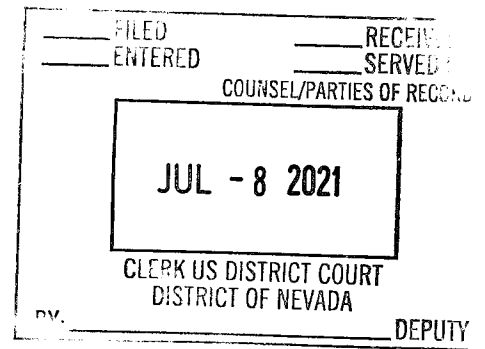


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3 Attorneys for Plaintiff
4 Securities and Exchange Commission
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5 Katharine Zoladz, Associate Regional Director
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8
9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF NEVADA**

11
12 2:21-cv-01298-JAD-BNW

13 SECURITIES AND EXCHANGE
14 COMMISSION,

15 Plaintiff,

16 vs.

17 PROFIT CONNECT WEALTH
18 SERVICES INC., JOY I. KOVAR, and
19 BRENT CARSON KOVAR,

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**RECOMMENDATION BY
PLAINTIFF SECURITIES AND
EXCHANGE COMMISSION THAT
GEOFFREY WINKLER BE
APPOINTED RECEIVER**

(Filed Under Seal)

1 Plaintiff Securities and Exchange Commission (“SEC”) requests the
2 appointment of a receiver over defendant Profit Connect Wealth Services, Inc.
3 (“Profit Connect”) and its subsidiaries and affiliates. The SEC requests that the
4 receiver have the full powers of an equity receiver, including, but not limited to, full
5 power over all funds, tangible and intangible assets including digital assets and
6 cryptocurrency, collateral, premises, choses in action, electronic devices, books,
7 records, papers, and other real or personal property belonging to, being managed by,
8 or in the possession or control of Profit Connect and any of its subsidiaries and
9 affiliates.

10 The SEC recommends that Geoffrey Winkler of American Fiduciary Services
11 be appointed receiver in this action. Attached hereto as Exhibit 1 is a copy of a letter
12 which sets forth his qualifications, the qualifications of his firm, a proposal to
13 provide services as a receiver, and additional information on his firm and their
14 services.

15 Mr. Winkler sent the information attached as Exhibit 1 to the SEC at the
16 request of counsel for the SEC in this action, who solicited this information in
17 conformity with internal SEC procedures for selecting candidates to recommend for
18 appointment by federal district courts as receivers in SEC actions. The SEC obtained
19 proposals from three other qualified receiver candidates and evaluated all four
20 proposals before selecting Mr. Winkler as its recommended candidate for receiver in
21 this action. If the Court desires, the SEC will provide information regarding these or
22 other candidates.

23 The SEC is recommending Mr. Winkler for several reasons. Mr. Winkler is an
24 experienced receiver with significant experience. Mr. Winkler is associated with
25 American Fiduciary Services, which provides services including receivership,
26 forensic accounting, and other related work. American Fiduciary Services has on
27 staff certified public accountants, a certified fraud examiner, and a certified
28 insolvency and restructuring advisor. In the SEC’s experience, it is more economical

1 to have a receiver that has such capabilities in-house, in contrast to a receiver that
2 would need to hire, for example, an outside or separate forensic accounting firm or
3 other professionals to perform necessary receivership duties. Moreover, Mr. Winkler
4 and his firm have extensive experience with managing receivership entities, as is
5 stated in the attached information. Mr. Winkler's regular hourly rate as a receiver is
6 \$595 per hour, with a regulatory rate of \$400. However, Mr. Winkler has agreed to
7 discount his rate for this matter to \$340 per hour, which is reasonable, particularly in
8 view of his substantial experience.

9 For these reasons, and given Mr. Winkler's impressive qualifications, as set
10 forth in the proposal attached as Exhibit 1, the SEC respectfully recommends that the
11 Court appoint Mr. Winkler as receiver in this matter.

12
13 Dated: July 8, 2021

/s/ Kathryn C. Wanner

14 Kathryn C. Wanner
15 Teri M. Melson
16 Attorneys for Plaintiff
17 SECURITIES AND
18 EXCHANGE COMMISSION
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Exhibit 1



Providing fiduciary, investigation, and consulting services to regulators, financial institutions, businesses, and investors.

Proposal for Receivership Services

Securities and Exchange Commission

v.

Profit Connect Wealth Services, Inc. et al.

June 25, 2021

About Us

Our team of professionals offer decades of experience providing fiduciary, investigative, and other management consulting services across several industries, including construction, manufacturing, financial services, healthcare, consumer services and sales. Our services include federal equity receiverships, state court receiverships, corporate monitorships, trustee in bankruptcy, corporate restructuring, forensic accounting, securities litigation consulting, anti-money laundering, and fraud prevention.

About This Proposal

American Fiduciary Services (AFS) is pleased to submit this proposal to serve as Receiver in the Securities and Exchange Commission v. Profit Connect Wealth Services, Inc. et al. This proposal for receivership services is based on the information available to us as of June 25, 2021, and includes our understanding of the current status, an outline of anticipated steps taken, and proposed staffing and qualifications.

Current Status

Based on our understanding, the Securities and Exchange Commission intends to file an emergency action under seal to halt an ongoing offering fraud in the District of Nevada. The defendants and relief defendants are a Las Vegas, Nevada based company named Profit Connect Wealth Services, Inc. and a mother and son duo named Joy Irene Carson Kovar and Brent Carson Kovar.

It is believed that defendants have raised over \$12 million from more than 275 investors since May 2018, including as recently as \$1 million in March 2021, for what appears to be a wholly fictitious investment. While there is approximately \$3.5 million currently in investor funds in visible bank accounts, it does appear that defendants have misappropriated funds for personal use and used some investor monies to pay other investors. Brent Carson Kovar, the proposed relief defendant who has received investor money, has a prior SEC fraud judgment against him. The business is operated, at least on its face, by the mother, although others may also be involved.

The SEC is considering filing its case the week of July 6th.

Anticipated Steps

Upon appointment as Receiver, and throughout the duration of my appointment, I would anticipate taking the following steps to ensure the orderly and cost-effective administration of the receivership estate:

- covertly research background information on all named defendants, including potential offices and homes, location of assets of the receivership, and any additional information that will be helpful upon appointment;
- take custody and control of all receivership locations;
- isolate receivership computer systems to prevent unauthorized access;
- if warranted, forensically image all appropriate computers, phones, cloud-based networks and portable media devices;

- preserve and document other sources of evidence;
- analyze and assess immediate financial issues, including, but not limited to payroll, insurance, operating expenses, credit cards, wire transfers and others;
- divert mail collection;
- identify and freeze all bank, brokerage, or securities related accounts;
- file and/or record the Order of Appointment, pursuant to 28 USC §754 in all jurisdictions where assets are located;
- identify and seize all personal and real property in the name of receivership defendants;
- serve notice of Temporary Restraining Order and Asset Freeze on all financial institutions, employees, vendors, landlords, investors and other interested third parties;
- immediately cease all fund raising and investment activities, if applicable, including monthly and quarterly payments and payments upon maturity;
- interview key parties to better understand business operations, fund raising activities and other information to assist in the orderly administration of the receivership estate;
- quickly analyze and assess business operations, develop pro forma financials to determine short, medium and long-term profitability of all distinct business lines and, with the assistance of the parties, perform cost-benefit analyses of continued operations versus wind-down of the business and then execute on the strategy that is decided;
- based on the strategy selected, either effectuate the wind-down of the existing business or position the receivership entities for continued operations, including setting up new operational accounts, a review of current facilities, staffing, insurance needs, benefits, etc.;
- establish a receivership accounting system and bank accounts;
- identify and create a list of investors, creditors, and other interested parties to be noticed in the case;
- actively reach out to investors to inform them of the receivership case and provide them information on how to contact the Receiver;
- appropriate existing website or create a website for investors to find information on contacting the Receiver, documents filed in the case and ultimately, the ability to file a claim in the case;
- if warranted, prepare a cost-efficient forensic accounting to identify assets, determine any recipients of ill-gotten gains and work with the SEC and the court to determine if there are other sources of potential recovery;
- examine the cost-benefit analysis of litigating claims against attorneys, accountants, officers, directors, insurance policies or others who may have contributed to investor losses;
- analyze and/or value receivership estate assets in anticipation of disposition for the benefit of investors;
- work with the SEC to develop a claims process and distribution plan that are both equitable and efficient, and focused on preventing disparate treatment of similarly situated investors;
- prepare periodic status and accounting reports pursuant to the Order of Appointment;
- Analyze the status and impact of all applicable tax filings and possible liabilities, file fiduciary tax returns for the pendency of the case;
- administer the filing of all tax returns and investor tax documents, as necessary; and
- wind down the affairs of the receivership estate and file a final report with the court.

