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Midwestern Bankruptcy
Institute

Commercial

Receiverships and Fiduciaries

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The Arcadian Hypothetical

Plaza Square Hotel LLC, a Kansas LLC, (“PSH”) owns a 150 person upscale hotel located in the Plaza area of Kansas City, Missouri and commonly known as the Arcadian. PSH is wholly owned by Mosby Holding Company, a Delaware limited liability company. The stock in MHC is privately owned by Ted Mosby, who is also the principal officer of both PSH and MHC. MHC is incorporated in Delaware, but its primary office is in Olathe, Kansas.

The Arcadian is a newly renovated hotel. On its third floor, it has a fitness center that is free to its guests, but also offers paid memberships.¹ On its third floor, it has multiple conference rooms. It also has small meeting rooms, hotel bar, and guest shop. On its ground floor, PSH leases space to MacLaren’s Fine Spirits and Dispensary, that sells high end spirits, cannabis, and accessories. The rent that MacLaren’s pays is based upon its percentage of sales. The Arcadian was recently appraised at \$120 million.

The acquisition and renovated costs of the Arcadian were financed through Goliath National Bank (“GNB”). GNB is a Missouri chartered bank with its primary corporate headquarters in Kansas City, Missouri. The loan to acquire the Arcadian and to do the renovations was \$110 million. Both PSH and MHC are co-obligors on the loan. The loan is secured by a Missouri deed of trust on the land and all asset security agreement in the assets of the PSH. The loan documents provide that upon default, GNB is entitled to the appointment of a receiver. It does have a personal guaranty of Mosby, but such guaranty is only triggered upon certain events taking place including the filing of a voluntary bankruptcy, receivership, and similar proceedings.

While the Arcadian opened to great fanfare, it did so just before the Covid-19 pandemic and has not fared well since. It has failed to book major conferences in part because certain conferences are concerned about the impact of MacLaren’s. With that said, MacLaren’s has in many ways been the one bright spot in light of the favorable percentage rent arrangement and the income PSH receives from it.

PSH has missed many of its loan payments to GNB. The current debt owed to GNB is approximately \$110,000 million. Additionally, Ted has fallen behind on both real estate taxes and withholding taxes in the approximate amount of \$750,000. Additionally, during the Covid-19 pandemic, PSH applied for and obtained a \$150,000 Paycheck Protection Program (PPP) loan from another lender, which was guaranteed by the Small Business Administration. Due to certain irregularities, including the fact that Ted used the money to buy a significant interest in MacLaren’s, the PPP Loan was not forgiven and PSH defaulted on the loan. The PPP Loan was unsecured. It is unknown whether SBA has honored its guaranty and “purchased” the SBA loan from the PPP lender.

In order to decorate the Arcadian, PSH entered into a unique license with Lily, a world-famous artist, to exhibit her newest art at the Arcadian. Given Lily’s notoriety, Ted believes that this will be a substantial draw to the Arcadian. The license agreement was guaranteed by both MHC and Ted, personally. PSH is currently in arrears to Lily under the contract for approximately \$250,000. The license agreement provides for venue in Lily’s home state of Florida.

Ted appears to have used \$150,000 recently advanced by GNB that were meant to pay his HVAC contractor, Robin, for a replacement HVAC system. Ted used the money instead to further his stake in MacLaren's. Robin is now threatening to file a mechanics' lien against the Arcadian for both the labor and materials related to the new HVAC system.

The Arcadian, and the real and personal property associated therewith, are the only assets of the PSH. GNB recently had the Arcadian appraised at \$120 million. MHC has interests in multiple other properties throughout the country valued in excess of \$1 billion dollars, but debt in roughly the same amount. Excluding his stock in MHC, Ted's net worth is roughly \$15 million due in large part to several land acquisitions he made over the years throughout the country. Ted has a lucrative podcast discussing architectural highlights throughout the country. He also now owns 49% of MacLaren's.

Marshall, general counsel for GNB, is trying to determine what his various options may with respect to the antics of Ted Mosby and the Arcadian. GNB has recently found several irregularities in the financial statements being issued to it many of which were prepared by Ted's outside accountant, Barney. Barney also happens to own the other 51% of McLarens, and has significant net worth on account of his accounting agency.

Marshall has approached his long-time law firm, Cantwell, Hemenway, and Moorlach, LLP, for assistance.



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A banner for the Midwest Bankruptcy Institute. The top left features the American Bankruptcy Institute and UMKC School of Law logos. The top right features a city skyline. The text "MIDWEST Bankruptcy Institute" is prominently displayed. Below this, the title "Receiverships: Bankruptcy Friend or Foe?" is centered. A white box contains a list of speakers and their firms:

Emily Cantwell
Lathrop GPM
Zach Hemenway
Stinson LLP
Eric Johnson
Spencer Fane LLP
John Moorlach
Whitfield & Eddy Law

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1



What Will Be Covered

- Types of Receivership
- Advantages and Disadvantages
- Intersection between Receivership and Bankruptcy
- Federal Priority Statute and other potential pitfalls

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Types of Receivership

<ul style="list-style-type: none"> • State Receiverships <ul style="list-style-type: none"> • General vs. Limited • Limited Jurisdictional Reach <ul style="list-style-type: none"> • Need of Ancillary Proceedings • Laws can vary from state to state <ul style="list-style-type: none"> • Injunctive Powers • Free and Clear Sales 	<ul style="list-style-type: none"> • Federal Receiverships <ul style="list-style-type: none"> • Jurisdiction <ul style="list-style-type: none"> • Limited by Subject Matter Jurisdiction • Nationwide Jurisdiction • 28 U.S.C. § 754 • Injunctive Powers • Arduous Sale Requirements • Better suited for regulatory enforcement than Debt collection
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The Arcadian Hypothetical

<ul style="list-style-type: none"> • Plaza Square Hotel LLC <ul style="list-style-type: none"> • Kansas LLC • Owns the Arcadian, 150 Person upscale hotel in Plaza area of KCMO • Appraised at \$120 million • Lines of Business <ul style="list-style-type: none"> • Hotel and Conference Center • Fitness Center • Corporate Tenant: McClarens 	<ul style="list-style-type: none"> • Mosby Holding Company <ul style="list-style-type: none"> • Delaware LLC • 100% Owner of PSH • Ted Mosby – Sole Member <ul style="list-style-type: none"> • Internet Personally • Real Estate Mogul • Net Worth: \$15 million
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The Arcadian Hypothetical

<ul style="list-style-type: none"> • MacLaren's Fine Spirits and Dispensary <ul style="list-style-type: none"> • Owners: Ted (49%) and Barney (51%) • Corporate Tenant at Arcadian • Percentage Based Rent • High end spirits, cannabis, and accessories 	<ul style="list-style-type: none"> • Goliath National Bank <ul style="list-style-type: none"> • Missouri Chartered Bank • Headquarters: KCMO • Construction Loan: \$110 Million <ul style="list-style-type: none"> • Co-Obligors: PSH and MHC • DOT and All Asset Security Agreement • Mosby Guarantor
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The Arcadian Hypothetical

<ul style="list-style-type: none"> • Unpaid Withholding and Real Estate Taxes • Unforgiven PPP Loan <ul style="list-style-type: none"> • Obligor: PSH • \$150,000 • Unsecured • Unknown if SBA has purchased loan back 	<ul style="list-style-type: none"> • Lily <ul style="list-style-type: none"> • Florida resident • License Agreement with PSH • Guaranteed by MHC/Ted • \$250,000 in arrears • Robin <ul style="list-style-type: none"> • Provided replacement HVAC • Owed \$150,000
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Should GNB pursue a Receivership?

<ul style="list-style-type: none"> • Which entities? • Should GNB pursue a federal or state receivership? <ul style="list-style-type: none"> • What would be the advantages? • What would be the disadvantages? • What must GNP show to get a receiver appointed? <ul style="list-style-type: none"> • Can GNP solely rely upon its receivership clause in the documents? • Does there have to be a showing of fraud or waste?

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What other enforcement options does GNB have?

- Is involuntary bankruptcy an option?
- Why should GNP not just foreclose and do an article 9 sale of the personal property of the Arcadian?

