

# **TURNOVER RECEIVERSHIPS “101”**

by

Peter E. Pratt, Jr., and

Jon Malone

Court Appointed Receivers

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(Updated September 30, 2012)

## FORWARD

### SELECTED REMARKS FOR FURTHER CONSIDERATION OF THE COLLECTION OF JUDGMENTS USING TURNOVER RECEIVERSHIPS

*The strategic implementation of escalating conflict typically results in increased pressure, stress and anxiety on a judgment debtor to bring about the resolution to an aging judgment indebtedness. Conflict, appropriately applied and strategically managed by a Receiver, tends often to break that status quo which has impeded the payment of a judgment.*

**Jon Malone** (B.S. Degree, Chemical Engineering)

*Conflict causes resolution.*

**Peter Pratt** (B.A. Degree, History)

*“[D]elinquencies in payments on the part of some... would result from a diversity of other causes—the real deficiency of resources; the mismanagement of their finances; accidental disorders...; and, in addition to the rest, the reluctance with which men commonly part with money for purposes that have outlived the exigencies which produced them, and interfere with the supply of immediate wants.” (Emphasis Added)*

Federalist Number 7

For the Independent Journal. Thursday, November 15, 1787

**ALEXANDER HAMILTON**

*“Some debts are fun when you are acquiring them, but none are fun when you set about retiring them.”*

**American Proverb - Source Unknown**

*Pretend inferiority and encourage (the debtor's) arrogance.*  
(The word “debtor” replaces “his” in actual translation)

“The Art of War” (476 B.C.)

**SUN TZU**

Thus it is that in war the victorious strategist only seeks battle after the victory has been won, whereas he who is destined to defeat first fights and afterwards looks for victory

“The Art of War” (476 BC)

**SUN TZU**

(With regard to Investigating, Locating, and Tracing Assets, particularly those held in financial institutions...)

“By indirections find directions out”

“Hamlet”

Act 2, Scene 1

**WILLIAM SHAKESPEARE**



# TURNOVER RECEIVERSHIPS “101”

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## 1. A VERY BRIEF HISTORY OF RECEIVERSHIPS

### A. The Origin of Receiverships in England

#### (1) Introduction

It is impossible to tell exactly when the first court receiver was appointed, but following the practice of granting injunctions to stay waste and preserve property, which was quite common during the reign of Queen Elizabeth (September 7, 1533 to March 24, 1603), cases readily presented themselves wherein the remedy of enjoining the party in possession from committing waste or doing harm to the property was not sufficient protection. See Clark, Ralph Ewing "A Treatise on the Law and Practice of Receiverships", 1918, §4, at 4. (Clark is considered to be the authority on receiverships.) In other words, the court at times was doubtful whether or not the party in possession of property, or collecting the rents and profits from the property, could or would properly obey the injunction and physically protect the property and the rents and profits for those ultimately entitled to receive it, i.e., the remaindermen. Id.

#### (2) A Growing Need for Receivers

If the injunction was not heeded the party disobeying the Court's injunction might be punished, but the punishment would not restore property irreparably destroyed or lost. Id. The property, if funds, was therefore ordered paid into the court. If the property was personal, other than money, or real property, it could not be paid into court. Id. The court itself, recognizing that it could not physically care for the property, therefore appointed an officer of the court to act for the court. Id. The practice of appointing a Receiver first developed in England in order to protect real estate for the benefits of a remainderman as well as infants as against those in possession. Clark on Receiverships at §5. This was usually the case where a surviving spouse was granted a life estate in the property with an heir as a remainderman. Id. The remainderman, seeing his estate being denuded by the widow, applied for a receiver to preserve the estate for his own benefit and tie the hands of the widow as to what she could legally do with the life estate and the proceeds generated therefrom. Id. Some examples of improper denuding of the life estate include selling all the timber to be harvested or leasing the mineral rights without limitation on the mining of any of the minerals on the property. The real estate itself was not taken into possession by the Receiver, but the fruits of the real estate, namely the rents and profits, were collected by the receiver and held by him subject to the orders of the court. Id.