This list is based on the National Association of Federal Equity Receivers *Receiver's Checklist for New Appointments*, which we use as reference when starting every new case (attached as Exhibit D). Please note that the list above only represents the general steps and is not necessarily inclusive of all work to be completed or in the order of anticipated completion. Furthermore, this list may be subject to modification, including the addition or subtraction of steps based on the individual needs of the case and the Order of Appointment.

Staffing and Qualifications

AFS' team of professionals bring decades of practical legal, business, and financial experience to bear on behalf of clients and constituents in regulatory, compliance, and litigation matters. Our team of highly educated and credentialed practitioners participate in sensitive and complex regulatory and internal investigations. Our team has worked closely with regional and multi-national financial services corporations, major law firms, and federal and state regulators on dozens of complex financial and securities industry cases.

We are often called upon to examine large datasets in conducting our investigations, or in assisting counsel or regulators in evaluating their own analysis. Our team includes individuals who bring a unique mix of financial industry knowledge and data science capabilities, which enables us to generate the highest possible added value for our clients. Whether it is a large-scale insider trading investigation or a focused examination into specific transactions and/or events, we use experienced programmers and forensic experts with financial industry, fraud examination and accounting backgrounds to form an effective team.

Geoff Winkler, JD, MBA, CFE, CIRA: I am a founding member and CEO of American Fiduciary Services LLC where I draw on my legal and financial industry experience across a diverse range of businesses to provide strategic and focused consulting as well as investigative and asset recovery analyses related to securities litigation and other sensitive business issues. Before founding AFS, I was a business consultant and turnaround professional where I gained extensive experience working with a wide array of businesses suffering financial, organizational or management issues. I often function as interim CEO, CFO, or COO while working to either restore the company to financial and organizational health or determine and execute the best plan to close the business and liquidate the assets for maximum value. Throughout this time, I have worked closely with the SEC, FTC, state and federal agencies, as well as a host of local legal and business professionals. My professional credentials include Certified Fraud Examiner (CFE), Certified Insolvency and Restructuring Advisor (CIRA), and Certified Specialist in Asset Recovery (CSAR).

John B. Hall, MBA, CFE, CIRA: Mr. Hall is a founding member and CFO of American Fiduciary Services LLC and specializes in fiduciary, investigative, and business operations engagements while concentrating on finance and accounting operations, analysis and reporting, fraud examination, forensic and other practical accounting, asset investigation and administration and claims process management. Over the years, Mr. Hall has worked closely with the SEC, FTC, state and federal agencies, as well as a host of local legal and business professionals. His professional credentials include Certified Fraud Examiner (CFE), Certified Insolvency and Restructuring Advisor (CIRA), Certified Specialist in Asset Recovery (CSAR), and anticipates receiving his Certified Distressed Business Valuation credential by the Fall.

For your reference, I have attached our CVs as Exhibit A and our fiduciary experience as Exhibit B.

Proposed Rates

Due to our broad range of experience and expertise, AFS can perform almost all required work in-house, saving both time and money, including tasks involving corporate accounting, forensic accounting, case administration, claims administration, asset valuation, investor communication and internet technology. AFS' billing philosophy is to leverage work down to the staff member with the lowest bill rate that also has the skills and experience necessary to complete the task. This allows us to minimize the cost to complete all work associated with the case, ensuring a maximum return to stakeholders involved in the matter while also preserving the quality of our work product. AFS does not bill for travel time in regulatory cases.

All billing standards meet or exceed the Securities and Exchange Commission's Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission (SFAR) and the U.S. Trustee's Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses.

AFS will not seek reimbursement for routine copying, facsimile, postage, or other expenses. Any expenses which we will seek to have reimbursed will be done so in accordance with the SEC and U.S. Trustee guidelines above. Costs directly attributable to the administration of the estate will be paid directly by the estate in accordance with the Order of Appointment.

Below is our 2021 Government Rate Sheet, which includes a 15 percent discount off our already discounted hourly rates for government matters and will not increase for the pendency of the case. Please note that both the standard regulatory rate and the discounted regulatory rate reflect a significant discount off our standard consulting rates.

American Fiduciary Services Staff	Regulatory Rate	Discounted Regulatory Rate	Standard Consulting Rate
Geoff Winkler – Receiver	\$400	\$340	\$595
John B. Hall – Forensic Accountant	\$365	\$310	\$445
Director of Case Management	\$320	\$272	\$375
Other Staff	\$115-\$270	\$97-\$229	\$150-\$325

Potential Legal Professionals	Regular Rate	Discounted Regulatory Rate	N/A
Allen Matkins – Receiver’s Counsel	\$495-\$930	\$446-\$837	N/A
Smiley Wang-Ekvall (Kyra Andrassy) – Alternate Receiver’s Counsel	\$390-\$630	\$331-\$536	N/A
Ballard Spahr (Maria Gall) – Local Counsel	\$290-\$495	\$247-421	N/A
Blut Law Group (Elliot Blut) – Alternate Local Counsel	\$425-\$575	\$362-\$489	N/A

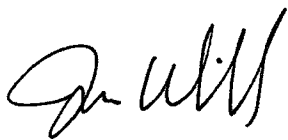
I am sensitive to the costs associated with hiring legal counsel, tax accountants and computer forensic experts and will only do so if necessary to effectuate the orderly administration of the receivership estate. I have proposed receiver’s counsel and an alternate receiver’s counsel in case the SEC has concerns our first choice. I also feel it is more cost effective to hire local counsel to split the work with receiver’s counsel where appropriate. I have included both a proposed local counsel and alternate local counsel for the Commission’s review. I have attached proposed counsels’ experience as Exhibit C.

All professionals retained by me will be required to follow my same billing practices, which are outlined below and meets or exceeds the Securities and Exchange Commission’s *Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission (SFAR)*.

Conclusion

Thank you for the opportunity to provide this proposal for receivership services in the Profit Connect Wealth Services matter. If you have any questions, or need any additional information, please reach out to me. My direct line is (855) 892-2784, my cell phone is (503)708-0028 and my email is geoff@americanfiduciaryservices.com.

Sincerely,



Geoff Winkler, JD, MBA, CFE, CIRA



Geoffrey B. Winkler, JD, MBA, CFE, CIRA

Contact

Office: (855) 892-2784
Cell: (503) 708-0028
Email: geoff@americanfiduciaryservices.com

Education

- B.A., Politics, Willamette University College of Liberal Arts
- M.B.A., Willamette University Atkinson Graduate School of Management
- J.D., Willamette University School of Law

Certifications

- Certified Fraud Examiner (CFE)
- Certified Insolvency and Restructuring Advisor (CIRA)
- Certified Specialist in Asset Recovery (CSAR)

Associations

- American Bar Association (ABA)
- Association of Certified Fraud Examiners (ACFE)
- Association of Certified Anti-Money Laundering Specialists (ACAMS)
- Association of Insolvency and Restructuring Advisors (AIRA)
- National Association of Federal Equity Receivers (NAFER)
- Securities Industry and Financial Markets Association (SIFMA)

Expertise

- Fiduciary and Insolvency Services
- Fraud Investigation
- Forensic Accounting
- Securities Fraud
- Regulatory Investigations
- Anti-Money Laundering
- Financial Litigation Consulting

Geoff Winkler is a founding member of American Fiduciary Services LLC based in Portland, Oregon. Mr. Winkler leads a team of legal and financial industry professionals who specialize in managing complex investigations, forensic accounting, fiduciary and insolvency services, and securities litigation support. He has extensive experience testifying as an expert witness and has served as CEO, CFO, COO, and CRO in dozens of State and District Court receiverships, corporate monitorships, chapter eleven bankruptcies, and in other cases as a fiduciary and insolvency expert. Mr. Winkler has lectured extensively on the topics of fraud, anti-money laundering, business law, and business ethics and has published dozens of articles on topics ranging from elder care abuse to SEC reforms, and managing expert witnesses to analyzing new DOL rules.

Mr. Winkler's experience includes leadership in large and complex fraud investigations and forensic accounting efforts in numerous industries including manufacturing, financial services, healthcare, hospitality, capital leases, consumer services and retail sales. One large private fraud investigation involved the misappropriation of funds from dozens of high-profile, high net worth individuals by their investment advisor. Mr. Winkler and his team analyzed millions of banking transactions to determine the extent of the fraud and calculate damages. In another complex damage and suitability analysis case involving Real Estate Investment Trusts, Mr. Winkler oversaw the review of over 200,000 transactions and 6,000,000 data points over five years to determine if appropriate suitability guidelines were being followed, resulting in quantifying the financial damages to the transacting institution and state regulators.

Among his numerous regulatory enforcement engagements, Mr. Winkler led a receivership team in an SEC action against a large operator of retirement care facilities in 34 states that was accused of defrauding over 12,000 investors and creditors for over \$2 billion. The restructuring effort resulted in spinoffs and a profitable sale, with most investors saw interest in addition to their capital investments returned to them.

Mr. Winkler is involved in several professional organizations, including the Association of Certified Fraud Examiners, the American Bar Association, the National Association of Federal Equity Receivers, which he serves as a member of the Board of Directors, and the Securities Industry and Financial Markets Association.