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What powers will the receiver have?

- Will the receiver be able to sell the property free and clear?
- The contract with Lily is potentially very valuable, how can it be handled under the Receivership?
 - If there is a state court receivership, how does it bind Lily?
- Can the receiver sue Ted for his various insider deals?
- Can the receiver sue Barney for being Ted's accomplice?
- Any concerns about conversations between the receiver and GNB?

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What obligations will the receiver have?

- What kind of reporting and consent rights can GNB expect?
- If the receiver sells, does the receiver have to pay the taxes before GNB?
- How does the PPP Loan potentially impact who the receiver can pay?

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What happens if a bankruptcy is filed?

- Does it matter which entity?
- Are there any impediments from a voluntary filing?
- What is the potential impact on the receiver?
- What should GNB initially due if a bankruptcy is filed?

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MIDWEST
Bankruptcy Institute

QUESTIONS?

2024 Midwestern Bankruptcy Institute

Receiverships: Bankruptcy Friend or Foe?

Panelists¹

Eric L. Johnson, Moderator
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¹ DISCLAIMER: These written materials and the presentation made by the panelists are intended for educational and discussion purposes only. The panelists are involved in cases regarding the various issues addressed in these materials and presentation. Any view or opinion expressed during the course of the presentation or in the materials is not intended to be attributable to the court, the clients of the panelists or the panelists' respective firms, and are not intended to bind any of the panelists, their firms, or their clients to any position or decision they may or may not take in those cases or in future cases.

I. INTRODUCTION

A. Why Use a Bankruptcy Alternative?

1. Certain situations do not demand all the protections of the Bankruptcy Code or can support the costs
2. Over the past several years, several states, including Missouri, have sought to modernize state insolvency laws
3. Higher acceptance by lenders who view the speed and lower cost as being advantageous
4. Greater flexibility for both Debtors and Creditors
5. More prompt and speedier distributions to creditors
6. In certain instances, less publicity than a bankruptcy filing

B. Two Main Types of Bankruptcy Alternatives

1. **Receiverships**
 - a. State
 - b. Federal
2. **Assignment for Benefit of Creditors**
 - a. Statutory
 - b. Common Law

II. RECEIVERSHIPS

A. Receivership – The Pros and Cons

1. Receivership Advantages

- a. Receiverships are flexible; cost effective way to achieve goals; can be done by agreement with borrower or by a contested lawsuit.
- b. Receivership is likely better for a secured creditor versus an unsecured creditor because the receiver will effectively be preserving the value of the secured lender's collateral for the benefit of the secured creditor. Unsecured creditors can only hope for a distribution down the road if unencumbered funds available.
- c. Greater ability to define and manage the scope of the receivership. A receiver may be sought to manage all aspects of a defendant's business and property, to preserve a single piece of property, or for all things in between.
- d. If creditor driven, one creditor may commence a receivership in instances where three noncontingent, undisputed unsecured creditors are likely needed to commence an involuntary bankruptcy.
- e. Whether by statute or by common law, some type of a stay is imposed on creditors to prevent a race to the Court house, although such stays are generally not as extensive as the automatic stay under 11 U.S.C. § 362. *See, e.g., Edminston v. J.C.G.-Medallion, Inc.*, 570 S.W.2d 306, 310 (Mo.Ct.App. 1978)(“While a prior lien is not affected by the appointment of a receiver over the property, a lien creditor may not disturb the possession of the court without its permission. That requirement arises more from considerations of decorum than from any authority of a receivership court to deny foreclosure of a valid prior lien. It allows a court an informed supervision over the affairs of the receivership property.”). *See also* Mo. Rev. Stat. § 515.575 (appointment of a general receiver under Missouri law will operate as a stay under certain parameters).

2. Receivership Disadvantages

- a. Law is not as precise or developed; can vary from state to state.
- b. If receivership contested, some courts, especially if no specific statutory guidance is provided, view it as harsh/extraordinary remedy. Be prepared to make a record.
- c. Receivership judge is typically a State or Federal court judge with limited experience in insolvency proceedings.

- d. If federal jurisdiction does not exist, state court jurisdictional limits will present challenges if the property sought to be included in the receivership estate is located in multiple states.
- e. If creditor driven, the debtor is likely not precluded from filing a voluntary bankruptcy.
- f. Avoidance actions more limited in receivership.
 - i. In most jurisdictions, no state law equivalent to routine preference actions.
 - ii. Depending on state law, a receiver may have ability to bring state law fraudulent transfer.
 - iii. Receivers may have other clawback actions, *e.g.*, constructive trust, etc.
- g. Federal Priority Statute will apply and can impose personal obligations on receiver

3. **Sale of Assets**

- a. Both receivership and bankruptcy allow for orders approving asset sale, which gives buyer some comfort. But the lure of a bankruptcy court order may be viewed as more valuable especially in large sale.
- b. Free and clear sales not as clear in receivership and may be subject to constitutional challenge.
- c. Growing acceptance by title companies of accepting receiver sales of real property.
- d. Receivership good option if borrower is absent, if the borrower out of the money on assets, and if no junior lien interests exist or junior lien holders consent.
- e. Receivership sales can be faster than a sale of assets in judicial foreclosure states.
- f. Selling real estate through receivership avoids financial institutions from taking asset on to its books as OREO (Other Real Estate Owned).

4. **Tax Considerations²**

- a. “Ensure the appointment order includes access to necessary documents and authority to file taxes”
- b. “Provide the IRS with notice of the fiduciary relationship”³
- c. “File tax returns for the applicable individual, entity and/or the receivership”⁴
- d. “Investigate potential pre-receivership tax returns and any outstanding tax liabilities”
- e. “Determine if the receivership is, or should be, a Qualified Settlement Fund”
- f. “Analyze the potential impact on investors, victims and other third parties”
- g. “Draft a discharge order and inform the IRS of the end of fiduciary responsibilities”

B. State Receiverships

1. Most states have some type of general receivership statute (*See Appendix B*).
 - a. Iowa: I.C.A. §§ 680.1 to 680.11 (general receivership statute); I.C.A. § 626.33 (lien enforcement)
 - b. Kansas: KSA §§ 60-1301 to 60-1305
 - c. Missouri: Mo. Rev. Stat. §§ 515.500 to 515.665⁵
 - d. Nebraska: Neb. Rev. Stat. §§ 25-1081 to 25-1092
 - e. Oklahoma: 12 Okl.St. Ann. §§ 1551 to 1560

In addition to general receivership statutes, many states have specialized receivership statutes for corporate liquidation/wrap-up, senior care facilities, cemeteries, utilities, and other specialized circumstances.

² See Joshua D. Smeltzer and Cort Thomas, “Tax Issues: A Checklist for Receivers,” *The Receiver*, Issue 10, pages 1, 10-14 (National Association of Federal Equity Receivers, 2020).

³ See IRS Form 56.

⁴ Understand what type of receivership and whether the Receiver or the Entity/Person is required to file returns and what type of return may need to be filed.

⁵ In 2016, Missouri enacted the Missouri Commercial Receivership Act (“MCRA”), which is a comprehensive Receivership statute.

