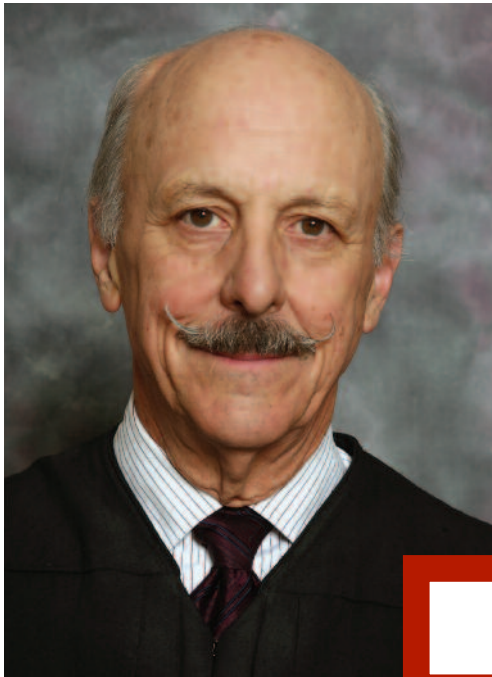




NEWS

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California Receivers Forum



The Honorable Dennis Montali

An Interview with the Honorable Dennis Montali

The **Honorable Dennis Montali** has served as a United States Bankruptcy Judge for over 20 years in the Northern District of California. He is, among other things, one of the best known and highly respected bankruptcy judges in the country. The *Receivership News* is extremely pleased to present the following interview with Judge Montali, conducted by **Ron Oliner**, a bankruptcy lawyer in Northern California and member of the Receivership News' Editorial Board.

Judge Montali attended Bishop O'Dowd High School in the Oakland and went on to attend college at the University of Notre Dame. After graduation, Judge Montali served in the United States Navy for four years before attending law school at Boalt Hall, University of California at Berkeley. In the following interview, Judge Montali discusses his legal career, as well as a few interesting facts not known about him otherwise.

Before his judicial career before you took the bench. Judge Montali completed his first year of law school at Boalt when I interviewed with a small bankruptcy firm called Rothschild and Phelan. One of the

Specialities of Equipment Appraisers

Recent Developments in Business Bankruptcy Law

BY: PEGGY BRISTER, ROBERT CLARK, CECILY DUMAS, GEOFFREY HEATON, JUDGE DENNIS MONTALI, AND RON OLINER

Each year, **Judge Dennis Montali**, **Cecily Dumas** and **Ron Oliner** present a two hour program to the San Francisco Bar Association and, separately, the Bay Area Bankruptcy Forum, covering developing case law in the bankruptcy field. Together with authors **Peggy Brister**, **Robert Clark** and **Geoffrey Heaton**, the group puts together very comprehensive materials for attendees. Here are excerpts from the program materials, describing some of the most significant decisional law rendered by courts in the circuit, and the Supreme Court, in 2013.

A. RESOLVING SPLIT AMONG CIRCUITS, SUPREME COURT HOLDS THAT SECTION 523(A)(4) DEFALCATION BY FIDUCIARY REQUIRES CULPABLE STATE OF MIND

A creditor filed a § 523(a)(4) nondischargeability action alleging that the debtor had breached his fiduciary duty by self-dealing while serving as trustee of his father's trust. Section 523(a)(4) excepts from discharge debts for, *inter alia*, "defalcation

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Appraising Unique Assets

BY: JACK YOUNG AND BEVERLY N. MCFARLAND*

RN's **Beverly McFarland** and her associate, **Kevin Whelan** of The Beverly Group, Inc., recently gave a presentation in San Francisco to the Northern California Chapter of the American Society of Appraisers ("ASA") on "*Challenges of Appraising Special Assets*". The emphasis was on the appraisal of assets in chapter 11 bankruptcies and receiverships and the differences between the two entities and how they are administered. Through the new acquaintances that we met that evening, we discovered some fascinating appraisals that members of the ASA have completed that we would like to share with Receivership News readers.

One of the more unique areas of the appraisal profession is the appraisals of machinery and equipment. For every type of machine or equipment that you can think of there is probably someone in the appraisal industry who specializes in it, from aircraft to boats to oil and gas to food processing. The preeminent designation for the valuation of these types of properties is the Accredited Senior Appraiser designation offered by the American Society of Appraisers "(ASA)" www.appraisers.org. ASA traces its roots back to 1936 and is the only multi-discipline, non-profit, international organization of professional appraisers. The society represents all appraisal disciplines: Appraisal Review and Management, Business Valuation, Gems and Jewelry, Machinery and Technical Specialties, Personal Property and Real Property. The ASA's mission is to foster the public trust of its members and the appraisal profession through compliance with the highest levels of ethical and professional standards.

In this article we are going to focus on three ASA machinery and equipment appraisers and some of the interesting items they have appraised.

Maritime Vessels

Captain Joseph W. Rodgers, ASA, www.rodgersandassociates.com started his maritime business in 1978 working as a surveyor for an underwriter of Lloyds and stationed in the Eastern Caribbean. At that time the charter fleet mostly consisted of classic large sized wooden yachts. Hurricane season was always busy. Capt. Rodgers says he can remember surveying the tall ship *Sunderland* built in 1888 in England, which is still in remarkably good condition; the last he heard, it was working as a charter boat in Mexico. Capt. Rodgers has worked on ships of all sizes, types and construction, including yachts, passenger ferries, research crafts, cargo ships, commercial fishing boats and small tankers.

