



## FVLS CONSULTANCY

FORENSIC & FINANCIAL CONSULTANTS

## CURRICULUM VITAE

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THEODORE G. PHELPS, CPA, CVA, CFE

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### PROFILE

Theodore G. Phelps has over 40 years of experience in executive leadership and consulting. He is a forensic accountant and testifying expert in financial investigations, fraud, business valuation, and economic damages.

Mr. Phelps is a proven expert in the fields of insolvency, reorganization, and restructuring, having managed many turnarounds during his career, employing several approaches, including in-court (bankruptcy) and out-of-court (ABC's, creditor compositions and receiverships).

He is an experienced Court Appointed Fiduciary, having successfully completed dozens of business receiverships, many of which involved fraud and shareholder oppression issues. Other fiduciary appointments include appointment as a partition referee, post-judgment receiver, and forensic accountant reporting to the Court.

He and his staff developed and taught a course in forensic accounting that is presently being taught at California State University, Los Angeles to undergraduate and postgraduate students, many of whom are law enforcement officers. He is an adjunct professor at Whitworth University, where he teaches a class in Fraud Investigation, along with various other accounting courses.

Mr. Phelps' professional experience includes various positions in corporate finance for publicly traded and privately held companies, Director of Corporate Reorganization with Price Waterhouse, and President of his own consulting firm for over 30 years.

Mr. Phelps holds an M.B.A. from Whitworth University, a B.S. in Accounting from the University of Southern California Marshall School of Business and studied Engineering at the United States Naval Academy.

His current credentials include Certified Public Accountant (CPA) in Washington, Idaho, and California, Certified Valuation Analyst (CVA), and Certified Fraud Examiner (CFE). Additionally, Mr. Phelps holds credentials in the areas of insolvency and distressed business valuation. He is a Certified Insolvency and Restructuring Advisor (CIRA) and Certified in Distressed Business Valuation (CDBV). The Association of Insolvency and Restructuring Advisors (AIRA) awards both credentials and has recently designated Mr. Phelps as a Distinguished Fellow of the Association. The Distinguished Fellow designation exemplifies the highest level of excellence in professional practice and honors his contributions and the positive legacy he has left on the profession. He also holds two credentials awarded by the American Institute of Certified Public Accountants (AICPA)—Accredited in Business Valuation (ABV) and Certified in Financial Forensics (CFF).

His professional affiliations include the Association of Certified Fraud Examiners (ACFE) and the National Association of Certified Valuation Analysts (NACVA). Since 1983, Mr. Phelps has been a member of the AICPA and is a member and Emeritus Director of the Association of Insolvency and Restructuring Advisors (AIRA). He is a life member of MENSA and the US Naval Academy Alumni Association. He has served on several boards of privately held companies and presently serves on the Board of Directors of Queen of Angels Catholic Church in Santa Clarita, CA.



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### SELECTED EXPERIENCE

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#### CORPORATE TURNAROUND/WORKOUT

##### **H.W. Hart Mfg., Inc.**

Light manufacturer of feeding and watering devices for the poultry industry. Manufacturing process included fabrication and assembly of sheet metal troughs, a proprietary "chain" for moving feed, and watering devices consisting of molded and extruded plastic parts. Company had established a branch network that put it in direct competition with many of its largest customers. Also, high interest rates reduced consumer demand for eggs, and a general decline in business conditions led to declining sales. Quality problems in the manufactured products further exacerbated the company's decline. Steps taken include closing the entire branch network, calling an informal creditors' meeting, and seeking and obtaining a government-guaranteed loan under the Trade Adjustment Assistance Act. The final plan paid all classes of creditors at a discount, resulting in a restructuring of the company's balance sheet, a restoration of owners' equity, and a return to normal operations.

##### **California Electrofab, Inc.**

Proprietary fabricator and assembler of printed circuit boards. Increased sales and a concurrent failure in the company's labor reporting systems led to massive over hiring on the assembly line, which severely constricted cash. Compounding this problem, the company had agreed to sixty-day payment terms on a large contract. Steps taken included establishing a simple labor reporting system, vastly reducing headcount, and renegotiating the payment terms of the company's largest contract. Company returned to normal operations within four months. Served on the company's Board of Directors until its sale four years later.

##### **Pat's Ski 'n Sports**

Leading retail sporting goods store had expanded to seven locations plus a warehouse, outstripping its capital and management abilities. Made contact with all of the company's major creditors to attempt an out of court workout. Creditors insisted that company file Chapter 11. Continued to negotiate with creditors' committee and its counsel. Outcome was liquidation when the secured lender withdrew its support and convinced the owner to convert to Chapter 7.

