
- Nicholas Wilson**, Douglas Wilson Companies, San Diego
- Deborah Kincade**, JBS & Associates, Laguna Beach

**Special Thanks to the Exhibitors**

Dear CRF Members:

For those who did not get a chance to attend the California Receivers Forum Loyola VIII Conference in Orange County, you certainly missed a great event. The event was sold out with receivers, attorneys, a judge and vendors from throughout the states of California, Arizona, Nevada and Texas. Not only were the speakers and education panels top notch, but the social and networking events were a lot of fun. I hope everyone left the conference learning something new or with new relationships. I know I did both.

There was a lengthy discussion at California Receivers Forum state board meeting held on Thursday, January 23rd considering the financial and organizational health of the chapters. The discussion with representatives from every chapter was wide ranging and included the state organization and the local chapter corporations reorganizing. As your new state Chair, I want to be sure you are involved in the conversation.

Those present at the state board meeting recognized that some chapters are financially struggling and dues paying members are hard to recruit when the receiverships are not plentiful. Providing corporate governance and delivering services to members takes a significant time commitment from volunteers. The board discussed options—a north and south chapter plus a state corporation or, alternatively, combining all of the regional chapters into one statewide corporation. The board members acknowledged the importance of each current chapter continuing to operate with regional leadership, education programs, social events and recruiting regional membership.

The statewide challenges are: how to best serve members; for all regional groups to get and stay compliant with corporate governance requirements; and for CRF to have an up-to-date public facing website with current information.

As your 2020 Chair, my priority is building consensus on how to revitalize CRF’s statewide presence, ensure compliance in corporate governance matters, operate efficiently, to continue to develop statewide leadership, maintain regional cultures and improve delivery of educational services to all members.

These priorities are in the conversation stage. The Board appointed a committee including myself, Red Griswold, Scott Sackett, Gerard Keena and Chris Seymour and administrators Jeanne Sleeper and Deborah Kincade who will present options to the Board at their next meeting. Please reach out to anyone on the committee with your input.

California Receivers Forum looks forward to providing exceptional education, social, and business development opportunities for those involved in the California receivership industry.

Sincerely,

Kevin Singer  
CRF 2020 Chair



*\*Jeanne B. Sleeper is the CEO of JBS & Associates, an association management company, and the administrator of the California Receivers Forum since its founding in 1994.*

Jeanne B. Sleeper

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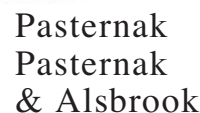
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## POST-JUDGMENT RECEIVERSHIPS...

Continued from page 1.

Cal.App.3d 264. The broad authority given to a post-judgment receiver has also been recognized by Courts throughout California. See e.g., *Morand v. Sup. Ct* (1974) 38 Cal.App.3d 347. These same cases concede that in some instances, a post-judgment receiver may be the only means of collecting on a judgment. Furthermore, in certain instances a post-judgment receiver may be *the only method for levying on certain assets* including liquor licenses [See Code of Civil Procedure § 708.630] and intellectual property, including patents. See e.g., *Yufa v. TSI Inc.*, 2012 U.S. Dist. LEXIS 129403 (N.D. Cal. 2012). Yet, notwithstanding the broad authority for a post-judgment receiver and the fact that in some instances a post-judgment receiver may be required, practitioners rarely deploy this immensely effective tool.

This sentiment was echoed by the panelists at the California Receiver's Forum Loyola VIII Symposium Post-Judgment Receivership Panel. On January 24, 2020, I had the great fortune of being able to moderate a lively discussion amongst experts in the industry, including **Jake Diiorio** [a Receiver from the Stapleton Group], **Lei Lei Wang Ekvall** [a Partner at Smiley Wang-Ekvall LLP], and the **Honorable Edward B. Moreton**, Judge Presiding in Department 44 of the Los Angeles Superior Court [the department responsible for all post-judgment matters at the Stanley Mosk Courthouse]. The panelists imparted their respective expertise from the vantage of the receiver, the creditor, and the Court on a wide range of issues affecting post-judgment receivers, and did not shy away from tough questions asked by the audience.