2. A developing number of states, including Arizona, Florida, Maryland, Michigan, Nevada, North Carolina, Ohio, Oregon, Missouri, Minnesota, Nevada, Tennessee, Utah, Washington, and Wisconsin have updated receivership statutes that provide a more comprehensive guide to appointment of a receiver and receiverships, especially if the principal underlying debtor asset is commercial real estate.
3. Legal standards will vary from state to state. If the state has a general, non-comprehensive receivership statute (for example, Kansas), much of the receivership law is developed by common law and local practice. If the state has a comprehensive receivership statute (for example, Missouri), the legal standards may be well-defined, but continue to be supported by common law and local practice.
4. A receiver's bond and oath are required in most jurisdictions.
5. Can be limited (only over certain assets) or general (over entire corporate enterprise). The type of receivership will impact a variety of matters including tax and corporate governance. A general receiver may have more powers than a limited receiver, but will generally also have more reporting requirements.
6. A state court receivership's jurisdiction is limited by the territorial boundaries of the state, which may necessitate the filing of ancillary receiverships in other states in which receivership property is located.
7. In many states, receivership is an ancillary remedy only and must be joined with another cause of action. *Compare ABM Janitorial Services-North Cent. Inc. v. Pami Ryan Town Centre LLC*, 601 F.Supp.2d 1111, 1116 (N.D. Iowa 2008) ("It is settled that Iowa Code § 680.1 creates an ancillary remedy only and not a separate cause of action."), with Mo. Rev. Stat. § 515.510.6 ("The appointment of a receiver is not required to be relief ancillary or in addition to any other claim, and may be sought as an independent claim and remedy.").
8. Wrongful receivership is a tort in certain states, such as Kansas. *See, e.g., Braun v. Pepper*, 578 P.2d 695 (Kan. 1978).
 - a. If moving for *ex parte* receivership, the movant should be take care that sufficient grounds exist. *See id.* at 700 ("We believe that there is equal, if not more, justification for imposing the same liability for the wrongful *ex parte* appointment of a receiver as there is in cases involving wrongful attachments or garnishments. Protection for a debtor is especially justified where a creditor obtains the appointment of a receiver *ex parte* without an opportunity for the debtor to be heard.").
 - b. *Ex parte* receiverships should be used sparingly. *Id.* ("It is well-settled that the appointment of a receiver, *ex parte* and without notice, to take over one's property is one of the most drastic actions known to law or equity.").

C. Federal Receiverships

1. Basics

- a. The appointment of a receiver is a procedural matter governed by federal law and federal equitable principles. *See* Fed. R. Civ. P. 66.
- b. A Federal Receivership may be more fitting for parties that have property located in different districts. *See* 28 U.S.C § 756, 1692
- c. The jurisdictional grant to federal receivers is limited to districts in which real and personal property are located and to districts in which those asserting right in such property are located.
- d. Jurisdiction is usually premised on diversity because a party's foreclosure/enforcement action is not usually based upon a federal question. *See, e.g., U.S. Bank Nat'l Assoc. v. Legends of KC, LP*, 2:12-cv-02298-JTM.
 - i. If attempting a judicial foreclosure in a federal proceeding, diversity can be destroyed by unknown or non-record parties. *Compare Home Savings of America, F.A. v. Am. Nat'l Bank and Trust Co. of Chicago*, 762 F. Supp. 240 (N.D. Ill. 1991)(dismissing foreclosure action brought in federal court where plaintiff was seeking a binding determination of unknown parties) *with John Hancock Realty Development Corp. v. Harte*, 568 F.Supp. 515 (N.D.Ill.1983)(refusing to dismiss finding the unknown parties were nominal "with no substantial interest in the controversy").
- e. Federal courts may appoint receivers in cases arising out of the violation of federal or state laws.
 - i. *FTC v. CWB Services, LLC*, Case No. 4:14-cv-00783-DW
 - ii. *FTC v. BF Labs, Inc.*, Case No. 4:14-cv-00815-BCW
 - iii. *FTC. v. Next-Gen Inc., et al.*, Case No. Case No. 4:18-CV-00128-DGK

2. Legal Standards

- a. ***Burden of Proof:*** Movant
- b. ***Standard of Review:*** Abuse of Discretion

- c. **Legal Standard:** Considered an extreme remedy, except if contrary statutory guidance exists; No precise formula, but following factors considered:⁶
 - i. “[V]alid claim by the party seeking the appointment”
 - ii. “[P]robability that fraudulent conduct has occurred or will occur to frustrate that claim”
 - iii. “[I]mminent danger that property will be concealed, lost, or diminished in value”
 - iv. “[I]nadequacy of legal remedies”
 - v. “[L]ack of a less drastic equitable remedy”
 - vi. “[L]ikelihood that appointing the receiver will do more good than harm

3. Federal Receiver Procedure

a. General Requirements

- i. Bond
- ii. Reporting and inventories
- iii. If property located in other districts, a receiver must file a complaint and order of appointment within 10 days in such districts. 28 U.S.C. § 754.

b. General Procedures

- i. Receivership Order will control many aspects.
- ii. In the Western District of Missouri, the receiver must administer the estate as nearly as may be in accordance with the practice in the administration of estates in bankruptcy unless Order provides otherwise. *See* W.D. Mo. L.R. 66.1

4. Sale of Assets

- a. The sales of assets by a receiver are governed by 28 U.S.C. §§ 2001, 2002, and 2004.

⁶ *Aviation Supply Corp. v. R.S.B.I. Aerospace, Inc.*, 999 F.2d 314 (8th Cir. 1993).

- b. The statutes governing the sale of assets are very specific with respect to certain requirements such as notice and appraisals, but vague with respect to the procedure for the sales.

III. KEY BANKRUPTCY AND OTHER FEDERAL PROVISIONS RELATED TO RECEIVERSHIPS

A. 11 U.S.C. § 543.

1. Definition of “custodian” under Bankruptcy Code includes receivers and assignees. *See* 11 U.S.C. § 101(11).
2. Section 543(a)-(b) requires a custodian to turnover property of the estate to the trustee (or debtor-in-possession) and provide and accounting upon a case being filed.
3. Section 543(c) provides certain protections to a custodian such as reasonable compensation. It also provides for a surcharge for excessive or improper disbursements by assignee.
4. Section 543(d)(1) provides that the Court may excuse compliance with Sections 543(a)-(c) if it is in best interest of creditors.
 - a. In evaluating whether a custodian should be excused from compliance with Code § 543, courts apply a multi-factored best interests of creditors test. *See, e.g., In re Franklin*, 476 B.R. 545, 551 (Bankr.N.D.Ill. 2012); *In re Falconridge, LLC*, 2007 WL 3332769 at *7, 2007 Bankr.LEXIS 3755, at *21-22 (Bankr. N.D. Ill. Nov. 8, 2007) (citing various types of mismanagement excusing turnover); *In re Dill*, 163 B.R. 221, 226 (E.D.N.Y. 1994); *In re Lizeric Realty Corp.*, 188 B.R. 499 (Bankr.S.D.N.Y. 1995) (turnover by receiver may be excused for cause); *In re Foundry of Barrington Partnership*, 129 B.R. 550, 558 (Bankr.N.D.Ill. 1991) (receiver excused from turnover requirement).
5. Section 543(d)(2) provides that a Court shall excuse compliance with Sections 543(a) and (b)(1), if (a) the custodian is an assignee for the benefit of the debtor's creditors; (b) the custodian was appointed or took possession more than 120 days before the date of the filing of the petition, and (c) compliance with Sections 543(a) and (b)(1) is not necessary to prevent fraud or injustice.

B. Can and should a receiver place an entity into bankruptcy?

1. Ability to do so may depend upon jurisdiction, type of receivership, and what is contained in the receivership order. *See, e.g., In re Fastech Production, LLC*, 2010 WL 146401 (Bankr. E.D. Okla. 2010)(finding that the Receivership Order did not prohibit members from filing bankruptcy even with receiver in place); *In re StatePark Building Group, Ltd.*, 316 B.R. 466 (Bankr. N.D. Tex. 2004) (finding

Receiver had authority to file bankruptcy); *Sino Clean Energy Inc. v. Seiden*, 565 B.R. 677 (D. Nev. 2017) (former directors no longer had authority to file bankruptcy).

2. A party needs to understand what bankruptcy can provide that cannot be done under applicable receivership law. Considerations may include, without limitation, ability to sell free and clear of liens, impact and ability to bring avoidance actions, assertion of nationwide jurisdiction, and implementation of automatic stay.
3. **In Pari Delicto Considerations:** *Kelly v. BMO Harris Bank National Assoc.*, 115 F.4th 901 (8th Cir. 2024)
 - a. **In Pari Delicto Defined:** The equitable defense of *in pari delicto* embodies the principle that a plaintiff who has participated in wrongdoing may not recover damages resulting from the wrongdoing.” *Id.* at 904.
 - b. **Facts:** Arising out of the Petters ponzi scheme, the jury awarded trustee \$484,209,716 in compensatory damages and \$79,533,392 in punitive damages for bank’s aiding and abetting breach of fiduciary. Prior to jury finding, district court denied bank use of *in pari delicto* defense.
 - c. **Issue:** Whether Chapter 7 Trustee subject to equitable defense of *in pari delicto* when the bankruptcy was proceeded by a receivership?
 - d. **Holding:** Receivership did not cleanse bankruptcy estate of *in pari delicto* defense and could be raised by bank defendant as a defense.