##### **Kold Kist Brands, Inc.**

Referred into this workout situation by secured lender who suspected fraud on the part of the owner. Negotiated with unsecured and secured creditors, buying time to position the company for a successful Chapter 11. On the eve of filing, a Joint Task Force operation, headed up by the Office of Inspector General for the Department of Agriculture, executed a search warrant on the company. This operation involved over 100 law enforcement officers from DOA, FBI, and other agencies. This delayed filing for a week. During that time, the Creditors met and insisted that the CEO step down and be replaced by Mr. Phelps, who ran the company during the bankruptcy, manufacturing out the remaining inventory, and safely supervising the shutdown of an environmentally dangerous ammonia cold storage unit. Testified on many occasions in Federal Bankruptcy Court and State Court.



## FORENSIC ACCOUNTING, VALUATION, AND ECONOMIC DAMAGES

### **Retail Western Wear & Saddlery**

Prepared fair market valuation of partial ownership for estate tax purposes in 2009. Recently called in to value the company for purposes of sale or liquidation due to downturns in the economy and government shutdowns pertaining to the COVID situation.

### **Oppressed Shareholder Case**

Minority (49%) shareholder was being mistreated by the majority shareholder, denied access to basic financial reporting, and to the books and records, despite frequent demands. Minority sued for dissolution. Engaged to perform the valuation for the minority shareholder, it was discovered that through a myriad of "vendors" actually owned by the majority shareholder, profits were being diverted from the company, disguising its real value. Following forensic analysis, including forensic accounting and investigation of the ownership of these entities, performed a correct valuation of the minority interest. Defended the report and negotiated with counsel for the majority to arrive at an equitable buy out of the minority interest.

### **Hairlocs**

Performed valuation of intangible assets of this company that was the subject of a post-judgment receivership. Assets valued included website, URL, phone numbers, hair-extension technology, customer lists, etc.

### **Startup Company**

A fitness center that had just opened had access to its facility blocked for several months by the City of Los Angeles. Having run out of money, the company was forced to close. Performed valuation of the company based on projected performance had the City not acted to block access. Case was settled on "favorable terms" for an undisclosed amount.

### **Life Settlements Company**

Minority oppression lawsuit. Majority shareholders, through a number of subterfuges, had diverted tens of millions of dollars of profits to a network of entities owned or controlled by themselves. Forensic study exposed these schemes, leading to a verdict of over \$20 million, in a case wherein the experts from the other side valued the minority share at zero.



## FIDUCIARY APPOINTMENTS

**Union Bank of California v Hemet Chrysler Case No. RIC 517602** (Superior Court of Riverside County, California) Appointed as Receiver to take possession and liquidate the assets of dealership; negotiated return of vehicles to General Motors, but when their bankruptcy intervened arranged dealer trades to liquidate new car inventory; auctioned used car inventory; sold major equipment, parts inventory and supplies to satisfy bank debt, which was paid in full.

**Autoshepherd, LLC:** Liquidation of assets of an online reseller of automobile parts and accessories under General Assignment for Benefit of Creditors; made distribution to unsecured creditors.

**Blodgett v Frederick Case No.: INC 1207463** (Superior Court of Riverside County, California) Post-judgment receivership involving the sale of fractional interests in various real estate ventures; made distributions to judgment creditors.

**Union Bank of California v Bodice & Knit Case No.: BC359015** (Superior Court of Los Angeles County, California) Took possession of and sold the assets of a knitting operation located in Los Angeles.

**National Bank of California v C&H Electric Case No.: PC 035855** (Superior Court of Los Angeles County, California) Took possession of and sold the assets of electrical contractor in Los Angeles County; investigated several instances of corruption involving major public works projects, to defend several bond claims successfully.

**Union Bank of California v Crinklaw Farms Case No. M54696** (Superior Court of Monterey County, California) Appointed Receiver over large garlic ranch that had been taken over by a religious cult after the death of the owner; sold current harvest of garlic along with warehouse full of imported garlic to large processor in the area to satisfy bank debt; liquidated remaining assets consisting of vehicles, office equipment, and supplies.

**Ruben v Maxey Case No.: BC369292** (Superior Court of Los Angeles County, California) Receiver was appointed to operate a kidney dialysis center in Inglewood, California, whose partners were engaged in litigation. The center was owned 1/3 by the litigating partners and 2/3 by a national concern. Resolution of the case was by sale of the 1/3 interest of the partners to the national concern for \$2.2 Million, which had originally offered \$80,000 for that interest. A forensic investigation performed by the Receiver's staff resolved the financial controversy between the two owners.

**Dreamcatchers v Hairlocs Case No. EC 050461** (Superior Court of Los Angeles County, California) Post-judgment receivership requiring the Receiver to value and sell several lots of intellectual property at private sales under CCP 701.510 to 701.680.



