

A Discussion With Professor Douglas Baird

By Kobus van der Zel, Global Turnarounds Inc.

On June 13, the law firm of Sugar Felsenthal Grais & Hammer LLP hosted Professor Douglas Baird of the University of Chicago during a well attended Certified Turnaround Professional (CTP) monthly luncheon meeting. Professor Baird showcased his aptitude for translating complex legal fact patterns into comprehensive and understandable discussions on relevant topics in the restructuring community. His remarkable talent came as no surprise to his audience, when considering his reputation and extensive scholarly contribution to our industry, including as author of 23 books and more than 70 periodicals on restructuring and bankruptcy.



Professor Douglas Baird addresses a group of CTPs at a June 13 luncheon.

buy the equity of its much more valuable subsidiary for only \$1 and then files for bankruptcy.” This scenario, taken from the Eleventh Circuit’s recent decision in *In re Tousa*, has serious ramifications for

Professor Baird tackled difficult topics such as upstream lending and fraudulent conveyances. “Tell me if you think the following situation should be a fraudulent conveyance or not?” Professor Baird asked. “This holding company agrees to

the holding company’s secured creditors. Can they prove a fraudulent conveyance or not?”

Similarly, Professor Baird explained the *Tribune* bankruptcy with an analogy, noting, “The holding company with very little assets signs a credit agreement with a new lender and transfers the funds to their subsidiary holding all the assets. Shortly thereafter the holding company files for bankruptcy and uses some of the funds for a trip to Rio de Janeiro.”



Professor Baird
Photos by Bill Farrar

Relying on highly publicized cases to draw significant inferences, Professor Baird assisted the CTPs in the room in drawing clear lines between actual and constructive fraud.

Following his conversation on fraudulent transfers, Professor Baird shared his views on venue reform legislation and fee reform. He articulated the reasons why certain venues remain dominant in the bankruptcy and restructuring community by comparing the superior business literacy of bankruptcy courts in Delaware and the Southern District of New York to other less popular U.S. bankruptcy venues. Additionally, although a sensitive matter for the CTPs in attendance, Professor Baird quoted a recent expression that “hourly fees are dead” and that what lies ahead is “a Darwinian struggle of lawyers during which many will survive,” which drew appreciative laughter from most. To articulate this point, he referred to the financial advisor’s substantial contingency fee in *Tousa* to exemplify the adverse effect on the debtor’s attempt to remain solvent. He concluded that the trend in the arena of professional compensation is firmly directed towards fixed fees.

As the luncheon came to a close, Professor Baird concluded with a story detailing his experience pitching Barack Obama, a young Harvard law student, on becoming a member of the University of Chicago law faculty following his graduation. Professor Baird noted that after considerable discussion, Obama accepted a part-time position, where he agreed to teach Constitutional Law while authoring a book on voting rights. Several months into Obama’s term at the University of Chicago, he remarked to Professor Baird that his book on voting rights had become more of an autobiography, which he later titled *Dreams from My Father*.

The CTP luncheon was nothing short of a tremendous success. Professor Baird provided his audience with a golden opportunity to learn from one of the leaders in the restructuring industry. Following the luncheon, one CTP shared the sentiments of the entire group, stating, “I felt privileged to be in that room today.” Those in attendance will assuredly draw upon this experience to further hone their respective crafts and adapt to this changing professional landscape. Thank you, Professor Baird and our host, Sugar Felsenthal Grais & Hammer LLP.

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