WHY DIVERSITY MATTERS IN RECEIVERSHIPS

By Paula Durham and Barbara Martinez

The impact of diversity on performance has been a hot-button discussion topic for years. There are many published articles and studies about the importance of diversity, equity, and inclusion for companies, government workplaces, and other organizations. What about receiverships? Why does diversity matter in receiverships? In short, diversity matters in receiverships for the same reasons that it matters in other arenas: greater innovation and success; better problem solving; and obtaining positive responses to inspire confidence. However, we propose that perhaps receiverships stand to gain even more significantly from diversity than other fields because of the unique challenges, complex work and diverse demographics of creditors and others typically involved in receiverships. In other words, it is not farfetched that diversity may result in amplified benefits in the receivership context due to the nature of the work.

Indeed, NAFER created the Diversity, Equity, and Inclusion (“DEI”) Committee in 2021 because NAFER recognizes the benefits and need for diversity in the receivership community. The DEI Committee works to enhance NAFER’s mission of delivering excellent education, networking, and receivership opportunities to the receivership community by promoting diversity. For example, the DEI Committee invited Kimberly Ellison-Taylor, Chief Executive Officer of KET Solutions, LLC and Chair of the American Institute of Certified Public Accountant’s National Commission on Diversity and Inclusion, to speak at the upcoming NAFER Conference in D.C. KET Solutions, LLC is a consulting firm focused on business growth, innovation, strategy, transformation and inclusive leadership. On Friday, September 16, 2022, at the NAFER conference, Ms. Ellison-Taylor will discuss how diversity, equity, and inclusion is the key to competitive advantage and a strategic approach to business growth, greater collaboration, and increased retention.

As proud members of the DEI Committee, we propose that anyone who participates in appointing receivers or creating multidisciplinary teams to aid the receiver can increase the potential for success in receiverships by incorporating diversity.
Three Reasons Why Diversity Matters in Receiverships

1. Diversity Leads to Greater Innovation and Success

Study after study has shown that diversity leads to more creative and successful teams. For example, a 2017 Boston Consulting Group study (“BCG Study”) demonstrated a strong and statistically significant correlation between management diversity and a company’s innovation level.\(^1\) Entities achieve heightened innovation by creating environments that foster “outside the box” thinking, which in turn brings fresh perspectives.

Importantly, diversity comes in many forms but not all characteristics affect innovation equally. The BCG Study focused on six dimensions of diversity: gender; national origin; career path; industry background; age; and education.\(^2\) According to the BCG study, the most significant innovation gains were realized when the leadership team changed in four ways: national origin of executives; range of industry backgrounds; gender balance; and career paths.\(^3\)

The BCG study found that innovative companies with diverse leadership often perform better in the marketplace. For example, organizations with above-average leadership diversity reported increased innovation revenue as opposed to organizations with below-average leadership diversity.\(^4\) In addition, diverse companies are more likely to report a growth in market share or to capture a new market.\(^5\)

The bottom line is that diversity has widely been shown to foster innovation and creativity by bringing a greater variety of perspectives and ideas to the table. While the research into the correlation between diversity and innovation primarily focuses on impacts to business performance, the same concepts easily translate to receiverships.

Receiverships bring many professionals with varying expertise together to fulfill very important duties. A receiver’s court-appointed powers generally include taking legal control of and protecting assets, filing claims on behalf of an entity placed into a “receivership,” and, ultimately, distributing assets to defrauded investors, claimants or creditors through a court-approved plan.\(^6\) As readers here can no doubt attest, courts appoint receivers as stewards of a myriad of businesses and organizations involving all kinds of industries, some with international reach. Indeed, many novel issues routinely arise in receiverships, often accompanied by many limitations in dealing with these issues. Consequently, the need for innovation to achieve success is critical.

It is therefore logical to conclude that increasing the diversity of the pool of receivers and their teams increases the probability that they will bring new ideas, approaches and solutions to bear. Simply put, diversity in the receivership community ensures fresh approaches to handle the myriad of complex situations they encounter, which is more likely to lead to better outcomes for
creditors and victims of fraud. For example, in a recent federal receivership involving a Ponzi scheme, perpetrators diverted proceeds of the fraud to buy assets in Latin America. For many reasons, the small receivership team and others with experience in receiverships feared that there were insurmountable challenges preventing the receiver from acquiring the assets abroad. The typical methods of attaining the foreign assets appeared unavailable. Before making a final determination, the receiver added two women team members with no prior receivership experience but who had extensive experience in international litigation and arbitration. They had worked in Latin America regularly and spoke Spanish fluently, and their experience and skill set in other industries and with Latin America ultimately led to crucial contributions resulting in the acquisition of valuable assets for the receivership. The two women members repeatedly asked thought provoking questions, highlighted important issues that were unique to interacting with people in Latin America and proposed novel ideas when brainstorming with the team. Consequently, the entire team was able to see new options, develop better and more creative strategies, and overcome the many unique challenges presented in attaining the assets. There is no doubt that the contributions of the women made the receivership team more innovative as a whole, which led to a successful result. It also gave the two new team members experience in receiverships that now makes them a great addition for other receivership teams, especially those involving Latin America.