Prior to forming American Fiduciary Services, Mr. Winkler was a Managing Director with Alvarez & Marsal, a global consulting firm, the Director of Fraud & Forensic Investigations at Bates Group, a litigation consulting firm, and the Director of Case Management for Grassmuck Group, a fiduciary and insolvency services firm.

John B. Hall, MBA, CFE, CIRA

American Fiduciary Services, LLC
715 NW Hoyt St. #4364
Portland, Oregon 97208-4364
(855)880-0100
john@americanfiduciaryservices.com

John B. Hall is the Chief Financial Officer and a Founding Principal with American Fiduciary Services in Portland, Oregon. He specializes in turnaround and distressed business financial management, forensic accounting investigations and reporting, and business valuation. Additional areas of expertise are finance and accounting operations, Business analysis, fraud examination, asset administration, and claims process management.

With more than sixteen years of professional experience, Mr. Hall has held senior roles in corporate finance, accounting, and financial analysis, has worked on dozens of fiduciary and investigations cases as a consultant and financial operations manager and as corporate controller. Working with the Securities and Exchange Commission, the Federal Trade Commission, as well as other governmental and private clients across numerous industries, Mr. Hall has provided vital support to federal equity receivers, bankruptcy trustees, corporate monitors and other fiduciaries in custodial and third-party capacities including as receiver's forensic accountant

Prior to founding AFS, Mr. Hall served as Director of Disputes and Investigations for Alvarez & Marsal in San Francisco, California, as Fraud and Forensic Investigations Consultant for Bates Group LLC, as Financial Operations Manager for Grassmuck Group, as Controller for Allied Works and as Senior Finance and Accounting Analyst for Fisher Investments.

Mr. Hall earned a BA and a MBA from Willamette University in Salem, Oregon. He is a Certified Fraud Examiner (CFE) and a Certified Insolvency and Restructuring Advisor (CIRA). He is also a member of the National Association of Federal Equity Receivers (NAFER) and a member of the Association of Certified Fraud Examiners (ACFE) and the Association of Insolvency and Restructuring Advisors (AIRA). He is currently attending coursework in pursuit of a Certification in Distressed Business Valuation (CDBV) with AIRA with expected completion in 2021 Q3.

EDUCATION

Willamette University -- Atkinson Graduate School of Management
Finance, Accounting and Statistics, MBA May 2005

Willamette University
Theatre Performance Studies, History, Religious Studies, BA May 2003

**FIDUCIARY AND OTHER CASE EXPERIENCE
OF AMERICAN FIDUCIARY SERVICES LLC**

Securities and Exchange Commission – Receivership Cases

- *Securities and Exchange Commission v. Essex Capital Corporation et al., United States District Court for the Central District of California.* The SEC sought a monitor to review the business activities of an equipment finance and venture capital company that had raised over \$232 million from high-net-worth investors. After reviewing my report, the SEC determined that a receiver was warranted. The case required a full forensic accounting involving over 120 bank and brokerage accounts over 25 years and a claim process that resulted in almost \$40 million in claims. In order to provide significant recovery for investors, significant professional liability, third party, and clawback litigation was initiated with encouraging results to date. This case is currently ongoing and final results are not yet available.
- *Securities and Exchange Commission v. Health Maintenance Centers, Inc. et al., United States District Court for the Western District of Washington.* An operator of medically integrated health clubs was accused of selling unregistered securities that raised over \$91 million from 7,000 investors in just seven years, with most of the money being used to finance a grossly extravagant lifestyle for the accused fraudsters in what has been called the largest stock fraud in Washington State history. From assets of \$47,000 on the day of filing, more than \$30 million was recovered and disbursed to investors.
- *Securities and Exchange Commission v. C. Wesley Rhodes and Rhodes Econometrics, Inc. et al., United States District Court for the District of Oregon at Portland.* Investment advisor that was accused of using a Ponzi scheme to steal \$36 million from just over 80 investors. The funds were found to have been used to purchase expensive property, collector cars, jewelry and to pay for an extravagant wedding and vacations.
- *Securities and Exchange Commission v. Global Online Direct, Inc. et al., United States District Court for the Northern District of Georgia at Atlanta.* The SEC sought a monitor to review the business activities of two farmers purporting to be operating a successful distressed merchandise resale business. Once onsite, it was quickly determined that no beneficial activities were occurring and the business was actually operating as a Ponzi scheme, having solicited nearly \$45 million dollars in unregistered investments from over 10,000 domestic and international investors. The case was converted to a receivership and the assets were liquidated for the benefit of investors.
- *Securities and Exchange Commission v. Sunwest Management, Inc. et al., United States District Court for the District of Oregon at Eugene.* The SEC sought a receivership and turnaround professional after they alleged that a large operator of retirement care facilities in 34 states was operating as a Ponzi-like scheme. In all, the company was accused of defrauding over 12,000 investors and creditors for \$2 billion in claims. Ultimately, the company was placed into bankruptcy to shed unprofitable investments and then restructured and sold, leading many of the investors to receive more than 100 percent of their original investment.

**FIDUCIARY AND OTHER CASE EXPERIENCE
OF AMERICAN FIDUCIARY SERVICES LLC**

Securities and Exchange Commission – Corporate Monitor and Other Regulatory Cases

- *Securities and Exchange Commission v. CapSource, Inc. et al., United States District Court for the District of Nevada.* The SEC brought an action against the parties for violations of the Securities Exchange Act of 1934 and, as part of the settlement with the parties, required that a CRO be appointed to take control over and manage the business through winddown. Overall, the company directly funded over \$1 billion in debt and equity for commercial and residential real estate projects all over the United States. This case is currently ongoing and final results are not yet available.
- *Securities and Exchange Commission v. Alexander James Trabulse and Fahey Fund, L.P. et al., United States District Court for the Northern District of California at San Francisco.* Hedge fund manager accused of using clients' money to pay for personal expenses. There were in excess of 100 clients that had invested over \$10 million. An investment ledger was provided, but it contained significant missing information and a full forensic accounting was required.
- *Securities and Exchange Commission v. Jay Peak, Inc. et al. United States District Court for the Southern District of Florida.* We were hired by a large financial institution to complete a forensic accounting to help them determine the amount of funds attributable to legitimate business expenses versus funds diverted as part of the alleged Ponzi scheme. Our work allowed the financial institution to settle with the SEC appointed receiver.

Federal Trade Commission – Receivership Cases

- *Federal Trade Commission v. Fortuna Alliance et al., United States District Court for the Western District of Washington at Seattle.* This was an international case that operated an Internet Ponzi scheme based in Bellingham, Washington. We took immediate possession and control of business locations and intercepted domestic and foreign cashier's checks worth millions of dollars. We uncovered and drilled multiple safe deposit boxes, from which we seized hundreds of thousands more in international money orders. Other actions included assisting the FTC and U.S. Attorney in seizing funds in Antigua and uncovering the purchase of an island offshore near Belize, part of the perpetrator's scheme to establish its own bank.
- *Federal Trade Commission v. Merchant Processing, Inc. et al., United States District Court for the District of Oregon at Portland.* A credit card processing company was accused of unlawful trade practices by offering misleading and altered contracts. We took possession of the business, replaced all fraudulent contracts, wound down a dog racing operation, filed delinquent tax returns and ultimately sold the business, allowing us to make all victims whole and writing a multi-million dollars check to the U.S. Treasury.
- *Federal Trade Commission v. Merchant Consolidated Savings, Inc. et al., United States District Court for the Western District of Washington at Tacoma.* A business offering credit card consolidation services was accused of charging large fees while failing to assist most consumers, leaving them in more debt than before working with the company. The business was quickly shut down and liquidated for the benefit of consumers that lost money.

**FIDUCIARY AND OTHER CASE EXPERIENCE
OF AMERICAN FIDUCIARY SERVICES LLC**

- *Federal Trade Commission v. Consumer Advocates Group Experts, LLC et al., United States District Court for the Central District of California at Los Angeles.* A company was accused of predatory practices through its mortgage assistance programs. In reality, the business charged consumers large up-front fees and provided little to no assistance with their mortgages. Ultimately, we shut down and liquidated the business and calculated the total loss for consumers of the business.

State Court – Receivership Cases

- *Crystal Dawn Smith Rilee Foundation v. Elizabeth Rhode and Yamhill County v. Elizabeth Rhode, Yamill County Circuit Court for the State of Oregon at McMinnville.* The director of a non-profit was accused of embezzling at least \$50,000. A full forensic accounting and inventory was taken to determine the extent of the loss and to prevent further dissipation of assets.
- *City of West Linn v. Elma Magkamit, Marion County Circuit Court for the State of Oregon at Salem.* An employee within the city of West Linn was accused of embezzling nearly \$2 million from city bank accounts. A full forensic accounting was undertaken to determine the extent of the loss and the method of concealment to prevent future losses.
- *Oregon Real Estate Department v. Crane Property Management, Oregon Department of Justice and Oregon Real Estate Division at Salem.* A property manager was accused of using client escrow funds for personal and business expenses. We were appointed to complete a forensic accounting, review and continue business operations, and, ultimately, sell the business to pay back clients.
- *Maco Wood Products, Clackamas County Circuit Court for the State of Oregon at Oregon City.* Large scale furniture manufacturer and secured lender turned to us to winddown business operations, including runout of current order and inventory.
- *Molalla Chevron, Clackamas County Circuit Court for the State of Oregon at Oregon City.* State court receiver during long-term partnership dispute that required restoration of business operations and reestablishing business relationships.