Those in attendance had the chance to ask questions directly of Judge Moreton, one of the leading judges overseeing post-judgment receivers in all of Los Angeles County. Judge Moreton explained that there is no hard or fast rule for when a post-judgment receiver is warranted in a particular case, but the remedy is not one that the Court will shy away from, especially if the facts warrant such relief. Judge Moreton also explained that he was very impressed with the effectiveness and skill employed by most post-judgment receivers appointed in cases he was overseeing.

Mr. Diiorio and Ms. Wang-Ekvall also imparted a wealth of wisdom for practitioners including this often-

overlooked benefit –the mere threat of a post-judgment receiver can often get an elusive debtor to start talking settlement. I personally have successfully moved for the appointment of dozens of post-judgment receivers for creditor clients, and I echo the sentiment of Mr. Diiorio and Ms. Wang-Ekvall. In about half of the cases, after filing a motion for the appointment of a post-judgment receiver, the creditor magically finds resources to settle out the judgment. So while costs are always a concern for a post-judgment receiver, the value of such relief should not be overlooked by practitioners or creditors.



*\*Michael Muse-Fisher is Senior Counsel of Buchalter, APC. Mr. Muse-Fisher specializes in creditor's rights, real estate disputes, corporate and partnership disputes, copyright and trademark disputes, cannabis law, and alternatives to bankruptcy.*

Michael Muse-Fisher

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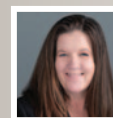
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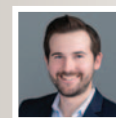
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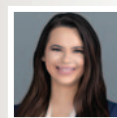
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Michael Kasolas & Company  
Office: 415-992-5806  
Email: mike@kasolas.com

is pleased to announce  
his appointment as

Partition Referee  
and Real Estate Broker  
In re: Fazeli v. Margett  
for the sale of a residential building  
in San Francisco, CA

Superior Court of California  
County of San Francisco

**MICHAEL G. KASOLAS, CPA**

Michael Kasolas & Company  
Office: 415-992-5806  
Email: mike@kasolas.com

is pleased to announce  
his appointment as

Partition Referee  
for a Partition by Appraisal  
In re: NAZ Auto Services, Inc. v.  
Tierney for the sale of a commercial  
building, gas station & convenience  
store in San Francisco, CA

Superior Court of California  
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in San Bernardino/Kern Counties

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

is pleased to announce  
his appointment as

Receiver to sell 18+ acres  
in Sonoma County, California  
Mosaic Vintage Oaks, LLC v. Vintage  
Oaks on the Town Green, LLC

Superior Court of California  
County of Sonoma

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

is pleased to announce  
his appointment as

Receiver to sell 5 acres  
in downtown Portland, Oregon  
Mosaic Portland Superblock, LLC  
v. PLCC1, LLC

Oregon Circuit Court  
County of Multnomah

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dwilson@douglaswilson.com

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Bedrosian v. Mohamed Hadid

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Korean Restaurant

U.S. District Court  
San Jose Division

# Problem Property Receiverships: A Tool for Local Governments

BY BLAKE ALSBROOK\*

At this year's Loyola VIII Symposium, Kevin Singer, Gerard Keena, and I hosted a concurrent-session panel discussion on Health and Safety Code Receiverships. Our panelists and audience members engaged in a lively back-and-forth on the specifics of receiverships involving problem properties, and I was left with many takeaways, but wanted to focus on one.

**Nomenclature:** Sometimes the words we use to describe legal tools matter. Over the course of our discussion at Loyola VIII, it became clear to me that the lawyers and practitioners in our community (including me) often refer to all receiverships involving local governments and problem properties as "Health and Safety Code receiverships," and that we invariably discuss how "the city" should proceed in such cases. I think that is a mistake.