2. Diversity Leads to Better Problem Solving

Besides improving innovation, studies show that increased diversity positively correlates with increased problem-solving ability. The American Psychological Association defines a mental set as “the tendency to apply a previously successful technique in solving a new problem.” When confronted with a problem, you apply all of your own culture, experiences, and understanding, or your mental set, to devising an effective solution. Utilizing your mental set to solve problems saves you time and energy. Great, right? Actually, no, not great. Relying on just one mental set (yours, or the mental set of a group of individuals similar in age, gender, education and culture to you) can actually limit thinking and reduce the pool of potential solutions.

Conversely, a variety of gender, cultural and professional backgrounds often correlates with more creative and effective solutions because of the difference in perspectives such diversity brings. Differing perspectives can result in different ways of defining the problem to begin with, which logically leads to different potential solutions. Groups with different ways of looking at the world and interpreting experiences appear to outperform groups with a single problem-solving perspective. The importance of diversity and better problem solving in the receivership community is not limited solely to analyzing novel issues or new challenges but also applies to matters that may be considered run of the mill. We all know every receivership is distinct in one way or another.
Thus, we recommend taking advantage of the benefits of a diverse team to improve problem solving even when receivership teams are handling issues that are more common. This principal is true even if the problems relate to business operations, asset recovery and liquidation, investigative strategy, interviews, claims, legal issues or distribution. For instance, in the receivership mentioned above involving Latin America, the two women team members added value on matters beyond asset acquisition overseas. They provided valuable input in the early stages of the investigation in the United States and in the administration of assets. Specifically, they weighed in on important decisions and conducted work on important witness interviews, investigative steps relating to assets, court filings and budget issues. In almost every instance, their input was different from those with prior experience in receiverships because they asked more questions, did not make assumptions, and were very open-minded about possible solutions to problems. Although those in the receivership world were seeing the issues through a linear lens based on their prior experiences, the additional team members brought new viewpoints because of their diversity in gender, cultural background, and professional background. Importantly, the better problem solving did not result solely from the additional team members. The diversity brought a new dynamic to the entire team, which infused it with new ideas and better decision making.

The key here is cognitive diversity, meaning differences in perspective or information processing styles. A Harvard Business Review (“HBR”) team found a positive correlation between higher cognitive diversity and faster problem solving. According to the HBR team, colleagues gravitate toward like individuals, often resulting in like-minded teams with low cognitive diversity.

For example, while people in western cultures orient their positions in relation to a place or geographical feature, in Micronesia their concept of travel and navigation is completely the opposite. A Micronesian in a boat on the ocean considers the boat to be the fixed point, while the ocean and other geographical features move past the boat. In other words, while you were on that Caribbean cruise believing the boat was moving through the ocean, your Micronesian shipmate believed that the boat was stationary and the scenery was moving. It is a subtle but powerful difference in perspective.

It is easy to see how diversity in a receivership team facilitates better problem solving. In the receivership context, teams can achieve cognitive diversity by broadening the pool of receivership candidates to include diverse professionals from not just law and finance/accounting, but also by considering those with backgrounds in history, psychology, or other specialties that a receivership team would not typically consider. Diverse teams can look at a problem in countless different ways, thereby significantly increasing the team’s ability to devise solutions quickly and more effectively.
3. Diversity Boosts Confidence in Receiverships

Studies show that diversity can improve a company’s image, resulting in greater success. The theory is that a business with a diverse workforce can better relate to a diverse customer base and that such understanding results in business growth. Indeed, many customers respond positively to companies with a diverse workforce. Although receiverships are distinct from normally operating businesses, the relatability, empathy and adaptability that result from diverse teams are also essential in the receivership context.

Perhaps the most apparent illustration of a receivership in which diversity could have a vital positive impact is in those involving affinity fraud, i.e., a type of investment fraud in which fraudsters target members of an identifiable group based on race, age, religion, or professional groups. For example, there are multiple examples of receiverships involving fraudsters who have targeted Haitian communities. In those cases, receiverships would undoubtedly benefit from having team members who are of Haitian descent, can speak Creole, and have a cultural prospective that would help to better understand victims’ perspectives. Victims are more likely to relate to and feel comfortable speaking with persons who have a similar background to those victimized. Therefore, at a minimum, diversity in the receivership team can aid in conducting interviews, getting cooperation from victims, and more effectively obtaining relevant information to benefit the receivership.

Affinity fraud receiverships are not the only ones to benefit from diversity. The many types of businesses and industries that may be subject to receiverships mean that the victim and company employee demographics are incredibly broad too. A receiver has a fiduciary duty to stakeholders and the court, and typically has the discretion to marshal, manage and liquidate the receivership company’s assets, while accounting for all receipts and payments. In most receiverships, to fulfill its fiduciary duties the team must interact with defrauded individuals and company employees regularly, including interviewing them. Creditors and employees come from different geographical areas, have different backgrounds, and vary in race, gender and sexual orientation. They are also typically under incredible stress from the events leading to the appointment of a receiver. Therefore, exposure to a diverse team is likely to trigger a positive response from some creditors and employees because of the team’s relatability, empathy and adaptability as a whole. Certainly, any such positive response aids in conducting interviews and obtaining cooperation, increasing the likelihood of obtaining important information to benefit and inspire faith in the receivership.