Other Fiduciary and Consulting Cases

- *Vevoda v. Vevoda, Jackson County Circuit Court for the State of Oregon.* A dispute between the family partners of a cannabis producer, we were hired as a neutral party to perform a full forensic accounting and business valuation of the cash-based business using copies of receipts, cash books entries, partial QuickBooks records, and a marijuana tracking system required by the state.
- *North American Securities Administrators Association (NASAA) v. Unnamed Financial Institution.* We were hired as an independent party between NASAA and a large financial institution to review the suitability of over 200,000 Real Estate Investment Trust (REIT) sales that took place over five years and determine what, if any, damages had occurred. Our work allowed both parties to determine the scope of any suitability issues and allowed the financial institution to refund any customer that had been harmed.

**FIDUCIARY AND OTHER CASE EXPERIENCE
OF AMERICAN FIDUCIARY SERVICES LLC**

- *Securities and Exchange Commission Variable Annuity Disclosure Initiative.* We were hired to assist several large financial institutions to review all their variable annuity sales over the last several years to determine whether they needed to self-report any potential suitability issues. This work allowed the financial institution to self-report to the SEC and avoid large penalties if violations were found.
- *United States Department of Justice.* The Department of Justice reached out to a large financial institution over concerns that one its most successful financial advisors was involved in drug trafficking and/or money laundering near the Texas border with Mexico. We were hired to undertake a complete forensic accounting of the advisor's personal and business operations, including hotels and retail businesses, and determine whether there were any signs of illegal activity. We concluded our analysis, which was then used to respond to the Department of Justice.
- *Large Financial Institution v. Financial Advisor.* A large financial institution discovered that a financial advisor had attempted to override internal controls and we were hired to complete a forensic accounting of the high-profile client accounts that the financial advisor managed. Using complex data analysis tools and relationship mapping, we were able to determine the extent of the fraud and the financial institution was able to reimburse its customers and maintain the relationships.
- *In re South Star Oil Company, United States Bankruptcy Court for the District of Oregon at Eugene. Chapter 11 Operating Bankruptcy.* A chain of 17 gas stations and convenience stores in bankruptcy that required renegotiating leases, selling properties, fixing DEQ issues and working with vendors to ensure product availability.
- *In re WJ Hoyt et al., United States Bankruptcy Court for the District of Oregon at Portland. Bankruptcy.* Hoyt and Sons operated a complex "phantom cow" scheme including nine ranches covering thousands of acres and numerous leases for additional grazing land. More than \$5 million was collected and the subject was indicted for mail fraud, bankruptcy fraud, and money laundering for selling thousands of adult female breeding cows that "they never had and which did not exist."
- *Parati Pension Plan, United States Department of Justice.* Orphaned retirement plan that we were asked to reconcile and serve as trustee through winddown.
- *Estate of Del Castillo, Multnomah County Circuit Court for the State of Oregon at Portland. Personal Representative.* Served as personal representative in contentious estate liquidation involving a bus transportation company.



David R. Zaro is a partner in our Los Angeles office, where his practice focuses upon litigation with an emphasis upon creditors' rights, bankruptcy litigation, and state and federal receiverships. David represents a wide range of clients including banks and other institutional lenders, developers, landlords, receivers, examiners, secured and unsecured creditors, and other business enterprises.

David has extensive experience as a bankruptcy lawyer as well as a trial lawyer in federal and state courts in California and several other jurisdictions. His experience in the field of insolvency, creditors' rights, and bankruptcy litigation includes out-of-court workouts and restructurings, federal and state court receiverships, and bankruptcy reorganization proceedings. David also advises residential and commercial lenders and others regarding all aspects of commercial law with regard to commercial and residential mortgage litigation, bank regulatory disputes, and collection actions.

David's representative cases include the representation of Court Appointed Receivers in a \$1.2 billion fraud action brought by the Securities and Exchange Commission in connection with the sale of TIC and other interests in 300 assisted living facilities; and a \$750 million ponzi-like scheme involving the purchase of medical related receivables and related lending transactions; representation of lender in workout of mezzanine financing on a multi-building office park; defense of actions in bankruptcy by junior lienholder and debtor against lender on an industrial park; and structure lease termination and modifications for commercial and retail tenants both in and out of bankruptcy.

David has lectured on matters regarding residential and commercial mortgage litigation and workouts, creditors' rights, construction law, and other real property remedies.

EDUCATION

J.D., UC Hastings College of the Law
B.A., Stanford University

SERVICES

Litigation & Counseling
Restructuring, Insolvency & Bankruptcy
Construction Contracts
Receiverships, Lenders & Special Creditor Remedies

INDUSTRIES

Financial Services
Construction

MEMBERSHIPS

- Financial Lawyers Conference
- American Bankruptcy Institute
- Turnaround Management Association

ACCOLADES

- Awarded Turnaround Management Association's Transaction of the Year- Large Turnaround Award (2011)

BAR ADMISSIONS

- California

COURT ADMISSIONS

- U.S. District Court, Central District of California
- U.S. District Court, Northern District of California
- U.S. District Court, Eastern District of California
- U.S. District Court, Southern District of California
- U.S. District Court, District of Arizona
- California Supreme Court
- U.S. Court of Appeals for the Ninth Circuit
- U.S. Supreme Court

Matters

- **Residential and Commercial Bank.** Represented bank in achieving a favorable published decision by the Ninth Circuit in Chapter 12 bankruptcy case. The appeal involved an attempt by a debtor in bankruptcy, and self-described family farmer, to leverage a discharge of personal debt in a prior Chapter 7 bankruptcy case into subsequent eligibility under Chapter 12 of the Bankruptcy Code, which could have enabled her to avoid foreclosure or strip down the value of the bank's security in the subject property. The Ninth Circuit did not agree with the debtor. The debtor sought an en banc review of the Ninth Circuit's decision which was subsequently denied.
- **SEC Receiver.** Representing SEC Receiver in securities fraud case in connection with the raising of \$120 million via the EB-5 program for the development of two large real estate developments in Seattle and neighboring Everett. We are prosecuting claims to recover investor funds from third-party borrower.
- **Residential and Commercial Bank.** Represented a residential and commercial bank in defending several thousand lawsuits throughout California, and managed local counsel in 20 other states. The lawsuits concern allegations of mortgage fraud, wrongful foreclosure, violations of TILA, RESPA, HOSPA, and other statutory and regulatory issues.

-
- **SEC Receiver.** Represented SEC Receiver in securities fraud case involving losses to investors of over \$40 million.
 - **Residential and Commercial Lender.** Represented a residential and commercial lender in the workout and collection of a portfolio of commercial loans exceeding \$1 billion.
 - **Residential and Commercial Lender.** Represented a residential and commercial lender as to the workout and collections of a portfolio of construction loans, some loans involving completed projects as well as those in progress.



Institutional lenders, commercial litigants, and receivers look to Joshua del Castillo for inventive answers to complex creditors' rights, receivership, and regulatory questions. His depth of experience and creativity in the areas of creditors' rights litigation and bankruptcy, the unique relationships he has cultivated in the receiverships space, and his familiarity with to up-to-the-minute regulatory developments, enable him to develop innovative strategies that mitigate client risks and improve client results.

Creditors' Rights, Litigation, and Regulatory Counsel

Joshua is a key member of the firm's Restructuring, Insolvency & Bankruptcy practice group, and routinely serves as counsel for institutional lenders or other creditors in bankruptcy and commercial litigation proceedings throughout California, in both state and federal courts, in addition to providing oversight to local counsel nationwide. Joshua likewise regularly represents clients in state and federal appellate matters. He is often called upon to provide proactive regulatory counsel, dispensing compliance advice and developing and deploying troubleshooting strategies, many derived from his extensive experience in serving as defense counsel to financial institutions in regulatory matters. In this capacity, Joshua assists clients in effectively satisfying their regulatory obligations while seeking to avoid potentially costly litigation or penalties.

A Pioneer in Receivership Solutions

As a member of the firm's premier Receiverships, Lenders & Special Creditor Remedies practice group, Joshua has been recognized for pioneering new legal solutions for receivers in state and federal matters, and has developed significant practical experience in creditors' rights, bankruptcy, and

EDUCATION

J.D., USC Gould School of Law
M.A., University of Michigan
B.A., *cum laude*, University of Southern California

SERVICES

Restructuring, Insolvency & Bankruptcy
Litigation & Counseling
Receiverships, Lenders & Special Creditor Remedies
Commercial Finance

INDUSTRIES

Financial Services
Residential & Multifamily

commercial litigation, including in the receivership context. This experience has taught him how to leverage new developments in the law to find innovative solutions to both age-old and novel problems.