Receivership is a broad remedy that is available to local governments to address problem properties, and the Health and Safety Code is not the only – or even necessarily the best – legal basis for the appointment of a receiver. By way of example, during our panel we touched on receiverships involving multifamily properties where drug sales, prostitution, or other illegal activities take place. While our discussion took place in the context of "Health and Safety Code" receiverships, a local governmental agency can also address such a problem through an action under Business & Professions Code Section 17200, which allows for the appointment of a receiver over a business that has engaged in any "wrongful" business practice. "Wrongful" business practice has been given a broad definition by California courts. For instance, in *People ex rel. City of Santa Monica v. Gabriel* (2010) 186 Cal. App.4th 882, 889, the City of Santa Monica used Section 17200 to obtain the appointment of a receiver over a multifamily property where the landlord sexually harassed a tenant. Likewise, as the Court of Appeal recently made clear in *City of Sierra Madre v. SunTrust* (2019), 32 Cal. App.5th 648, Code of Civil Procedure Section 564 can serve as the basis for a

receiver's appointment even where the underlying lawsuit is brought pursuant to a provision of the Health and Safety Code. Put simply, the Health and Safety Code shouldn't be our only reference-point for discussions regarding receiverships over problem properties.

While our panel discussion often focused on the proper steps for "the city" to take in seeking the appointment of a receiver over a problem property, the receivership remedy is not exclusively available to cities: county counsel, related county agencies, and the State can similarly seek the appointment of a receiver where an owner fails to comply with regulations regarding the use of real property.

Perhaps this is an unnecessarily bookish way of getting to my underlying point: shoe-horning all receiverships concerning problem properties under the title "Health and Safety Code receiverships" is probably unwise. One of the goals of the California Receivers Forum is to increase awareness and educate practitioners on the receivership remedy and how and when it can be used. When we discuss receiverships over problem properties, focusing on the relatively complex provisions of the Health and Safety Code, and only considering options available to "the city," does us a disservice. One of the biggest challenges we face as receivers is basic awareness. I can say with certainty that each and every member of the California Receivers Forum has experienced the challenge of attempting to explain what a receiver is and what we do. By broadening and simplifying discussion we are likely to do a better job of spreading the word about a powerful tool available to local governments.



*\*Blake Alsbrook is a partner at Ervin Cohen & Jessup, LLP in Los Angeles. Blake acts as a receiver and partition referee and provides legal services to prominent receivers and other court-appointed fiduciaries throughout California.*

Blake Alsbrook

## PROFESSIONAL PROFILE:

# Ryan Baker

## *From NYU to South America to USC to Working a Billion Dollar Receivership*



Armed with an undergraduate degree in economics from New York University, Ryan Baker was heading for the Wall Street job market—just in time for the 2008 financial crisis.

“I had worked at Smith Barney and was trained for the financial industry and ready to head to one

of the Wall Street Banks to do private equity,” said Ryan. “There I was, sitting in the heart of New York, witnessing the bottom fall out and the spectacular collapse of the financial industry. The timing couldn’t have been worse. All the mid-town firms I was targeting now had lines of people out the door carrying banker’s boxes containing picture frames and their favorite office ferns.”

Clearly it was time to pivot, and Ryan chose to return to his home base in Orange County, Calif. where he had graduated from St. Margaret’s Episcopal School in San Juan Capistrano. “The California weather had been calling me for a while,” laughs Ryan, “I’d realized it’s better to have the option to go to the snow instead of the snow inevitably coming to you.”

Once back in Southern California, the investment banking job market was still in shambles. “The writing on the wall was clear: I needed to make a major career change. Investment banking wasn’t going to come back for a while.” says Ryan. “My brother had been ruminating on this crazy idea of backpacking through South America. And, with no job prospects and some major life decisions to make, what better time to go?” Ryan and his brother started in Mexico and traveled South America for six months. Ryan and his brother surfed, cliff jumped and paraglided their way across Costa Rica, Panama, Colombia, Ecuador, Peru, and Bolivia

and perfected their Spanish language skills.

In these younger years, Ryan had always been active and a bit of an adrenaline seeker. Ryan had also travelled extensively across Europe and southeast Asia. He also competed in five Olympic distance triathlons, ran a marathon and two half marathons, went bungee jumping (twice), and sky dived out of a perfectly functioning airplane. Now-a-days, Ryan prefers to play golf, ski, and change diapers.

From his younger and more daring years, Ryan has transitioned to a new chapter in his life. In 2009, Ryan reconnected with a former high school classmate, Sarah. They fell in love, married, and now have two adorable and amazing daughters, ages one and three.

To say the least, 2009 was a good year for Ryan. He started dating his wife and found his career in the receivership industry. When Ryan met Bob Mosier, president and CEO of Mosier & Co. Inc., the prestigious



Ryan and Sarah Baker and their daughters.