In 2009 Capt. Rodgers appraised the *Desert Princess* – an 80 foot paddle wheeler passenger service boat that was working as a ferry on Lake Mead. One wouldn't think that there are riverboats on a lake, but it was not uncommon back in the old

days. This boat was brought in before the infrastructure for the nearby national park was put in place. Of course, in order to sell the boat it may have to be moved and it was near impossible to remove the vessel without dismantling, which created an interesting twist to the appraisal process.

Capt. Rodgers also appraised the ship *Northern Victor*. Built in 1945, it was a steel constructed or converted ship utilized as the largest fish processing vessel in Alaska, that measured 380' in length and weighed 8902 gross tons. She was built in 1945 as the cargo vessel *Marengo* in Wisconsin for the U.S. war effort. Released from the U.S. Reserve Fleet in 1972, she was converted to the oil well drilling ship *Ocean Cyclone* in Beaumont, Texas, with the addition of a drilling tower and other drilling related equipment, and a new engine room at 40 feet in length and 20 feet in beam to bring her to present dimensions of 380 feet long and 70 feet wide. After a successful career drilling for oil in the Middle East and South America, the vessel was retired in Brazil in 1986. The vessel traveled to South Africa in 1998 for removal of drilling related equipment and then returned to the United States and converted to a fish processing vessel, operating in Panama City, Florida, until its move to Alaska in July 1990. Since then, *Northern Victor* has operated in Alaska and produced various seafood products as the second largest processing vessel in the United States fishing industry. Following purchase by *Icicle* in 1999, the vessel underwent major processing equipment additions and improvements that have made her the most versatile processing vessel in the U.S. industry. With quarters for 222 crew members, she processes Alaskan Pollock at her primary operating base in the Aleutians Islands near Dutch Harbor.

Alaskan Pipeline

Bob Podwalny, ASA, has been a contributing author to three editions of *Valuation and Machinery and Equipment* textbooks, and a course developer and senior instructor of American Society of Appraisers "*Machinery and Equipment Principles of Valuation*" as well as for the World Bank Economic Development Program. He has also been an instructor of valuation courses throughout the United States as well as in Mexico, Romania, Slovenia, Canada, Russia, Kazakhstan and China.

For the last few years, Bob has been working on the valuation of the Alaskan pipeline for ad valorem tax purposes. The pipeline was built between 1976-1977 and covers 800 miles from Prudhoe Bay to Valdez, Alaska. As of 2010, the pipeline has shipped almost 16 billion barrels of oil. By the way, do you know why the Alaska pipeline has a zig-zag pattern? That distinctive pattern allows the pipeline to absorb an earthquake up to 7.0 on the Richter magnitude scale.

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Campbell Soup, Food Processing Plant

Jack Young ASA, CPA, www.norcalvaluation.com took a rather unconventional path to his ASA designation. Jack was awarded his B.S. Accountancy, Arizona State University, in 1988. Upon graduation he went into the audit department of international CPA firm KPMG in their Sacramento office, where he worked with clients such as Sun-Maid Raisins. Previous to accreditation as an ASA in Equipment and Machinery Appraisal, Jack worked for many years as an auctioneer and auction manager of business assets and machinery & equipment. This experience, combined with his background in accounting and finance, provided a strong base for asset valuation concepts. Jack is also an active member of the Northern California Chapter of the ASA, where he serves as the Chapter President.

Jack recently appraised the 129-acre Campbell Soup facility in Sacramento, CA. This facility, with 1.6 million square feet under roof, and a total of 12 processing lines, was the company's oldest functioning food processing facility. After a 60-year run, the south Sacramento factory closed last year. The equipment valuation focused on two main areas. The first was the



Appraising manufacturing facilities is a highly specialized project. Consider the cooling tubes in a soup processing plant pictured above. What is the value of the pipes in an active food processing environment versus disassembled as used pipes or scrap metal.

equipment directly involved in the processing of food products from initial cleaning and preparation through blending, canning, cooking, labeling, packaging and palletizing. The second area includes all the functions that support the processing area. These are the areas of material handling, steam generation, compressed air, water cooling, HVAC, electrical substations, water purification as well as the areas that include mechanical and administrative support functions.

An equipment appraiser is often asked what, exactly, he appraises, and as you can see from this small sample of Accredited Senior Appraisers specializing in Machinery and Technical Specialties, the possibilities are endless. While some equipment appraisers remain equipment generalists, many of them find themselves becoming an expert in a particular field, whether large commercial marine vessels, food processing and agricultural equipment, famous pipe lines, aircraft, or some other, equally fascinating area of equipment appraisals. Kevin and I always find it interesting to work with the variety of professionals that we come across in our business.



Jack Young, ASA, CPA

**Jack Young ASA, CPA, <http://www.norcalvaluation.com>. Experience includes the KPMG audit department in Sacramento, management of an auction firm specializing in commercial equipment and is an expert in asset valuation concepts. Jack is the American Society of Appraisers, Northern California Chapter President.*



Beverly McFarland

**Beverly N. McFarland is an RN Associate Publisher, a chapter 11 trustee and receiver and CEO of The Beverly Group, Inc., an asset management company that has successfully resolved in excess of \$8 billion dollars of estimated assets since 1983. Ms. McFarland is a former chair and current member of the California Receivers Forum BOD, the Turnaround Managers Association BOD and has enjoyed presenting at the Loyola Law School seminars through the years as well as many other associations on receiverships and chapter 11 bankruptcy matters.*

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