Joshua bolsters his ability to solve multi-faceted client problems with broad access critical resources at Allen Matkins—including attorneys with unique knowledge and relationships across a spectrum of environmental, real estate, securities, labor, and related issues—and regularly works with an extensive network of outside professionals, including forensic accountants, tax accountants, private investigators, property managers, and brokers. Joshua endeavors to staff matters leanly so that his clients become familiar with all of the attorneys working on their matters, and receive accountable and responsive service.

In the Community

While helping his clients thrive, Joshua works to help the broader community prosper. In addition to his commitment to *pro bono* service, he currently serves on the advisory board of the Wage Justice Center, which works to advance low-income workers' rights, educate workers, and advocate for the collection of unpaid wages.

MEMBERSHIPS

- Financial Lawyers Conference
- California Receivers Forum
- Hispanic National Bar Association
- National Association of Federal Equity Receivers

ACCOLADES

- *Pro Bono Award*, Wage Justice Center, 2009
- Selected for inclusion in *Super Lawyers' Southern California Rising Stars* (2012 - 2015)

BAR ADMISSIONS

- California

COURT ADMISSIONS

- All California state courts
- U.S. District Court, Northern District of California (including Bankruptcy Court)
- U.S. District Court, Eastern District of California (including Bankruptcy Court)
- U.S. District Court, Central District of California (including Bankruptcy Court)
- U.S. District Court, Southern District of California (including Bankruptcy Court)
- U.S. Court of Appeals for the Ninth Circuit
- Bankruptcy Appellate Panel of the Ninth Circuit
- Supreme Court of the United States

Matters

LITIGATION AND BANKRUPTCY

- **Commercial Lenders.** Represented a national, commercial lender in connection with a large bankruptcy and breach of contract dispute, in both state and federal courts.
- **Developers.** Represented national developers in connection with preferential transfer claims brought by bankruptcy trustees.
- **Law Firms.** Represented a national law firm in connection with the bankruptcy of a large client.
- **Mortgage Lenders.** Represented a number of the nation's largest mortgage lenders in multiple commercial litigation matters, in both state and federal courts, including courts of appeal.
- **Non-Profit Organizations.** Provided *pro bono* assistance to a non-profit organization representing indigent and low-income workers in employment disputes.

FEDERAL EQUITY RECEIVERSHIPS

- ***Securities and Exchange Commission v. Plus Money, Inc., et al.***, (U.S. District Court, Southern District of California). Represented a receiver appointed in a Securities and Exchange Commission enforcement action alleging a \$45 million Ponzi-like investment scheme based on purported covered-call option trading. Receiver marshaled assets and distributed funds to defrauded investors.
- ***Securities and Exchange Commission v. Pacheco, et al.***, (U.S. District Court, Southern District of California). Represented a receiver appointed in a Securities and Exchange Commission enforcement action alleging a \$15 million Ponzi-like investment scheme based on purported covered-call option trading. Receiver marshaled assets and distributed funds to defrauded investors.
- ***Securities and Exchange Commission v. Medical Capital Holding, et al.***, (U.S. District Court, Central District of California). Represented a receiver appointed in a Securities and Exchange Commission enforcement action alleging a Ponzi-like investment scheme which raised over \$1 billion, ostensibly to purchase medical receivables.
- ***Securities and Exchange Commission v. Global Online Direct, Inc., et al.***, (U.S. District Court, Northern District of Georgia). Represented a receiver appointed in a Securities and Exchange Commission enforcement action alleging that the defendant entities raised over \$45 million through the sale of unregistered securities.
- ***Securities and Exchange Commission v. Trabulse, et al.***, (U.S. District Court, Northern District of California). Represented a receiver appointed to monitor a hedge fund, at the request of the Securities and Exchange Commission.

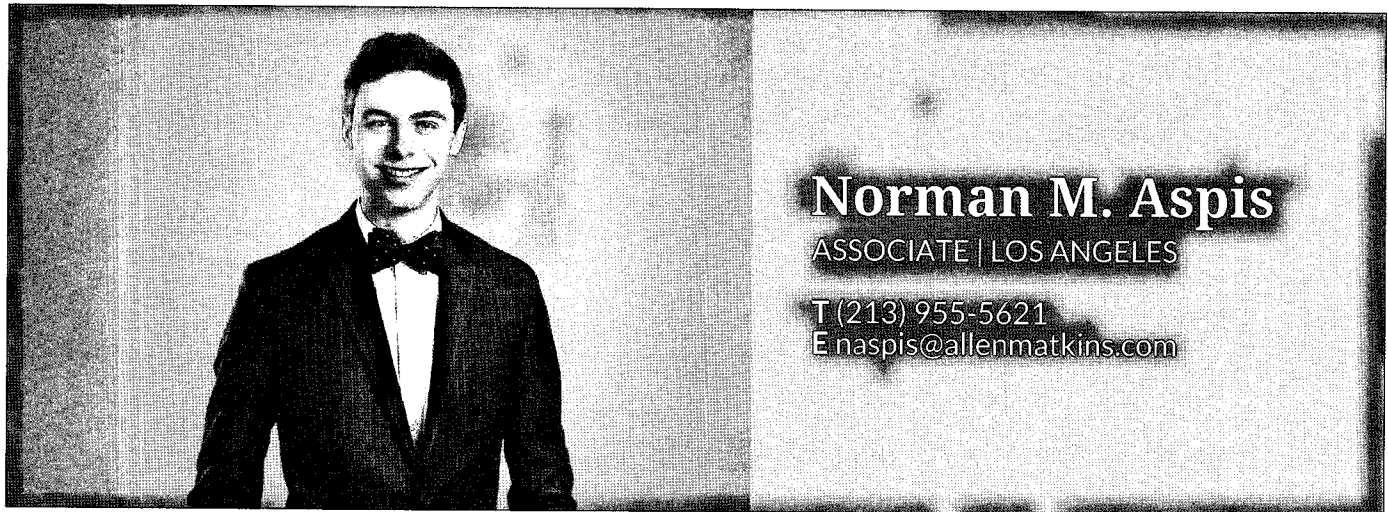
- **Federal Trade Commission v. Consumer Advocates Group, LLC, et al.**, (U.S. District Court, Southern District of California). Represented a receiver appointed at the request of the Federal Trade Commission in connection with an enforcement action alleging deceptive and fraudulent mortgage modification practices.

REAL PROPERTY RECEIVERSHIPS

- **Wachovia Bank, NA v. Downtown Sunnyvale Residential, LLC, et al.**, (Superior Court of California, County of Santa Clara). Represented a real property receiver appointed over a large-scale commercial development in connection with successfully securing trial court approval of the receiver's administration and improvement of the development, as well as approval of the receiver's compensation and discharge request.
- **First Citizens Bank & Trust Co. v. NDustrial Drive LLC, et al.**, (Superior Court of California, County of San Joaquin). Represented a real property receiver appointed to administer receivership estate substantially comprised of abandoned recycling facility. Assisted receiver with site clean-up, marketing, and sale efforts.
- **Hana Small Business Lending, Inc. v. Rock Petroleum, Inc., et al.**, (Superior Court of California, County of Riverside). Represented a real property receiver appointed to administer, and ultimately sell, receivership estate comprised of multiple service stations, convenience stores, and attendant contracts and permits.
- **Excel National Bank v. Tolosa Sison Family Corp., et al.**, (Superior Court of California, County of San Mateo). Represented a real property receiver appointed to administer receivership estate substantially comprised of service station and convenience store assets.

REGULATORY COMPLIANCE

- **Real Property Brokerage.** Represented one of the Southwest's largest real property brokerages in connection with litigation alleging a violation of federal consumer protection statutes.
- **Lenders and Institutional Investors.** Represented lender in connection with litigation alleging systematic violations of the Fair Credit Reporting Act. Represented national institutional investor in connection with revision of internal policies and procedures for compliance with new or revised consumer protection statutes. Represented lender in connection with action implicating Bank Secrecy Act and Gramm-Leach-Bliley-Act matters.
- **Telecommunications Business.** Represented cell tower leasing entity in connection with policies and procedures for compliance with new or revised consumer protection statutes.
- **Public Interest Organizations.** Provided analysis of applicability of provisions of Dodd-Frank Act to highly publicized business practices of so-called buy-here / pay-here automobile dealerships.



Norman helps clients maximize their goals and objectives in litigation related to creditors' rights, bankruptcy, and state and federal receiverships. He is a valued team member who provides a high level of attention to detail, sound judgment, and responsive service.

Working alongside Allen Matkins litigation partners, Norman is known for his ability to flesh out creative angles and craft persuasive arguments to win in a broad array of proceedings both inside and outside the courtroom.