Continued from page 16.

fiduciary and crisis management firm, he pestered Bob for three months,” says Ryan. “I would read *Receivership News* articles and email Bob telling him how interesting they were, in the hopes of breaking into this incredible industry.” Finally, Mosier gave him his big break.

The assignment was the Private Equity Management Group – a billion-dollar Ponzi scheme exposed in Federal Court by the Securities and Exchange Commission that led to the appointment of Mosier as a Federal Equity Receiver.

Ryan was tasked with tracing \$1 billion worth of investments from nine investors over a 10-year period into 46 investment vehicles located in the British Virgin Islands. The overall investments included over 50 assets and 275 life insurance policies (with over \$1 billion in face value) and a cash flow requirement of \$1 million per week to keep the insurance premiums current. Most of the assets were jointly owned by multiple investors. This analysis provided the basis for the court-approved distribution plan to victims of the \$336 million recovery.

“Bob trusted me,” says Ryan. “He tossed me in the deep end and forced me to sink or swim.” Ryan also credits Mosier for encouraging him to attend USC to earn his MBA, which he did while working at Mosier & Co. Soon after, Ryan began taking on his own receivership assignments ranging from electric bike companies to night clubs to large commercial real estate. For 10 years, Mosier and Ryan worked together on all aspects of the receiverships industry, handling a comprehensive range of assignments.

Last year, Ryan joined Douglas Wilson Companies (DWC) in San Diego. DWC’s business model of pivoting between real estate and receivership/fiduciary work brings new case exposure to Ryan’s work portfolio. Having been appointed on or served as lead agent on more than 100 Receiver, Provisional Director, Trustee and Partition Referee matters, Ryan was the perfect person to launch DWC’s new Los Angeles/Orange County office. His experience with regulatory receivership assignments from the Securities and Exchange Commission, Department of Justice, and state courts was a solid fit with DWC’s line of business. “Ryan is one of the industry’s high achievers, with extensive regulatory receivership experience involving financially challenged operating companies and complex real estate ventures,” said Douglas Wilson, DWC chairman and CEO.

Some of Ryan’s current receivership assignments include the liquidation of the nation’s second largest hospitality furniture manufacturer, whose difficulties impacted not only 500 employees but some of the country’s biggest companies, inclusive of J.W. Marriott, Disneyland, and Starbucks. Another high-profile receivership assignment on Ryan’s docket is the Mohamed Hadid home in Bel Air, a 30,000 square feet, \$28 million spec house that was built in violation of multiple building codes, resulting in endangerment to its neighbors.

Ryan is a member of the National Association of Federal Equity Receivers and both the Los Angeles County and the Orange County Bankruptcy Forums. Ryan continues to serve on the board of the California Receivers Forum and helped found the Young Professionals Committee for both CRF and NAFER.

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# Reference: Receivership Process Terms



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Among the options available to secured creditors in dealing with a distressed property or business is to have a receiver appointed, an option included in virtually every commercial loan agreement • A receivership offers the benefit of control of a troubled asset or business without the secured creditor foreclosing and taking ownership of the asset and without the secured creditor being deemed to be in possession of the property prior to foreclosure and taking ownership • Insulates the secured creditor from liability associated with the operation of the property • Receivership law is not well-defined and is limited only by the equitable powers of a Court, so receivership may be advantageous to a bankruptcy and offer more options than moving forward with a foreclosure.

## **TOP TEN BENEFITS OF APPOINTING A RECEIVER**

- 1) Appointed quickly to safeguard and preserve assets. Stop the fraud.
- 2) Provided with broad powers to quickly institute change.
- 3) Operate and stabilize a business in anticipation of a sale. Maintain or even increase the value of the underlying assets.
- 4) Empowered to take control of all assets, books, and records, thus allowing for a quick investigation of the debtor's financial affairs. This information can then be shared with secured creditor and other stakeholders to help determine the best way to proceed.
- 5) Court fiduciary provides greater credibility and authority in dealing with employees, customers, vendors, and other creditors.
- 6) Empowered to institute litigation to recover fraudulently conveyed assets, can freeze and compel the return of debtor property and can issue subpoenas to investigate asset transfers.
- 7) Cost effective – Receiverships are typically a fraction of the cost of a bankruptcy filing – no committees, extra counsel, US Trustee, costly delays, etc.
- 8) Streamline reporting requirements and fewer court hearings. Saves time and provides for more focus on the task at hand.
- 9) Less Publicity – generally not picked up by