C. Federal Priority Statute

1. **Citation:** 31 U.S.C. § 3713
2. **What does it do:** Prioritizes federal debts over other debts in certain insolvency situations. *Does not apply in Bankruptcy Cases.*
3. **Key Elements**
 - a. Debt owed to federal government, e.g., taxes, SBA loan obligations, etc.
 - b. Insolvency
 - c. Voluntary assignment of assets or an act of bankruptcy committed, e.g., receivership
4. **Why parties should care:** It can create personal liability on the fiduciary, i.e., receiver.

5. **Exceptions**

- a. If government acquired debt post act of bankruptcy, i.e., after receivership put in place. *See* Allen J. Guon, *Fiduciaries Must “CARE”: Personal Liability for PPP Loans Under Federal Priority Statute*, XL ABI Journal 6, 26-27, 50-51, June 2021 (citing *U.S. v. Marxen*, 307 U.S. 200, 208 (1939); *U.S. v. Brocato*, 403 F.2d 105, 109-10 (5th Cir. 1968)).
- b. Priority subject to “specific and perfected lien” held by a secured creditor. *See id.* (citing *U.S. v. Estate of Romani*, 523 U.S. 517, 529 (1998)).
- c. Inconsistent with subsequently enacted federal laws, e.g., Tax Lien Act. *See id.*

APPENDIX A – RECEIVERSHIP RESOURCES AND SOURCES

Acknowledgment

The panelists would like to acknowledge the materials are an updated version of the following:

Geoffrey L. Berman, Robert Hammeke, Eric L. Johnson, and Hon. Holly L. Teeter, *What's My Alternative?: Counsel Your Client and the Court with Respect to Bankruptcy Alternatives*, 40th Annual Midwestern Bankruptcy Institute (October 2020).

Further, the following materials were used as source material:

Robert Hammeke, Eric Johnson, Michele O'Malley, and Michael Tamburini, *The Intersection of Receivership & Bankruptcy*, Kansas City Bankruptcy Bar Association Commercial Practice Seminar (November 2018)

Mark Stingley and Eric Johnson, *Missouri's New Receivership Statute and Other Non-Bankruptcy Alternatives*, MoBar 2017 Annual Bankruptcy Institute (March 2017)

Mark Stingley and Eric Johnson, *Change is Coming to Business Bankruptcy*, KBA 2016 Bankruptcy & Insolvency CLE (April 2016), KBA 2016 Corporation Banking & Business, Corporate Counsel and Tax CLE (May 2016)

Additional Resources

Eric Peterson, *Commercial Receivership Act Guidebook*, MoBar (2017)

Phillip S. Stenger, *Receivership Sourcebook* (5th Ed. 2013)

Robert A. Hammeke, *Strategic Alternatives For and Against Distressed Businesses*, Chapter 11 - State Court Receiverships, Chapter 51 - Kansas Receivership Guide, Chapter 59 - Missouri Receivership Guide (2020 Ed.)

APPENDIX B– RELEVANT RECEIVERSHIP STATUTES

IOWA

I.C.A. § 680.1. Appointment. On the petition of either party to a civil action or proceeding, wherein the party shows that the party has a probable right to, or interest in, any property which is the subject of the controversy, and that such property, or its rents or profits, are in danger of being lost or materially injured or impaired, and on such notice to the adverse party as the court shall prescribe, the court, if satisfied that the interests of one or both parties will be thereby promoted, and the substantial rights of neither unduly infringed, may appoint a receiver to take charge of and control such property under its direction during the pendency of the action, and may order and coerce the delivery of it to the receiver.

I.C.A. § 680.2. Permissible Proofs. Upon the hearing of the application, affidavits, and such other proof as the court or judge permits, may be introduced, and upon the whole case such order made as will be for the best interest of all parties concerned.

I.C.A. § 680.3. Oath and Bond. Before entering upon the discharge of the receiver's duties, the receiver must be sworn faithfully to discharge the trust to the best of the receiver's ability, and must also file with the clerk a bond with sureties, to be approved by the clerk, in a penalty to be fixed by the court, and conditioned for the faithful discharge of the receiver's duties, and that the receiver will obey the orders of the court in respect thereto.

I.C.A. § 680.4. Powers. Subject to the control of the court, a receiver has power to bring and defend actions, to take and keep possession of property, to collect debts, to receive the rents and profits of real property, and, generally, to do such acts in respect to the property committed to the receiver as may be authorized by law or ordered by the court.

I.C.A. § 680.5. Priority of Liens. Persons having liens upon the property placed in the hands of a receiver shall, if there is a contest as to their priority, submit them to the court for determination.

I.C.A. § 680.6. Taxes as Prior Claim – Nonnecessity to File. When the assets of any corporation, partnership, or person shall be placed in the hands of a receiver, all taxes against said corporation, partnership, or person, whether levied under the laws of the state or ordinances of municipal corporations, shall be entitled to priority and be first paid in full by the receiver and claims therefor need not be filed with said receiver.

I.C.A. § 680.7. Claims Entitled to Priority. When the property of any person, partnership, company, or corporation has been placed in the hands of a receiver for distribution, after the payment of all costs the following claims shall be entitled to priority of payment in the order named:

1. Taxes or other debts entitled to preference under the laws of the United States.
2. Debts due or taxes assessed and levied for the benefit of the state, county, or other municipal corporation in this state.
3. Debts owing to employees for labor or work performed or services rendered as provided in section 626.69.

I.C.A. § 680.8. Nonapplicability. The provisions of section 680.7 shall not apply to the receivership of state banks, as defined in section 524.105, trust companies, or private banks. In addition, in the receivership of such state banks and trust companies, or private banks, no preference or priority shall be allowed as is provided in section 680.7 except for labor or wage claims as provided by statute.

I.C.A. § 680.9. Legislative Intent. The provisions of section 680.8 are declaratory of the intent of the legislature and of its interpretation of the provisions of section 680.7.

I.C.A. § 680.10. Discovery of Assets. The court having direction or control of a receiver may, on its own motion, or on motion of the receiver, require any person suspected of having taken wrongful possession of any of the effects of any person, corporation, or partnership for which said receiver has been appointed, or of having had such effects under the person's control, or any officer or agent of any such suspected person, to appear and submit to an examination,

under oath, touching such matters, and if, on such examination, it appears that the person examined has the wrongful possession of any such property, the court may order the delivery thereof to the receiver.

I.C.A. § 680.11. Contempt. If, on being served with the order of the court requiring the person to do so, any person fails to appear in accordance therewith, or if, having appeared, the person refuses to answer any questions which the court thinks proper to be put to the person in the course of such examination, or if the person fails to comply with the order of the court requiring the person to deliver any such property or effects to the receiver, the person may be committed to the jail of the county until the person does.

I.C.A. § 626.33. Lien – Equitable Proceeding – Receiver. The plaintiff shall, from the time such property is so levied on, have a lien on the interest of the defendant therein, and may commence an action by equitable proceedings to ascertain the nature and extent of such interest and to enforce the lien; and, if deemed necessary or proper, the court may appoint a receiver under the circumstances provided in the chapter relating to receivers.

KANSAS

KSA 60-1301. Appointment. A justice of the supreme court, a judge of the court of appeals or a district judge, or in the district judge's absence from the county a district magistrate judge, shall have authority to appoint a receiver in conformity with the provisions of K.S.A. 60-1302 and 60-1303, and amendments thereto, whose duty it shall be to keep, preserve, and manage all property and protect any business or business interest entrusted to the receiver pending the determination of any proceeding in which such property or interest may be affected by the final judgment. A person who has an interest in property or in the outcome of the proceeding shall not be appointed or continued as a receiver if objection is made thereto by another interested party unless the judge finds and rules that such objection is arbitrary or unreasonable.