Prior to joining Allen Matkins, Norman was an associate in the commercial litigation department at Dentons US LLP. There, he worked on litigation matters involving government contracts law, international trade regulations, insurance coverage, employment disputes, and environmental issues. He is a former intern at the United States Attorney's Office for the Central District of California, the District of Massachusetts, and the House of Commons of the United Kingdom.

BAR ADMISSIONS

- California

EDUCATION

J.D., University of Virginia School of Law
B.S., *summa cum laude*, Northeastern University

SERVICES

Litigation & Counseling
Receiverships, Lenders & Special Creditor Remedies
Restructuring, Insolvency & Bankruptcy



Catriona M. Lavery

ASSOCIATE | ORANGE COUNTY

T (949) 851-5493

E clavery@allenmatkins.com

Catriona “Catrina” Lavery is part of the Allen Matkins litigation team. She has considerable experience representing both plaintiffs and defendants in a variety of business matters, with a focus on insurance coverage disputes and class actions. As a former federal law clerk, she is experienced in federal procedure.

EDUCATION

J.D., *magna cum laude*, University of California, Irvine School of Law

B.A., University of California, Los Angeles

SERVICES

Litigation & Counseling

Catriona approaches every matter with a goal-oriented approach and works with clients to identify and achieve their big picture goals. She is a creative problem-solver and seeks out opportunities to streamline complex matters for courts, juries, and litigants alike.

Earlier in her career, Catriona clerked for both Chief Judge Sidney R. Thomas of the Ninth Circuit Court of Appeals and Judge Bruce M. Selya of the First Circuit Court of Appeals. During law school, Catriona externed for Judge Gonzalo P. Curiel of the Southern District of California and served on the Executive Board of the UC Irvine Law Review. She graduated *magna cum laude* from UC Irvine School of Law as a member of the law school’s fourth graduating class.

Catriona is a member of the Los Angeles County Bar Association Barristers/Young Attorneys Executive Committee and enjoys mentoring new lawyers and law students.

BAR ADMISSIONS

- California

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Kyra E. Andrassy
Partner

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PRACTICE AREAS

Insolvency and Business Litigation

AWARDS/RECOGNITION

- Best Lawyers in America, Bankruptcy and Creditors' Rights 2018-2020
- Named to the list of the Top 50 Lawyers in Orange County by Southern California Super Lawyers 2019
- Southern California Super Lawyers 2012-2020
- Top Bankruptcy Lawyers, OC Metro Magazine 2015
- Southern California Rising Star 2005-2008 and 2010-2011

EDUCATION

- Loyola Law School, Juris Doctor 1998
- University of California, San Diego, B.A. Political Science 1995

JUDICIAL CLERKSHIPS

- Hon. John E. Ryan - United States Bankruptcy Court, Central District of California, Santa Ana Division 1998-2000

ADMISSIONS

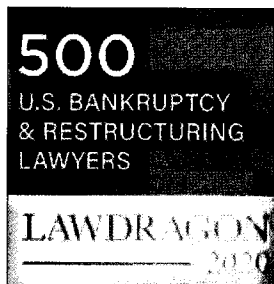
- California State Bar
- United States Court of Appeals for the Ninth Circuit
- U.S. District Courts for the Central, Eastern, Northern, and Southern Districts of California

MEMBERSHIPS/ASSOCIATIONS

- American Bankruptcy Institute
- National Association of Federal Equity Receivers
- Orange County Bankruptcy Forum
- Los Angeles Bankruptcy Forum
- California Receivers Forum
- International Women's Insolvency and Restructuring Confederation
- Orange County Bar Association
- Federal Bar Association
- Orange County Women Lawyer's Association

KYRA E. ANDRASSY is a partner of Smiley Wang-Ekvall, LLP. She concentrates her practice on bankruptcy and insolvency matters and business litigation. Her insolvency-related work includes representing chapter 11 debtors, chapter 7 and chapter 11 trustees, secured and unsecured creditors, creditors' committees, purchasers of assets from bankruptcy estates, assignees in assignments for the benefit of creditors, federal and state court receivers, and borrowers in out-of-court workouts. Ms. Andrassy's business litigation practice includes a broad range of disputes in state and federal court, including breach of contract and fraud.

She received her undergraduate degree in political science from the University of California at San Diego in 1995, and her law degree from Loyola Law School in Los Angeles in 1998. She was an editor of the Loyola Law Review and the recipient of the American Jurisprudence Book Award in Legal Writing. She served a judicial externship to the Honorable Barry Russell, United States Bankruptcy Judge for the Central District of California, in Spring 1998. From September 1998 until September 2000, Ms. Andrassy served a judicial clerkship to the Honorable John E. Ryan, United States Bankruptcy Judge for the Central District of California and a member of the Ninth Circuit Bankruptcy Appellate Panel.



PROFESSIONAL ACTIVITIES

- Member of the Executive Committee of the Business Law Section of the California Lawyers Association. 2020-2023
- Co-Chair of the Insolvency Law Committee of the Business Law Section of the California Lawyers Association, 2019-2020
- Conference Co-Chair, National Association of Federal Equity Receivers Annual Conference, 2020
- Director, LA/OC Chapter of the California Receivers Forum, 2019-2022
- Conference Co-Chair, American Bankruptcy Institute Bankruptcy Battleground West. 2020-2021

- Director, American Youth Soccer Organization Region 159 (2014 to 2016)



- Conference Co-Chair, California Bankruptcy Forum Conference, 2019
- Co-Vice Chair of the Insolvency Law Committee of the Business Law Section of the California Lawyers Association, 2018-2019
- Director, Southern California Chapter of the International Women's Insolvency & Restructuring Confederation, 2016-2021
- Secretary of the Insolvency Law Committee of the Business Law Section of the California Lawyers Association, 2017-2018
- Co-Education Chair, California Bankruptcy Forum Conference, 2018
- Co-Editor in Chief of eBulletins for the Insolvency Law Committee of the Business Law Section of the State Bar of California, 2016-2017
- Member of the Advisory Board for the American Bankruptcy Institute's Bankruptcy Battleground West, 2017-2019
- Member of the Bar Advisory Board for the U.S. Bankruptcy Court, Central District of California, 2016-2017
- Member, Insolvency Law Committee of the Business Law Section of the State Bar of California, 2015-2018
- Sole attorney member of the committee to revise the Local Rules Governing Bankruptcy Appeals, Cases, and Proceedings of the U.S. District Court, Central District of California, 2011
- President, Orange County Bankruptcy Forum, 2008-2009
- Director, California Bankruptcy Forum, 2008-2010
- Member, U.S. Bankruptcy Court, Central District Task Force for Amendments to Local Rules, 2007-2008
- Director, Orange County Bankruptcy Forum, 2006-2009
- Program Chair for the Bankruptcy Ethics Symposium for the Federal Bar Association, Los Angeles Chapter, 2006
- Member of the Advisory Board for the Bankruptcy Ethics Symposium for the Federal Bar Association, Los Angeles Chapter, 2004-2005
- Section Chair, Orange County Bar Association Commercial Law & Bankruptcy Section, 2004
- Program Chair, Orange County Bar Association Commercial Law & Bankruptcy Section, 2003

SPEAKING ENGAGEMENTS

- Panelist, *The Bankruptcy Code and Receiverships: Cracking the Code*
National Association of Federal Equity Receivers
2020
- Panelist, *Receivers' Reports and Fee Applications: A Workshop*
LA/OC Chapter of the California Receivers Forum
2019
- Panelist and Moderator, *The Intersection of Pension and Retirement Plans and Bankruptcy*
American Bankruptcy Institute
2017
- Panelist, *Federal Practice/Bankruptcy*
Orange County Bar Association's Bridging the Gap Program
2016
- Producer and Moderator, *Identifying Estate Assets in Atypical Property*
California Bankruptcy Forum
2013
- Panelist, *Business Bankruptcy Issues*
Orange County Bar Association and Orange County Bankruptcy Forum
2011
- Moderator, *Judgment Enforcement in Federal Court*
Orange County Bankruptcy Forum
2006

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**Timothy W. Evanston**

Associate

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PRACTICE AREAS

Insolvency and Business Litigation

AWARDS/RECOGNITION

- Best Lawyers in America: Ones to Watch, Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law 2021

EDUCATION

- University of California, Los Angeles, J.D. 2016
- University of California, Irvine, B.A. Political Science 2012

JUDICIAL CLERKSHIPS

- Hon. Robert N. Kwan - United States Bankruptcy Court, Central District of California 2017-2018
- Hon. Theodor C. Albert - United States Bankruptcy Court, Central District of California 2016-2017

ADMISSIONS

- California State Bar
- U.S. District Courts for the Central, Eastern, Northern, and Southern Districts of California

MEMBERSHIPS/ASSOCIATIONS

- American Bankruptcy Institute
- Orange County Bankruptcy Forum
- Los Angeles Bankruptcy Forum
- Orange County Bar Association



TIMOTHY W. EVANSTON is an associate at Smiley Wang-Ekvall, LLP. He concentrates his practice on bankruptcy and insolvency matters and business litigation.