*Continued on page 19...*

## **RECEIVERSHIPS GENERALLY**

The appointment of receivers has become much more popular over the past ten years as to investment frauds and secured creditors' demand for more efficient liquidations, as courts become more familiar with the process • Secured creditors have become frustrated with the high cost of bankruptcy and view receivership as a more efficient liquidation process.

## **THE ROLE OF A RECEIVER**

A receiver has a similar role as a bankruptcy trustee, but entirely different laws apply to the fiduciary's actions • A receiver is appointed ancillary to a primary cause of action and the Receiver serves as new management whose primary responsibility is to marshal, manage and maintain the status quo of a business or asset until the primary subject of the lawsuit is resolved • A receiver can provide quick, interim equitable relief, as well as longterm preservation and management of property • A receiver is a fiduciary to all stakeholders in a case who reports to the appointing court • A receiver's duties and powers are defined by the Receiver Appointment Order, and Judges have very broad discretion in fashioning the receiver's duties and powers.

## **REASONS FOR APPOINTMENT OF A RECEIVER**

Rescue deteriorating collateral • Enforce secured creditor's rights under loan documents • Eliminate mismanagement and intentional misconduct • Insulate the secured creditor from lender liability • Freezing and ceasing other creditors actions • Stabilize and establish a controlled structure • Develop a procedure for marketing the property • Convey property free and clear of liens.

## **BREADTH OF RECEIVERSHIPS**

A receivership's breadth depends on the needs of the particular circumstance and is only limited by the equity powers of the Court • A receivership can be for limited purposes – for example, to simply take possession of and preserve property pending judgment, foreclosure or sale of the property • A receivership can be utilized as a foreclosure alternative for secured creditors not wishing to take title to secured property • A receivership can be utilized to a bankruptcy alternative for stakeholder wishing to liquidate the property of a debtor and adjudicate claims against the debtor.

**REFERENCE: RECEIVERSHIP PROCESS TERMS**

*Continued from page 18.*

the media unless major fraud case. Some Defendants simply do not want the publicity. 10) Asset sale or bar dates published. 11) The laws governing receiverships are less well-defined and broad, thus providing more flexibility and creativity than a bankruptcy.

**STAKEHOLDER CONSIDERATIONS**

Appoint receiver when the eventual sale or liquidation is required. The secured creditor has a non-performing loan which cannot be serviced by continuing the operation of the Borrower • Appoint receiver when the underlying business or management activities are alleged to be illegal/fraudulent and/or the stakeholders have lost faith in management • The secured creditor is concerned with the continuing erosion of its collateral and the need to continue funding the Borrower’s underlying operation • There is a lack of credible financial information • There are concerns over the physical loss of assets (cash, inventory, etc.) and/or the diminution of value of the debtor and its associated business. Source of The Receiver’s Authority: Derived from the Court’s inherent equitable powers • Federal Case - receiverships are ancillary to a primary cause of action, so subject matter jurisdiction must independently exist (federal question or diversity jurisdiction). Once subject matter jurisdiction exists, 28 U.S.C. Sections 754 and 1692 provide the appointing Court with territorial jurisdiction over all matters related to receivership regardless where the property is located • State Case – jurisdiction under applicable state laws–limited to the territorial jurisdiction of the State • The Order of Receiver Appointment Controls: Tailored to specific circumstances • Defines appropriate duties and authority • Provides structure and minimize “chaos”.

**EQUITY/BUSINESS RECEIVERS**

Appointed over an entity, but sometimes are appointed over an individual • Many receiverships are just over the property to avoid legacy issues with the individual or entity (taxes, benefits plans, etc.) • A receiver for an individual or entity requires special considerations including living expenses, control of defendant’s mail, and filing defendant’s personal tax returns.