KSA 60-1302. Oath and Bond. The receiver shall before entering upon his or her duties, (1) be sworn to perform them faithfully, and (2) execute a bond with sufficient sureties to such persons on such conditions and in such sum as the judge shall direct. Additional bond may be required or the bond may be reduced by the court at any time.

KSA 60-1303. Powers. The receiver shall perform such acts respecting the property or business as the judge may authorize.

KSA 60-1304. Petition for Appointment; Specifications; Notice; Bond; Application to Nonresidents. A receiver shall not be appointed unless: (a) The petition or application for appointment specifies, to the extent known to the petitioner or applicant, the general character and probable value of the property, business or business interest for which the appointment is sought, and, if real property is involved, the estimated annual income therefrom; (b) notice and an opportunity to be heard is given to the interested parties, including any person or persons known to be in possession of all or any part of such property, business or business interest, unless the judge shall, after the introduction of evidence and a record of the proceeding is made, make a finding that immediate and irreparable injury is likely to result, and shall set forth in the order the probable nature of such immediate and irreparable injury. The judge may also require the petitioner or applicant to execute a bond, on such terms as the judge may direct, which bond shall not be a substitute for or in lieu of the bond of the receiver required in K.S.A. 60-1302. This section shall not apply where the defendant is a nonresident or a foreign corporation not authorized to do business in this state.

KSA 60-1305. Appeal. An aggrieved party may, within 14 days, appeal from an order appointing or refusing to appoint a receiver without awaiting final determination of the proceeding. If a receiver has been appointed and the appellant files an appeal bond with such terms and conditions as the judge may direct, the appointment shall be suspended and the property retained in the possession of the appellant pending the final determination of the appeal.

MISSOURI

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Mo. Rev. Stat. § 515.500. Citation of Law. Sections 515.500 to 515.665 may be cited as the "Missouri Commercial Receivership Act".

Mo. Rev. Stat. § 515.505. Definitions. As used in sections 515.500 to 515.665, the following terms shall mean:

(1) "Affiliate":

(a) A person that directly or indirectly owns, controls, or holds with power to vote twenty percent or more of the outstanding voting interests of a debtor, other than:

a. An entity that holds such securities in a fiduciary or agency capacity without sole discretionary power to vote such interests; or

b. Solely to secure a debt, if such entity has not in fact exercised such power to vote;

(b) A person whose business is operated under a lease or operating agreement by a debtor, or a person substantially all of whose property is operated under an operating agreement with a debtor; or

(c) A person that directly or indirectly operates the business or substantially all of the property of the debtor under a lease or operating agreement or similar arrangement;

(2) "Claim", a right to payment whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured, or a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured;

(3) "Court", a circuit court of the state of Missouri before which an application to appoint a receiver under sections 515.500 to 515.665 has been made or granted, or before which a receivership action under sections 515.500 to 515.665 is pending;

(4) "Creditor", a person that has a claim against the debtor that arose at the time of or before the appointment of a receiver pursuant to sections 515.500 to 515.665;

(5) "Debt", liability on a claim;

(6) "Debtor", a person as to which a receiver is sought to be appointed or a court appoints pursuant to sections 515.500 to 515.665, a person who owns property as to which a receiver is sought to be appointed or a court appoints a receiver pursuant to sections 515.500 to 515.665, a person as to which a receiver has been appointed by a court in a foreign jurisdiction, or a person who owns property as to which a receiver has been appointed by a court in a foreign jurisdiction;

(7) "Entity", a person other than a natural person;

(8) "Estate property", property as to which a court appoints a receiver pursuant to sections 515.500 to 515.665;

(9) "Executory contract", a contract, including a lease, where the obligations of the debtor and the counter party or counter parties to the contract are unperformed to the extent that the failure of either party to complete performance of its obligations would constitute a material breach of the contract, thereby excusing the other party's performance of its obligations under the contract;

(10) "Foreign jurisdiction", any state or federal jurisdiction other than that of this state;

- (11) “Insolvent”, a financial status or condition such that the sum of the person’s debts is greater than the value of such person’s property, at fair valuation;
- (12) “Lien”, a charge against property or an interest in property to secure payment of a debt or performance of an obligation whether created voluntarily or by operation of law;
- (13) “Notice and a hearing”, such notice as is appropriate and an opportunity for hearing if one is requested. Absent request for hearing by an appropriate person or party in interest, the term notice and a hearing does not indicate a requirement for an actual hearing unless the court so orders;
- (14) “Party”, a person who is a party to the action, becomes a party to the action, or shall be joined or shall be allowed to intervene in the action pursuant to the rules of the Missouri supreme court, including, without limitation, any person needed for just adjudication of the action;
- (15) “Party in interest”, the debtor, any party, the receiver, any person with an ownership interest in or lien against estate property or property sought to become estate property, any person that, with respect to particular matters presented in the receivership, has an interest that will be affected, and, in a general receivership, any creditor of the debtor;
- (16) “Person”, includes natural persons, partnerships, limited liability companies, corporations, and other entities recognized under the laws of this state;
- (17) “Property”, any right, title, and interest, of the debtor, whether legal or equitable, tangible or intangible, in real and personal property, regardless of the manner by which such rights were or are acquired, but does not include property of an individual person exempt from execution under the laws of this state; provided however, that estate property includes any nonexempt interest in property that is partially exempt. Property includes, but is not limited to, any proceeds, products, offspring, rents, or profits of or from property. Property does not include any power that a debtor may exercise solely for the benefit of another person or property impressed with a trust except to the extent that the debtor has a residual interest;
- (18) “Receiver”, a receiver appointed by a court pursuant to sections 515.500 to 515.665;
- (19) “Receivership”, the estate created pursuant to the court’s order or orders appointing a receiver pursuant to sections 515.500 to 515.665, including all estate property and the interests, rights, powers, and duties of the receiver and all parties in interest relating to estate property;
- (20) “Receivership action”, the action as to which a receiver is sought to be appointed or a court appoints a receiver pursuant to sections 515.500 to 515.665;
- (21) “Secured creditor”, a creditor that has a security interest or other lien on estate property.

Mo. Rev. Stat. § 515.510. Court Authorized to Appoint Receiver, When, Procedure.

1. To the extent the appointment of a receiver is not otherwise provided for pursuant to sections 49.555, 82.1026, 91.730, 198.099, 257.450, 276.501, 287.360, 287.875, 351.498, 351.1189, 354.357, 354.480, 355.736, 369.354, 370.154, 375.650, 375.954, 375.1166, 375.1176, 379.1336, 379.1418, 382.409, 393.145, 407.100, 425.030, 441.510, 443.893, 513.105, 513.110, 521.310, 537.500, 630.763, or any other statute providing for the appointment of a receiver or administration of a receivership estate in specific circumstances, the court or any judge thereof in vacation, shall have the power to appoint a receiver, whenever such appointment shall be deemed necessary, whose duty it shall be to keep and preserve any money or other thing deposited in court, or that may be subject of a tender, and to keep and preserve all property and protect any business or business interest entrusted to the receiver pending any legal or equitable action concerning the same, subject to the order of the court, including in the following instances:

- (1) In an action brought to dissolve an entity the court may appoint a receiver with the powers of a custodian to manage the business affairs of the entity and to wind up and liquidate the entity;

(2) In an action in which the person seeking appointment of a receiver has a lien on or interest in property or its revenue-producing potential, and either:

(a) The appointment of a receiver with respect to the property or its revenue-producing potential is necessary to keep and preserve the property or its revenue-producing potential or to protect any business or business interest concerning the property or its revenue-producing potential; or

(b) The appointment of a receiver with respect to the property or its revenue-producing potential is provided for by a valid and enforceable contract or contract provision; or

(c) The appointment of a receiver is necessary to effectuate or enforce an assignment of rents or other revenues from the property;

(3) After judgment, in order to give effect to the judgment, provided that the party seeking the appointment demonstrates it has no other adequate remedy to enforce the judgment;

(4) To dispose of property according to provisions of a judgment dealing with its disposition;