Mr. Evanston received his undergraduate degree in political science from the University of California, Irvine in 2012, where he graduated cum laude, and received his law degree from the University of California, Los Angeles, in 2016. While in law school, Mr. Evanston served as senior managing editor of the Pacific Basin Law Journal. He also served a judicial externship to the Honorable Theodor C. Albert, United States Bankruptcy Judge for the Central District of California, and worked as a legal intern for the U.S. Trustee Program of the Department of Justice. After law school, Mr. Evanston served a judicial clerkship to the Honorable Theodor C. Albert, United States Bankruptcy Judge for the Central District of California, from September 2016 to March 2017. From August 2017 to August 2018, he served a judicial clerkship to the Honorable Robert N. Kwan, United States Bankruptcy Judge for the Central District of California.

**PROFESSIONAL ACTIVITIES**

- Secretary/Treasurer, Commercial Law and Bankruptcy Section of the Orange County Bar Association, 2021

SPEAKING ENGAGEMENTS

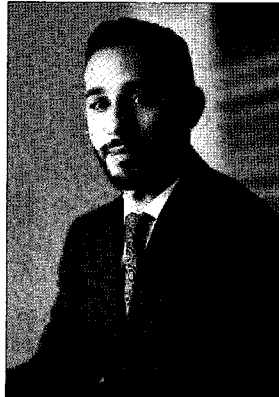
- Panelist, *Navigating SBRA: A Roadmap to SBRA's Updates and Changes for Small Businesses*
Los Angeles Bankruptcy Forum
2020

PUBLICATIONS

- Co-Author, *The Small Business Reorganization Act: Big Changes for Small Businesses*
American Bar Association, Business Law Section
02-14-2020

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Insolvency. Real Estate. Business Litigation.



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Associate

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PRACTICE AREAS

Insolvency and Business Litigation

AWARDS/RECOGNITION

- Southern California Super Lawyers Rising Star 2020
- Best Lawyers in America: Ones to Watch, Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law 2021

EDUCATION

- Pepperdine University School of Law, Juris Doctor 2014
- New York University, B.S. in Finance and Economic Policy 2009

JUDICIAL CLERKSHIPS

- Hon. Robert N. Kwan - United States Bankruptcy Court, Central District of California 2015-2017

ADMISSIONS

- California State Bar
- U.S. District Courts for the Central, Eastern, Southern, and Northern Districts of California

MEMBERSHIPS/ASSOCIATIONS

- American Bankruptcy Institute
- Orange County Bankruptcy Forum
- Los Angeles Bankruptcy Forum

MICHAEL L. SIMON is an associate of Smiley Wang-Ekvall, LLP. He concentrates his practice on bankruptcy and insolvency matters and business litigation. Mr. Simon has represented chapter 11 debtors, creditors' committees, trustees, judgment creditors, secured and unsecured creditors, and plan trustees.

Mr. Simon received his undergraduate degree in finance and economic policy from New York University's Leonard N. Stern School of Business in 2009. He received his J.D. from Pepperdine University School of Law and his Certificate in Dispute Resolution from the Straus Institute for Dispute Resolution in 2014. While in law school, Mr. Simon served as an editor for the Journal of Business, Entrepreneurship and the Law, and served judicial externships to the Honorable Robert N. Kwan, United States Bankruptcy Judge for the Central District of California, and the Honorable Valerie B. Fairbank, United States District Court Judge for the Central District of California. After law school, he served a judicial clerkship to the Honorable Robert N. Kwan from August 2015 to March 2017.

Mr. Simon currently serves as a director for the Orange County Bankruptcy Forum and was recognized as a Southern California Rising Star by Super Lawyers in 2020.

**PROFESSIONAL ACTIVITIES**

- Director, Orange County Bankruptcy Forum, 2019-2022



MARIA A. GALL, ESQ.

Ballard Spahr LLP
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Las Vegas, Nevada 89135
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gallm@ballardspahr.com

Maria Gall is a partner in Ballard Spahr LLP's Litigation Department and its Securities Enforcement and Corporate Governance Litigation Group.

Ms. Gall is an experienced litigator in the business sector, with a particular focus on corporate governance and securities litigation, as well as contractual liability, complex construction disputes, and high-value post-judgment collection matters. She has represented companies ranging from start-ups to those listed on the Fortune 50. Her clients cross a wide spectrum of industries and have included private equity and hedge funds, multi-national banks, health care companies, pharmaceutical and energy companies, international construction corporations, cannabis companies, as well as directors, officers, and significant stockholders of both publicly traded and privately held corporations. She also represents federal receivers and monitors.

Maria began her career in New York City with Cadwalader, Wickersham & Taft LLP, a multi-national law firm. She then served as Visiting Assistant Professor of Law at the University of Kentucky, College of Law, teaching courses in business organization (corporations), international human rights law, and professional responsibility before returning to the practice of law. Maria also guest lectures at the University of Nevada on topics concerning business organizations. Additionally, she maintains an active pro bono litigation practice and is a member of the steering committee for the firm's Racial Justice & Equality Initiative. She is a partner co-lead of Ballard Women and member of the firm's Diversity Council.

RELEVANT PROFESSIONAL EXPERIENCE

Ms. Gall currently represents the receiver or monitor in the following actions:

- *Federal Trade Commission vs. AMG Services, Inc., et al.*, Case Nos. 2:12-cv-00536-GMN-VCF, 2:18-cv-01813-GMN-DJA, 2:18-cv-02281-GMN-VCF, 2:17-cv-02966-GMN-NJK, 2:17-cv-02967-GMN-BNW, 2:17-cv-02968-GMN-NJK, 2:17-cv-02969-GMN-DJA
- *Federal Trade Commission vs. Consumer Defense, LLC, et al.*, Case No. 2:18-cv-00030-JCM-BNW

- *Thomas W. McNamara, as the Court-Appointed Monitor for AMG Capital Management, LLC, et al. v. Whamtech, Inc.*, Case No. 2:18-cv-01336-JCM-CWH
- *Federal Trade Commission v. Lead Express, Inc., et al.*, Case No. 2:20-cv-JAD-NJK

EDUCATION

University of Kentucky
J. David Rosenberg College of Law
J.D., 2006

The London School of Economics & Political Science
MSc, 2012

Vanderbilt University
B. Mus., 2002

PROFESSIONAL RATE

Ms. Gall currently bills at a rate of \$495.00/hour. The associates in her office currently bill at a rate of \$290.00/hour. Ms. Gall is able to discount these rates by 15%.

Elliot S. Blut is the principal of Blut Law Group, PC with extensive practice in all major areas of business, Probate, Trust and Estate litigation. Mr. Blut has extensive trial and appellate experience in state and federal courts in California and Nevada.

Mr. Blut received his B.A. degree from the University of California, San Diego in political science in 1989 and his Juris Doctor from Hastings College of the Law in 1992. Mr. Blut is a member of the State Bars of California and Nevada, and is admitted to practice in all Nevada and California State Courts. Mr. Blut is also admitted to practice in numerous federal courts throughout the United States, including the United States District Court for the Central District of California, the United States District Court for the Eastern District of California, the United States District Court for the Northern District of California, the United States District Court for the District of Nevada and the United States Tax Court. Mr. Blut is further admitted to practice before the United States Court of Appeal for the Ninth Circuit.

In his 28 years of practice, Mr. Blut has represented hundreds of clients in a wide variety of matters. These include representation in business and commercial litigation matters, including contract disputes, partnership disputes, franchise disputes, business fraud claims, real estate, lender liability and issues surrounding residential lending and wrongful foreclosure. Mr. Blut also has particular expertise in the area of probate and trust litigation and estate planning. The probate and trust litigation experience includes representing heirs, executors and other estate administrators, trust beneficiaries, and trustees in litigating trust and estate disputes. Mr. Blut's litigation experience has included numerous jury trials and bench trials as well as binding arbitration. Mr. Blut has represented national mortgage lenders and servicers in foreclosures, collections, Bankruptcy and litigation for violation of foreclosure statutes, fraud, unfair business practices and quiet title actions.

Bar Admissions

- California
- Nevada
- U.S. District Court Central District of California
- U.S. District Court Eastern District of California
- U.S. District Court Northern District of California
- U.S. District Court District of Nevada
- U.S. Tax Court
- U.S. Court of Appeals 9th Circuit

Education

- **University of California, Hastings College of the Law, San Francisco, California**
 - J.D. - 1992
- **University of California, San Diego, California**
 - B.A. - 1989
 - Major: Political Science

Professional Associations and Memberships

- State Bar of California, Member
- State Bar of Nevada, Member

EXHIBIT D

RECEIVER'S CHECK LIST FOR NEW APPOINTMENTS**I. Prior to Appointment****A. Appointing Order (defined below), if available**

1. Review to make sure that it provides appropriate authority to deal with anticipated assets – cases involving real estate require different authority than cases involving insurance products.
2. If the order places an individual in receivership, inquire about limiting assets in receivership or obtaining an order excusing the Receiver from filing the individual's tax returns. *See* 26 CFR §1.6012-3(b)(5) ("A receiver who stands in the place of an individual must make the return of income required in respect of such individual. A receiver of only part of the property of an individual need not file a return, and the individual must make his own return.").