**RECEIVER’S POWERS**

Officer of the court • Manages and operates the property according to the laws of the state where the property is located • Court has broad discretion to

determine appropriate relief in an equity receivership, including to stay actions against entity in receivership • Governed by equity in most instances.

**A FEW KEY ISSUES FOR A RECEIVER ORDER**

The Order Appointing Receiver governs all aspects of the receivership • Right to remove senior management and operate business • Right to obtain possession of and freeze assets of the receivership estate • Right to divert mail • Right of investigative authority • Right to employ counsel and other professionals • Right to stand in shoes of insured and the debtor's interest in property.

**SCOPE OF AUTHORITY DEFINED BY COURT ORDER**

Collect, marshal, take custody, control or possession • Sell assets • Have access to premises and books and records.

*\* Information was compiled by Bruce Poltrock from various sources.*

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# Heard in the Halls: NOTES, OBSERVATIONS, AND GOSSIP RELAYED

BY MICHAEL J. MUSE-FISHER\*

Welcome to the latest edition of *Heard in the Halls*. Please provide your snippets of news, questions or comments about receivership issues or the professional community by telephone, mail, fax, or email to: **Michael J. Muse-Fisher** at Buchalter, A Professional Corporation, 1000 Wilshire Blvd, Suite 1500, Los Angeles, CA 90017. Phone: (213) 891-0700; Fax: (213) 896-0400; Email: [mmuse-fisher@buchalter.com](mailto:mmuse-fisher@buchalter.com).



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

- The Young Professionals Council (YPC) Receivership 101 Training: The YPC is working with small, medium and large firms in Los Angeles and Orange County to provide training to attorneys on all things receiverships. If you or your firm are interested in getting a crash course in receiverships, or fine tuning your existing receivership skills, please contact **Michael Muse-Fisher** (at [mmuse-fisher@buchalter.com](mailto:mmuse-fisher@buchalter.com)), and members of the YPC will make themselves available to present tips, tricks, strategies, and recommendations to you and your firm tailored to your specific needs.
- The Man, The Legend: **Blake Alsbrook** is the newest partner at Ervin Cohen & Jessup LLP. With nearly ten years of practicing under the tutelage of **David Pasternak** (one of California's most preeminent receivers and attorneys), Blake is a wonderful addition to ECJ's already illustrious receivership legal team, including **Byron Moldo**, **Peter Davidson**, and **Howard Camhi**.
- Doing Good in this World: **Chris Hawkins**, Shareholder at Sullivan Hill in San Diego, joins the Mentor Program as an attorney mentor for Crawford High School Academy of Law and Justice. The goal of the mentor program is to provide an opportunity for students to interact and build positive relationships with legal professionals who can, in turn, serve as a resource. Eleventh grade Academy students are mentored by practicing attorneys from the San Diego legal community. Students focus on setting S.M.A.R.T. goals, get help with researching and applying to college, and learn essential job interviewing skills.
- Holy Cow, Loyola VIII Was Wonderful: In the blink of an eye, Loyola VIII came and went on January 23-24, 2020 at the Renaissance Newport Beach. It was a fantastic event with incredible speakers, panelists, and attendees. Attendance was at capacity thanks to the efforts **Mia Blackler**, **Kevin Singer**, **Dominic LoBuglio**, **Michael Davis**, **Joel Weinberg**, **Jeanne Sleeper**, **Deborah Kincade**, and **Richard Ormond**. I was also on the planning committee but it would be weird to thank myself. I did, however, win an honorable mention at the receiver's swimsuit competition on Friday... or at least I would like to think I would have if we held the competition as I had proposed at the planning meetings, but which Mia shot down.
- **Spread the Word**: Know someone thinking about getting started in receivership work? Steer them to [www.receivers.org](http://www.receivers.org) to order a past Loyola program 4-disc DVD set for \$75, teaching receivership basics and including sample pleadings.

\***Michael J. Muse-Fisher** is Senior Counsel at Buchalter, A Professional Corporation. Mr. Muse-Fisher specializes in creditor's rights, real estate disputes, corporate and partnership disputes, copyright and trademark disputes, cannabis law, and alternatives to bankruptcy. Representative clients include regional and national lending and financial institutions, state and federal receivers, and companies ranging from family-owned operations to Fortune 500 corporations.



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