(5) To the extent that property is not exempt from execution, at the instance of a judgment creditor either before or after the issuance of any execution, to preserve or protect it, or prevent its transfer;

(6) If and to the extent that property is subject to execution to satisfy a judgment, to preserve the property during the pendency of an appeal, or when an execution has been returned unsatisfied, or when an order requiring a judgment debtor to appear for proceedings supplemental to judgment has been issued and the judgment debtor fails to submit to examination as ordered;

(7) Upon attachment of real or personal property when the property attached is of a perishable nature or is otherwise in danger of waste, impairment, or destruction or where a debtor has absconded with, secreted, or abandoned the property, and it is necessary to collect, conserve, manage, control, or protect it, or to dispose of it promptly, or when the court determines that the nature of the property or the exigency of the case otherwise provides cause for the appointment of a receiver;

(8) In an action by a transferor of real or personal property to avoid or rescind the transfer on the basis of fraud, or in an action to subject property or a fund to the payment of a debt;

(9) In an action against any entity if that person is insolvent or is not generally paying the entity's debts as those debts become due unless they are the subject of bona fide dispute;

(10) In an action where a mortgagee has posted and the court has approved a redemption bond as provided pursuant to section 443.440;

(11) If a general assignment for the benefit of creditors has been made;

(12) Pursuant to the terms of a valid and enforceable contract or contract provision providing for the appointment of a receiver, other than pursuant to a contract or contract provision providing for the appointment of a receiver with respect to the primary residence of a debtor who is a natural person;

(13) To enforce a valid and enforceable contractual assignment of rents or other revenue from the property; and

(14) To prevent irreparable injury to the person or persons requesting the appointment of a receiver with respect to the debtor's property.

2. A court of this state shall appoint as receiver of property located in this state a person appointed in a foreign jurisdiction as receiver with respect to the property specifically or with respect to the debtor's property generally, upon

the application of the receiver appointed in the foreign jurisdiction or of any party to that foreign action, and following the appointment shall give effect to orders, judgments, and decrees of the court in the foreign jurisdiction affecting the property in this state held by a receiver appointed in the foreign jurisdiction, unless the court determines that to do so would be manifestly unjust or manifestly inequitable. The venue of such an action may be any county in which the debtor resides or maintains any office, or any county in which any property over which a receiver is to be appointed is located at the time the action is commenced.

3. At least seven days' notice of any application for the appointment of a receiver shall be given to the debtor and to all other parties to the action in which the request for appointment of a receiver is sought, and to all other parties in interest as the court may require. If any execution by a judgment creditor or any application by a judgment creditor for the appointment of a receiver with respect to property over which the appointment of a receiver is sought is pending in any other action at the time the application is made, then notice of the application for the receiver's appointment also shall be given to the judgment creditor in the other action. The court may shorten or expand the period for notice of an application for the appointment of a receiver upon good cause shown.

4. The order appointing a receiver shall reasonably describe the property over which the receiver is to take charge, by category, individual items, or both if the receiver is to take charge of less than substantially all of the debtor's property. If the order appointing a receiver does not expressly limit the receiver's authority to designated property or categories of property of the owner, the receiver shall be deemed a general receiver with authority to take charge over all of the debtor's property, wherever located.

5. The court may condition the appointment of a receiver upon the giving of security by the person seeking the appointment of a receiver, in such amount as the court may specify, for the payment of costs and damages incurred or suffered by any person should it later be determined that the appointment of the receiver was wrongfully obtained.

6. The appointment of a receiver is not required to be relief ancillary or in addition to any other claim, and may be sought as an independent claim and remedy.

7. Sections 515.500 to 515.665 shall not apply to persons or entities who are, or who should be, regulated as public utilities by the public service commission.

Mo. Rev. Stat. 515.515. General and Limited Receivers. A receiver shall be either a general receiver or a limited receiver. A receiver shall be a general receiver if the receiver is appointed to take possession and control of all or substantially all of a debtor's property and provided the power to liquidate such property. A receiver shall be a limited receiver if the receiver is appointed to take possession and control of only limited or specific property of a debtor, whether to preserve or to liquidate such property. A receiver appointed at the request of a person having a lien on or interest in specific property that constitutes all or substantially all of a debtor's property may be either a general receiver or a limited receiver. The court shall specify in the order appointing a receiver whether the receiver is appointed as a general receiver or as a limited receiver. The court by order, upon notice and a hearing, may convert either a general receiver into a limited receiver or a limited receiver into a general receiver for good cause shown. In the absence of a clear designation by the court of the type of receiver appointed, whether limited or general, the receiver shall be presumed to be a general receiver and shall have the rights, powers, and duties attendant thereto.

Mo. Rev. Stat. § 515.520. Notice of Appointment, Content.

1. Upon entry of an order appointing a receiver or upon conversion of a limited receiver to a general receiver pursuant to section 515.515 and within ten business days thereof, or within such additional time as the court may allow, the receiver shall give notice of the appointment or conversion to all parties in interest, including the secretary of state for the state of Missouri, and state and federal taxing authorities. Such notice shall be made by first class mail and proof of service thereof shall be filed with the court. The content of such notice shall include:

- (1) The caption reflecting the action in which the receiver is appointed;
- (2) The date the action was filed;

- (3) The date the receiver was appointed;
- (4) The name, address, and contact information of the appointed receiver;
- (5) Whether the receiver is a limited or general receiver;
- (6) A description of the estate property;
- (7) The debtor's name and address and the name and address of the attorney for the debtor, if any;
- (8) The court address at which pleadings, motions, or other papers may be filed;
- (9) Such additional information as the court directs; and
- (10) A copy of the court's order appointing the receiver.

2. A general receiver shall also give notice of the receivership by publication in a newspaper of general circulation published in the county or counties in which estate property is known to be located once a week for three consecutive weeks. The first notice shall be published within thirty days after the date of appointment of the receiver. The notice of the receivership shall include the date of appointment of the receiver, the name of the court and the action number, the last day on which claims may be filed, if established by the court, and the name and address of the debtor, the receiver, and the receiver's attorney, if any. For purposes of this section, all intangible property included as estate property is deemed to be located in the county in which the debtor, if a natural person, resides, or in which the debtor, if an entity, maintains its principal administrative offices.

3. The debtor shall cooperate with all reasonable requests for information from the receiver for purposes of assisting the receiver in providing notice pursuant to subsection 1 of this section. In the court's discretion, the failure of such debtor to cooperate with any reasonable request for information may be punished as a contempt of court.

Mo. Rev. Stat. § 515.525. Replacement of Receiver, When. Except as provided in sections 515.500 to 515.665 or otherwise by statute, any person, whether or not a resident of this state, may serve as a receiver. A person may not be appointed as a receiver, and shall be replaced as receiver if already appointed, if it should appear to the court that the person:

- (1) Has been found guilty of a felony or other crime involving moral turpitude or is controlled by a person who has been convicted of a felony or other crime involving moral turpitude;
- (2) Is a party to the action, or is a parent, grandparent, grandchild, sibling, partner, director, officer, agent, attorney, employee, secured or unsecured creditor or lienor of, or holder of any equity interest in, or controls or is controlled by, the debtor, or who is the agent, affiliate, or attorney of any disqualified person;
- (3) Has an interest materially adverse to the interest of persons to be affected by the receivership generally;
or
- (4) Is a sheriff of any county.

Mo. Rev. Stat. § 515.530. Bond Requirements. Except as otherwise provided for by statute or court rule, before entering upon duties of receiver, a receiver shall execute a bond with one or more sureties approved by the court, in the amount the court specifies, conditioned that the receiver will faithfully discharge the duties of receiver in accordance with orders of the court and state law. Unless otherwise ordered by the court, the receiver's bond runs in favor of all persons having an interest in the receivership proceeding or property held by the receiver and in favor of state agencies.

Mo. Rev. Stat. § 515.535. Receiver to Have Powers and Priority of Creditor. As of the time of appointment, and subject to the provisions of subdivision (3) of subsection 3 of section 515.575, the receiver shall have the powers and

priority as if it were a creditor that obtained a judicial lien at the time of appointment on all of the debtor's property that is subject to the receivership, subject to satisfaction of recording requirements as to real property pursuant to paragraph (c) of subsection 2 of section 515.545.