B. Identify your team and negotiate price – attorneys, accountants (forensic, bookkeeping, and tax), forensic information technology (IT) expert, asset class experts.**II. Prepare to Enter and Control****A. Receiver Bond**

1. Determine if the TRO and Appointing Order (collectively "Appointing Order" herein) requires a Receiver's bond.
2. Arrange for filing.

B. Preparation for Control

1. Note locations identified in the Appointing Order.
2. Carefully attempt to verify locations; don't alert the defendants.
3. Note defendant entities identified in the Appointing Order.
4. Note whether individual defendants' assets are identified in the Appointing Order.
5. Determine likely locations of records, documents and remote (Cloud) data, email, and record storage.
6. Identify likely locations of bank, brokerage, and merchant accounts.
7. Prepare multiple copies of the Appointing Order.
8. Coordinate timing of entry and confirm location details with law enforcement.

EXHIBIT D

9. Arrange locksmith present at entry to open and later to change locks.
- C. Gather Your Team
- D. Meet with Plaintiff Agency to Discuss
 1. Confirm the defendants and potential related parties and affiliates.
 2. Obtain known criminal histories.
 3. Obtain available pictures of defendants.
 4. Discuss known assets and financial institutions not identified in the Appointing Order.
 5. Review the defendants' known operating details and number of employees.
 6. Are any assets subject to deterioration or special preservation?
 7. Investigate the potential for concurrent criminal investigation and the presence of criminal authorities at entry.
 8. Discuss coordinating access to documents with the criminal authorities.
 9. Coordinate with plaintiff agency IT personnel, if any. The FTC generally supplies forensic IT personnel; the SEC generally does not.
 10. Coordinate who is going to fax or e-mail the Appointing Order to financial institutions. Note that some financial institutions insist on personal service at a branch. You should still fax or e-mail the Order to these institutions and then follow up with personal service.
- E. Be certain that the financial institutions are properly served with Appointing Order. The FTC Order usually includes email service to financial institutions. The SEC Order is not clear about email service, sometimes directing facsimile or personal service.

III. Enter the Premises and Take Control

- A. The Location
 1. Direct employees to back away from computers and stop telephone conversations.
 2. Later, take control of all mail delivered to the site, to a PO Box, and to a private mail service.
 3. Contact post office to change address for mail.
 4. Locate the name of the property owner and obtain a copy of the lease.

EXHIBIT D

5. Change the locks, reset the alarm codes.

B. The IT Systems

1. Identify on-site and all co-location, cloud, or other remote facilities.
2. Obtain all user names and passwords for on-site and remote accounting, email, document servers, and backups.
3. Disable all remote access for on-site and remote servers. Change all user names and passwords to the Receiver's control.
4. Locate any on-site or offsite Customer Relationship Management (CRM) databases or systems.
5. Obtain user names and passwords for all desktop and laptop computers.
6. Have a forensic backup performed on key computers before examining the computer.

C. Websites/Cloud vendors

1. Obtain name and location of the website host and cloud vendor. Serve the Appointing Order to freeze access by defendants and consumers.
2. Change access to Receiver only by changing the user names and passwords.
3. Be certain consumer transactions cannot be completed.
4. Download all electronic records as soon as possible. Use a forensic consultant to retain chain of custody.

D. Bank Accounts, Credit Card and Authorized Debit Processors

1. Contact banks and other financial institutions and confirm all accounts related to receivership defendants have been frozen. Plaintiff Agency will serve on individual defendants' accounts. Although the individual accounts are frozen, they are not under the Receiver's control unless assets of individual defendants are subject to the Appointing Order.
2. Locate the department and individuals to provide assistance downloading account activity for bank accounts and merchant accounts.
3. Obtain user names and passwords for on-site or offsite CRM databases or systems. Change access to Receiver only.
4. Arrange to download all account activity in the CRM system.

EXHIBIT D

5. When available, review financial account activity to determine if there have been unusual or large payments/withdrawals to individual defendants, and other large or unusual payments or transfers.

E. Additional Search and Review Activities

1. Obtain contact information for outside accounting firms from the defendants or as identified in records.
2. Examine desks and cabinets for information about additional bank accounts, investment accounts, merchant processing accounts, real property, and personal property.
3. When available, review email to identify receivership assets and persons who may have information about assets.
4. Serve Appointing Order on any newly identified financial institutions, merchant processors, entities, or individuals holding assets of the receivership defendants, and outside accounting firms.
5. Secure and examine all file cabinets, safes, desks, briefcases, electronic contact lists, and rolodexes.
6. Examine drop ceiling.
7. Obtain combinations and keys for safes or other locked areas. Use locksmiths for access as needed.

F. Other Duties and Procedures

1. Collect all ID cards, swipe cards, and parking cards.
2. Determine what employee benefits programs exist.
3. Determine date of the last payroll and period covered by last payroll. Is there an outside payroll company that needs to be served with the Appointing Order? How is the payroll funded?
4. Determine the appropriate payroll payments, if any, for employees.
5. Follow up with financial institutions to confirm freezing of accounts and results of freezing.
6. Determine if on-site servers should be removed to the Receiver's office for further study and review.
7. Evaluate what paper documents should be examined promptly. Coordinate and provide access to electronic and paper documents with the plaintiff and defendants.
8. Interview all defendants to identify real and personal property in the name of the receivership defendants.

EXHIBIT D

9. Interview all employees. Determine which non-defendant staff members the Receiver will employ. Dismiss all others.
10. Identify company lawyers. If appropriate, arrange to take control of all client legal files. Explain the Receiver now holds the attorney-client privilege.
11. Determine whether to retain or terminate the services of the current attorneys.
12. Determine whether to waive conflicts of interest as to company's former counsel so it can represent individual defendants.
13. Determine the cost to obtain an inventory of raw materials, work in process, and finished goods, or warehoused wholesale inventory, or retail inventory on-site and stored.
14. Determine leases of real and personal property, utilities and other immediate obligations of companies and arrange for termination/continuation.
15. Determine whether and the extent to which the receivership defendants may be operated lawfully and profitably.

IV. Next Steps

A. Immediate Next Actions

1. Inform the Receiver's attorney about assets located outside of the Federal District Court which issued the Appointing Order, requiring the filing of miscellaneous actions under 28 U.S.C. § 754.
2. Complete an initial analysis of financial, accounting, and legal records, physical and electronic invoices, and paid bills such as mortgage payments, equipment lease payments, and real property tax payments.
3. Complete title and lien searches in the name of receivership entities and individual defendants.
4. Confer with the Receiver's attorney and evaluate whether to record lis pendens against identified real properties.
5. Complete UCC searches and corporate record searches
6. Obtain EINs for entities being placed into receivership.
7. Seek tax advice as to organizational structure, e.g., whether to create a Qualified Settlement Fund or continue to operate under the receivership entity.

EXHIBIT D

V. Investor/Victim Communication

A. Create a contact list.

1. Start with Defendant's records.
2. Design and establish electronic formats to create contact lists and other useful information about potential victims and other creditors.
3. Create and maintain contact and service lists. Mailchimp or similar services are both easy and cost effective.

B. Send a letter to investor/victims introducing the Receiver and informing them of the receivership.

1. Letter should direct the investor to the receivership website, e-mail address (e.g., receiver@acme-receivership.com) and phone number. Suggest that further communications will be electronic.
2. Create letterhead for the receivership; do not use your standard firm letterhead.

C. Establish a Website

1. Establish a receivership website or a dedicated section on the Receiver's website to the receivership.
2. Establish a dedicated e-mail address and telephone number for the receivership. Appoint a trusted employee to answer the phone and respond to the e-mail. The SEC's Billing Instructions for Receivers require that a paralegal or similarly paid staff member handle basic communication with investors.
3. Post the Appointing Order.
4. Post preliminary receivership status and information for potential victims (potentially defrauded investors or consumers) and encourage electronic contact.
5. Invite potential victims to provide contact information for the Receiver to use for later communication.
6. Regularly update website by posting receivership reports, FAQs, important pleadings filed by the Receiver and parties, and orders issued by the court.

D. Consider a webinar or conference call

1. If possible, include a method by which investors can ask questions. WebEx and other conference providers have a built-in question function that allows participants to send questions to the host.

EXHIBIT D

2. Consider creating a PowerPoint or other visual material to go with the call
3. Record the call and post the recording and any demonstratives on the website.

VI. Initial Report to the Court

- A. Develop an Outline for Initial Report to the Court
 1. Information in Report Required Under the Appointing Order.
 2. Information to assist Court at time of hearing on preliminary injunction and order to show cause why Receiver should not be made permanent.
- B. Request permission to communicate with and provide notice to investor/victims by e-mail as a cost-saving measure.