## FIDUCIARY APPOINTMENTS continued

**Union Bank of California v Valley Western Distributors Case No. VC035494** Appointed Receiver to liquidate this \$60 million distributor of flooring materials by motion of the senior secured creditor. Early in the case was contacted by a junior secured creditor that was concerned about their inventory being auctioned off and thereby harming their local market. Arrangements were made for that creditor to buy the bank's position at par, thereby allowing the Receiver to manage the business for an additional six months while that creditor located a new distributor, who bought the inventory at par. Receivership concluded at the point that the new distributor took over, and the Receiver then took a general assignment to conclude the liquidation. Filed all required federal and state income tax returns and sales tax returns. Filed for and obtained over \$800,000 in tax refunds for the estate.

**Valley Western Distributors:** Accepted General Assignment for the Benefit of Creditors to conclude the liquidation of assets begun in the aforementioned receivership; ownership of the company agreed to the appointment of prior Receiver as Assignee. Returned 40% to unsecured creditors after paying out over \$12 million to secured creditors.

**Union Bank of California v Ambitech International Case No. PC038454** (Superior Court of Los Angeles County, California). Bank sought Receiver to complete the wind-down and liquidation of a printed circuit board manufacturer based in California. One of the chief assets of the company was a major defense subcontractor located in Beaverton, Oregon, which was sold to its employees by the Receiver, which retired the bank debt. Liquidation of the Chatsworth, CA facility brought to light a major environmental program that led to the involvement of the California Department of Toxic Substances Control and the United States Environmental Protection Agency in a Superfund Cleanup project. Mr. Phelps worked with and assisted representatives of both agencies in achieving a positive outcome.

**Trago International, et al. v Montgomery, et al. Case No.: YC054317** (Superior Court of Los Angeles County, California) Post-judgment receivership involving the sale of intellectual property under CCP 701.510 to 701.680.

**Ballestra, et al. v Ricor Racing and Development Case No.: BC273230** (Superior Court of Los Angeles County, California) Post-judgment receivership to collect royalties on several patents; forensic investigation to trace funds over several years.

**Bank of America v United et al. Case No.: A-09-603267-B** (District Court of Clark County, Nevada). Receivership included five automobile dealerships in Las Vegas, Nevada. Liquidated inventories of new and used cars; utility vehicles and other rolling stock; parts, supplies, tires, shop equipment, and paint equipment.



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**Keshen v Tallen Case No.: BC503552** (Superior Court of Los Angeles County, California) Partnership dispute; Receiver appointed to manage seven real estate LLC's; procure financing on expiring loans; leased property; file all tax returns for the entities; conduct forensic accounting on the relevant entities spanning a period in excess of ten years.

**Wilshire State Bank v Unicorp Beef, Inc. et. al. Case No.: LC086199** (Superior Court of Los Angeles County, California) Plaintiff, Wilshire State Bank sought appointment of Receiver to determine the disposition of over \$6 million of missing inventory. Ensuing investigation revealed a loan kiting scheme involving several banks in the Korean community, and suggestions of improprieties of at least one bank director. The Receiver turned all of his findings over to several agencies of the U.S. Government, including Criminal Investigation Division of IRS, U.S. Treasury, and Department of Homeland Security, resulting in the successful prosecution of the principal of the debtor company.

**Ralston v Dumouchel** Partition Referee assignment, wherein five siblings were in disagreement as to how to dispose of two parcels of real estate, the family home, and a large shopping center, adjacent to the family home. One sibling preferred that the shopping center be physically partitioned and distributed to the siblings. The rest objected. A forensic appraiser was engaged to opine on the two proposed methods, agreeing with the Referee that physical partitioning would severely diminish the value. During the pendency of the Referral, Referee was appointed Receiver to take charge of several thousands of dollars of rents that had been misappropriated by the dissident sibling to cover her legal expenses. During the pendency, several environmental and lease issues were resolved, and finally, the shopping center and the family home were sold, and funds distributed to the siblings.

## EXPERT TESTIMONY

**In re Hassen Imports Partnership, 466 B.R. 492 (2012)** In Federal Bankruptcy Court, Phelps testified in favor of the Debtor, who maintained that his enterprises did not fall under the Single Asset Real Estate (SARE) provisions of the code. Specifically, his analysis and testimony dealt with determining whether a business was dependent upon other businesses owned by the Debtor for its revenues. The Debtor prevailed, and this decision was cited in several subsequent SARE cases.

**In re Breton Construction, Inc. v CPA Firm** Testified as an expert on various aspects of financial statement fraud, and as a percipient witness with respect to false and misleading entries in the books and records, resulting in fraud upon the auditors, and the issuance of false and misleading financial statements.

**Divorce Case Idaho** Testified as to value of husband's interest in medical practice.

**In re Cooper v Reliant Life Shares** Testified as an expert in the forensic investigation that resulted in adjustments leading to a valuation of Cooper's 1/3 interest (previously valued by BDO at \$35,000) of over \$20 million, which was the subsequent verdict in that case.

**Dreamcatcher v Hairlocs Case No. EC 050461** Gave expert testimony about the value of intangible and intellectual property owned by Hairlocs, including the name, customer lists, telephone numbers, domain name, and patents.