Mo. Rev. Stat. § 515.540. Court to Have Exclusive Authority, When.

1. Except as otherwise provided for by sections 515.500 to 515.665, the court in all cases has exclusive authority over the receiver, and the exclusive possession and right of control with respect to all real property and all tangible and intangible personal property with respect to which the receiver is appointed, wherever located, and the exclusive authority to determine all controversies relating to the collection, preservation, application, and distribution of all property, and all claims against the receiver arising out of the exercise of the receiver's powers or the performance of the receiver's duties. However, the court does not have exclusive authority over actions in which a state agency is a party and in which jurisdiction or venue is vested elsewhere.

2. For good cause shown, the court has power to shorten or expand the time frames specified in sections 515.500 to 515.665.

Mo. Rev. Stat. § 515.545. Powers, Authority, and Duties of Receivers.

1. A receiver has the following powers and authority:

(1) To incur or pay expenses incidental to the receiver's preservation and use of estate property, and otherwise in the performance of the receiver's duties, including the power to pay obligations incurred prior to the receiver's appointment if and to the extent that payment is determined by the receiver to be prudent in order to preserve the value of estate property and the funds used for this purpose are not subject to any lien or right of setoff in favor of a creditor who has not consented to the payment and whose interest is not otherwise adequately protected;

(2) If the appointment applies to all or substantially all of the property of an operating business or any revenue-producing property of the debtor, to do all the things which the owner of the business or property may do in the exercise of ordinary business judgment, or in the ordinary course of the operation of the business as a going concern or use of the property including, but not limited to, the purchase and sale of goods or services in the ordinary course of such business, and the incurring and payment of expenses of the business or property in the ordinary course;

(3) To assert any rights, claims, or choses in action of the debtor, if and to the extent that the rights, claims, or choses in action are themselves property within the scope of the appointment or relate to any estate property, to maintain in the receiver's name or in the name of the debtor any action to enforce any right, claim, or chose in action, and to intervene in actions in which the debtor is a party for the purpose of exercising the powers under this subsection;

(4) To intervene in any action in which a claim is asserted against the debtor, for the purpose of prosecuting or defending the claim and requesting the transfer of venue of the action to the court appointing the receiver. However, the court shall not transfer actions in which a state agency is a party and as to which a statute expressly vests jurisdiction or venue elsewhere. This power is exercisable with court approval by a limited receiver, and with or without court approval by a general receiver;

(5) To assert rights, claims, or choses in action of the receiver arising out of transactions in which the receiver is a participant;

(6) To pursue in the name of the receiver any claim under sections 428.005 to 428.059 assertable by any creditor of the debtor, if pursuit of the claim is determined by the receiver to be appropriate in the exercise of the receiver's business judgment;

(7) To seek and obtain advice or instruction from the court with respect to any course of action with respect

to which the receiver is uncertain in the exercise of the receiver's powers or the discharge of the receiver's duties;

(8) To obtain appraisals with respect to estate property;

(9) To compel by subpoena any person to submit to an examination under oath, in the manner of a deposition in accordance with rule 57.03 of the Missouri rules of civil procedure, with respect to estate property or any other matter that may affect the administration of the receivership;

(10) To use, sell, or lease property other than in the ordinary course of business pursuant to section 515.645, and to execute in the debtor's stead such documents, conveyances, and borrower consents as may be required in connection therewith; and

(11) All other powers as may be conferred upon the receiver specifically by sections 515.500 to 515.665, by statute, court rule, or by the court.

2. A receiver has the following duties:

(1) The duty to notify all federal and state taxing and applicable regulatory agencies of the receiver's appointment in accordance with any applicable laws imposing this duty, including but not limited to, 26 U.S.C. Section 6036;

(2) The duty to comply with state law;

(3) If a receiver is appointed with respect to any real property, the duty to record as soon as practicable within the land records in any county in which such real property may be situated a notice of lis pendens as provided in section 527.260, together with a certified copy of the order of appointment, together with a legal description of the real property if one is not included in that order; and

(4) Other duties as may be required specifically by sections 515.500 to 515.665, by statute, court rule, or by the court.

3. The various powers, authorities, and duties of a receiver provided by sections 515.500 to 515.665 may be expanded, modified, or limited by order of the court.

Mo. Rev. Stat. § 515.550. Estate Property, Turnover of Upon Demand – Court Action to Compel.

1. Upon demand by a receiver, any person, including the debtor, shall turn over any estate property that is within the possession or control of that person unless otherwise ordered by the court for good cause shown. A receiver by motion may seek to compel turnover of estate property as against any person over which the court first establishes jurisdiction, unless there exists a bona fide dispute with respect to the existence or nature of the receiver's possessory interest in the estate property, in which case turnover shall be sought by means of a legal action. In the absence of a bona fide dispute with respect to the receiver's right to possession of estate property, the failure to relinquish possession and control to the receiver shall be punishable as a contempt of the court.

2. Should the court after notice and a hearing pursuant to subsection 1 of this section order the turnover of property to the receiver, the party against which such order is made shall have the right to deliver a bond executed by such party as principal together with one or more sufficient sureties providing that the principal and each such surety shall each be bound to the receiver in double the amount of the value of the property to be turned over, should the property not be turned over to the receiver when such order becomes final. Absent such bond, the property ordered to be turned over to the receiver shall be immediately turned over to the receiver within ten days of the entry of such order.

Mo Rev. Stat. § 515.555. Debtor duties and requirements.

1. In addition to other duties and requirements set forth in sections 515.500 to 515.665 and as ordered by the court,

the debtor shall:

- (1) Within fourteen days of the appointment of a general receiver, make available for inspection by the receiver during normal business hours all information and data required to be filed with the court pursuant to section 515.560, in the form and manner the same are maintained in the ordinary course of the debtor's business;
- (2) Assist and cooperate fully with the receiver in the administration of the estate and the discharge of the receiver's duties, and comply with all orders of the court;
- (3) Supply to the receiver information necessary to enable the receiver to complete any schedules or reports that the receiver may be required to file with the court, and otherwise assist the receiver in the completion of the schedules;
- (4) Upon the receiver's appointment, deliver into the receiver's possession all the property of the receivership estate in the person's possession, custody, or control, including, but not limited to, all accounts, books, papers, records, and other documents; and
- (5) Following the receiver's appointment, submit to examination by the receiver, or by any other person upon order of the court, under oath, concerning the acts, conduct, property, liabilities, and financial condition of that person or any matter relating to the receiver's administration of the estate.

2. When the debtor is an entity, each of the officers, directors, managers, members, partners, or other individuals exercising or having the power to exercise control over the affairs of the entity are subject to the requirements of this section.

Mo. Rev. Stat. § 515.560. Debtor to File Schedules, When.

1. Within thirty days after the date of appointment of a general receiver, the debtor shall file with the court and submit to the receiver the following schedules:

- (1) A true list of all of the known creditors and applicable regulatory and taxing agencies of the debtor, including the mailing addresses for each, the amount and nature of their claims, and whether their claims are disputed; and
- (2) A true list of all estate property, including the estimated liquidation value and location of the property and, if real property, a legal description thereof, as of the date of appointment of the receiver.

2. The Missouri supreme court may from time to time prescribe by court rule the schedules to be filed in receiverships as the supreme court shall deem appropriate to the effective administrations of sections 515.500 to 515.665.

Mo. Rev. Stat. § 515.565. Appraisal Not Required Without Court Order.

1. A receiver shall not be obligated to obtain any appraisal or other independent valuation of property in the receiver's possession unless ordered by the court to do so.

2. A court may order the receiver to file such additional schedules, reports of assets, liabilities, claims, or inventories as necessary and proper.

3. Whenever a list or schedule required pursuant to this section is not prepared and filed as required by the debtor, the court may order the receiver, a petitioning creditor, or such other person as the court in its discretion deems appropriate to prepare and file such list or schedule within a time fixed by the court. The court may approve reimbursement of the cost incurred in complying with such order as an administrative expense.