#### (3) The Effect of Appointing Receivers in English Chancery Courts

The appointment of receivers of rents and profits was very common in the reign of Queen Elizabeth." In the case of The Duchess of Marlborough, et al., v. The Duke of Marlborough," decided between 1740 and 1741, Lord Hardwick ordered the Duke to have possession of the estate and said if certain annuities were not paid, the court could appoint a receiver. Id. Many other cases are found in the early reports where receivers were appointed over the property, both real and personal, of infants, and other wards of the chancery court. Id. In England the appointment of receivers was, until very recently, confined to courts of chancery. Id. However, the Judicature Act of 1873 "extended the jurisdiction to appoint a receiver to all divisions of the high court, to the court of appeals, and to every inferior court having jurisdiction in equity, or at law and in equity, and the admiralty respectively, as regards all causes of action within their jurisdiction. Id.

#### **(4) The Utility of British Precedent**

Any English decisions can be cited as precedents for American courts because, before the time of Chancellor Kent, no American cases covering receivers were printed which are readily available today. In addition, many modern English cases have been cited, because the English courts of highest authority today are more prone than American courts to go at length into the whys and wherefores of their rulings, while the American courts are accustomed to cite numerous authorities as precedents for their decisions. It can be very useful in many cases to point out and indicate the differences in the law and practice of receivers in England and America. This assists the Court, the American Practitioner, and law students that a vast storehouse of valuable precedent on the law of receivers can be found in the English Reports. Clark on Receivers, Chapter 1, §§1-10.

### **B. The Origin of Receiverships in the United States**

#### **(1) The Necessity of Receivers to Protect Railroads**

Continuing the evolution of the law of Receiverships under the precedents set by the Chancery Courts of England, Receiverships began to be employed in American Courts when the great industrialist robber-baron tycoons of the 19<sup>th</sup> Century such as Cornelius Vanderbilt, Andrew Carnegie, John D. Rockefeller, and J.P. Morgan, sought to take control of insolvent railroads during the Panic of 1873 and subsequent Panics thereafter. The law of receivers thus began to evolve in the United States in English courts of equity, or Chancery Courts. See Stern, Jeffery, "Failed Markets and Failed Solutions: The Unwitting Formulation of the Corporate Reorganization Technique," 90 Colum. L.Rev. 783, 789 (1990). Railroads suffered from a malaise known to many of today's Chapter 11 debtors, i.e., valuable assets but no operating cash. See Lubin, Stephen J., "Railroad Receiverships and Modern Bankruptcy Theory," (89 Cornell L. Rev. 1420, 1441), 2004. Thus, late 19<sup>th</sup> Century American courts utilized equity receiverships from the common law of the Chancery Courts of England, the remedy that became the historical antecedent to modern chapter 11 bankruptcy. *Id.* The courts devised the model of equity receiverships as a way to reorganize insolvent railroads by adjusting the rights of all creditors under one unified proceeding, thus denying the robber-baron tycoons their opportunity for further inflating their already vast wealth. *Id.* Clark on Receivers, Chapter 1, §§1-10.

#### **(2) The Beginning of Use of Receiverships to Protect Railroads**

In the landmark case of Macon & Western Railroad v. Parker, 9 Ga. 377 (1851), the Georgia Supreme Court placed an insolvent railroad into the hands of a court-appointed trustee. The court of equity created an estate that consisted of all of the assets of the railroad, i.e., the "receivership estate." The railroad brought its own motion to enjoin execution by judgment creditors. By bringing the property before the court, the railroad obviated the need for disparate proceedings in Courts of other jurisdictions with different rules and procedures governing the appointment of a receiver and disposition of property. *Id.* At 393-394. See also Farmers Loan Trust Co., *infra*.

#### **(3) The Failure of Federal Bankruptcy Law to Protect Railroads**

Congress's introduction of federal bankruptcy legislation, the Bankruptcy Act of 1889, did not slow down the use of receiverships for two reasons. First, that act did not permit the reorganization of large corporations and exempted railroads from its coverage altogether. Second, there was less need for a federal solution to insolvency when most commerce was *intrastate*. Thus, receiverships continued to be widely used until the mid-1930s, when Congress finally added the corporate reorganization provisions to the Bankruptcy Act, "essentially codifying receivership practice for corporations."

### **C. The Texas Turnover Statute**

#### **(1) Introduction to the Turnover State**

Once upon a time the only practical (though practically useless) remedies for collecting a judgment in

Also available as part of the eCourse

[Collecting Debts and Judgments 2012: State Court Exemptions and Other Property Issues; Post-Judgment Remedies; plus Turnover Receiverships](#)

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