The importance of confidence in receiverships through diversity also extends to the courts. Appointment of a receiver is an equitable remedy and the administration of a receivership is subject to a district court’s discretion. A court typically appoints a receiver in cases in which a regulatory agency or creditors in an underlying case fear that fraudsters may dissipate or waste corporate
property and assets. Although regulatory agencies and creditors may recommend to the court the appointment of a receiver, it is ultimately the court’s decision to make the appointment. Moreover, courts give receivers the powers to fulfill their duties. Receiverships rely on the courts not only for appointments but also for favorable rulings in support of the receivership. Therefore, it is imperative that receivers and their teams inspire confidence from the courts through diverse teams.

Recently, some courts have been quite vocal about their preference for more diversity in receiverships. Representatives of regulatory agencies and federal district court judges have spoken publicly about these issues. For example, in June 2022, NAFER’s Receiver publication carried a roundtable discussion that included Bikram Bandy, Chief Litigation Counsel for the Federal Trade Commission (“FTC”), in which Mr. Bandy noted that judges have criticized the lack of diversity in the receiver pool. According to Mr. Bandy, the FTC is working on reforms to address this concern. Judges’ perceptions and complaints about a lack of diversity reveal a lack of confidence in receiverships that may negatively affect receivership work in the long term. Thus, it is prudent to acknowledge the demonstrated benefits of diversity by embracing diversity in selecting receivers and establishing receivership teams.

Aside from those directly involved in a receivership, we cannot underestimate the importance of public perception about receiverships. Many receiverships are high profile matters covered by the media. Additionally, the legal, accounting, real estate and many other professional communities stay abreast of receivership matters. At a time when the advantages of diversity are so well known, the public and certain industries may perceive a lack of diversity in receiverships as a deficiency in relatability, empathy and adaptability that could undermine their credibility.

Boosting confidence in receiverships by embracing diversity results in better communications with those involved in receiverships, good public relations and, ultimately, more success.

What can you do?

For the reasons described above, those who work with receiverships, including receivers or members of the receiver’s team, may significantly enhance receiverships by fostering diversity. A commitment to incorporating diversity in receiverships is not just a sentiment; we must all take steps to further the goal of reaping the benefits of diversity in this field. We can all do a few simple things to improve diversity in receiverships.
1. **Acknowledge Lack of Diversity and Be Open to Inclusion**

First, acknowledge any lack of diversity in the first place and be open to the advantages of inclusion. If courts or others raise a concern about lack of diversity, seriously consider whether this is in fact the case. Study your environment in the workplace, meetings and court settings involving receiverships. If you do in fact notice lack of diversity, be open to the many studies, some referenced here, and the logical conclusions that diversity can help make receiverships, and you, individually, more successful. View the potential synergy diverse teams create as an exciting prospect that will bring all team members personal and professional growth as well as more successful outcomes.

2. **Recruit Diverse Receivers and Receivership Team Members**

Second, it is critical to recruit diverse receivers and team members. Anyone with input as to hiring or team selections within their own workplace or business can help to accomplish this action item. Additionally, anyone looking to make a referral or recruit team members outside of their own workplace should also seek to recruit diverse talent. Being intentional about bringing diversity into receivership work opportunities furthers the goal of inclusivity. It also expands your network to allow for more collaboration and business opportunities in receiverships.

3. **Establish Diverse Mentoring Programs**

Establishing diverse mentoring programs is a great action item to help grow diversity in receiverships. Mentorships help to teach new leaders, sometimes with less experience, about receiverships. Focusing on mentoring diverse team members ensures that they learn from others experienced in receiverships while promoting inclusion through bonding and long-lasting relationships. Mentoring those within and outside of your workplace who have an interest in receivership work can lead to great long-term growth in diversity.

**Conclusion**

A large (and continually growing) body of evidence shows that increased diversity in the workplace leads to positive outcomes. Diverse teams correlate with increased innovation and better problem solving by bringing to bear different backgrounds, ideas and perspectives. Diverse teams also help to improve a company’s image, by making them more relatable to their customers.

These positive correlations translate to the receivership world. Courts may appoint receivers over a wide variety of businesses and industries covering a broad demographic. A diverse receivership team approaches problems with a broader perspective, which leads to greater innovation and problem solving. Diversity in a receivership team also boosts the confidence of
the various receivership constituencies, increasing the credibility of receiverships as an equitable remedy.

NAFER members have a unique opportunity to foster diversity in the receivership community. Acknowledging a problem is always the first step towards a solution, so take a moment to consider the diversity level in your receivership environment. Remain open to recruiting or recommending diverse individuals to your next receivership assignment. In addition, and perhaps most importantly, consider diversity in your mentoring decisions. Taking these steps demonstrates a commitment to diversity that is sure to make our community much more successful.

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ENDNOTES

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