Mo. Rev. Stat. § 515.570. General Receiver to File Monthly Report, Contents.

1. A general receiver shall file with the court a monthly report of the receiver's operations and financial affairs unless otherwise ordered by the court. Except as otherwise ordered by the court, each report of a general receiver shall be due by the last day of the subsequent month and shall include the following:

- (1) A balance sheet;
- (2) A statement of income and expenses;
- (3) A statement of cash receipts and disbursements;
- (4) A statement of accrued accounts receivable of the receiver;
- (5) A statement disclosing amounts considered to be uncollectable;
- (6) A statement of accounts payable of the receiver, including professional fees. Such statement shall list the name of each creditor and the amounts owing and remaining unpaid over thirty days; and
- (7) A tax disclosure statement, which shall list post filing taxes due or tax deposits required, the name of the taxing agency, the amount due, the date due, and an explanation for any failure to make payments or deposits.

2. A limited receiver shall file with the court all such reports as the court may require.

Mo. Rev. Stat. § 515.575. Appointment of General Receiver to Operate as a Stay, When – Expiration of Stay – No Stay, When.

1. Except as otherwise ordered by the court, the entry of an order appointing a general receiver shall operate as a stay, applicable to all persons, of:

- (1) The commencement or continuation, including the issuance, employment, or service of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the entry of the order of appointment, or to recover a claim against the debtor that arose before the entry of the order of appointment;
- (2) The enforcement against the debtor or any estate property of a judgment obtained before the order of appointment;
- (3) Any act to obtain possession of estate property from the receiver, or to interfere with, or exercise control over, estate property;
- (4) Any act to create, perfect, or enforce any lien or claim against estate property except by exercise of a right of setoff, to the extent that the lien secures a claim against the debtor that arose before the entry of the order of appointment; or
- (5) Any act to collect, assess, or recover a claim against the debtor that arose before the entry of the order of appointment.

2. The stay shall automatically expire as to the acts specified in subdivisions (1), (2) and (3) of subsection 1 of this section sixty days after the entry of the order of appointment unless before the expiration of the sixty-day period the debtor or receiver, for good cause shown, obtains an order of the court extending the stay, after notice and a hearing. A person whose action or proceeding is stayed by motion to the court may seek relief from the stay for good cause shown. Any judgment obtained against the debtor or estate property following the entry of the order of appointment is not a lien against estate property unless the receivership is terminated prior to a conveyance of the property against which the judgment would otherwise constitute a lien.

3. The entry of an order appointing a receiver does not operate as a stay of:

- (1) The commencement or continuation of a criminal proceeding against the debtor;
- (2) The commencement or continuation of an action or proceeding to establish paternity, or to establish or modify an order for alimony, maintenance, or support, or to collect alimony, maintenance, or support under any order of a court;
- (3) Any act to perfect or to maintain or continue the perfection of an interest in estate property pursuant to any generally applicable Missouri law that permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection. Such right to perfect an interest in estate property includes any act to perfect an interest in purchase money collateral pursuant to sections 400.9-301 to 400.9-339, perfection of a lien that may be placed against real property under the provisions of chapter 429, or the assertion of a right to continue in possession of any estate property that is in the possession of a person entitled to retain possession of such property pending payment for work performed with respect to such property. If perfection of an interest would otherwise require seizure of the property involved or the commencement of an action, the perfection shall instead be accomplished by filing, and by serving upon the receiver, or receiver's counsel, if any, notice of the interest within the time fixed by law for seizure or commencement;
- (4) The commencement or continuation of an action or proceeding by a governmental unit to enforce its police or regulatory power;
- (5) The enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce its police or regulatory power, or with respect to any licensure of the debtor;
- (6) The exercise of a right of setoff, including but not limited to, any right of a commodity broker, forward contract merchant, stockbroker, financial institution, or securities clearing agency to set off a claim for a margin payment or settlement payment arising out of a commodity contract, forward contract, or securities contract against cash, securities, or other property held or due from the commodity broker, forward contract merchant, stockbroker, financial institution, or securities clearing agency to margin, guarantee, secure, or settle the commodity contract, forward contract, or securities contract, and any right of a swap participant to set off a claim for a payment due to the swap participant under or in connection with a swap agreement against any payment due from the swap participant under or in connection with the swap agreement or against cash, securities, or other property of the debtor held by or due from the swap participant to guarantee, secure, or settle the swap agreement;
- (7) The establishment by a governmental unit of any tax liability and any appeal thereof; or
- (8) Any action pending in a court other than that in which the receiver is appointed until transcription of the order appointing the receiver or extending the stay is made to the other court in which an action against the debtor is pending.

4. For the purposes of subdivision (8) of subsection 3 of this section, the receiver or any party in interest is authorized to cause to be transcribed any order appointing a receiver or extending the stay to any and all courts in which any action against a debtor is pending in this state. A court that receives a transcript of an order of receivership or extension of stay may on its own order sua sponte transfer the matter before the court to the court issuing an order of receivership.

Mo Rev. Stat. § 515.580. Utility Service, Notice Required by Public Utility to Discontinue--Violations, Remedies.

1. A public utility, as defined in section 386.020, providing service to estate property may not alter, refuse, or discontinue service to the property without first giving the receiver fifteen days' notice, or such other notice as may be required by the rules of the public service commission for a customer of that class, of any default or intention to alter, refuse, or discontinue service to estate property. This section does not prohibit the court, upon motion by the receiver, to prohibit the alteration or cessation of utility service if the receiver can furnish adequate assurance of payment in the form of deposit or other security for service to be provided after entry of the order appointing the receiver.

2. Any public utility regulated by the public service commission which violates this section shall be subject to appropriate remedial measures by the commission upon receiving notice that the utility has violated the provisions of this section.

3. When a utility service provider not regulated by the public service commission violates this section, upon direction of the court, an action may be brought by the receiver against the utility to enforce compliance with the provisions of this section.

Mo. Rev. Stat. § 515.585. Contracts and Leases, Receiver May Assume or Reject--Action to Compel Rejection--Consent to Assume Required, When.

1. A receiver may assume or reject any executory contract or unexpired lease of the debtor upon order of the court following notice and a hearing, which shall include notice to persons party to the executory contract or unexpired lease to be assumed or rejected. The court may condition assumption or rejection of any executory contract or unexpired lease on the terms and conditions the court believes are just and proper under the particular circumstances of the action. Such terms and conditions may include a requirement that the receiver cures or provides adequate assurance that the receiver will promptly cure any default. A general receiver's performance of an executory contract or unexpired lease prior to the court's authorization of its assumption or rejection shall not constitute an assumption of the executory contract or unexpired lease, or an agreement by the receiver to assume it, nor otherwise preclude the receiver thereafter from seeking the court's authority to reject it.

2. Any person party to an executory contract or unexpired lease may by motion seek to compel the rejection thereof at any time, such rejection the court shall order in its discretion, and as the interests of justice may require. In determining a motion to compel the rejection of an executory contract or unexpired lease, the court may consider, among other factors:

- (1) Whether rejection is in the best interests of the receivership estate and the interests of creditors;
- (2) The extent to which the executory contract or unexpired lease burdens the receivership estate financially;
- (3) Whether the debtor is performing or is in breach of the executory contract or unexpired lease;
- (4) If the debtor is in breach of a financial provision of the executory contract or unexpired lease, the debtor's ability to cure such breach within a reasonable time; and
- (5) Harm suffered by the non-debtor person party to the executory contract or unexpired lease that results or may result from refusing the rejection thereof.

3. Any obligation or liability incurred by a general receiver on account of the receiver's assumption of an executory contract or unexpired lease shall be treated as an expense of the receivership. A receiver's rejection of an executory contract or unexpired lease shall be treated as a breach of the contract or lease occurring immediately prior to the receiver's appointment; and the receiver's right to possess or use property pursuant to any executory contract or unexpired lease shall terminate upon rejection of such contract or lease. A non-debtor party to an executory contract or unexpired lease that is rejected by a receiver may take such steps as may be necessary under applicable law to terminate or cancel such contract or lease. The claim of a non-debtor party to an executory contract or unexpired lease resulting from a receiver's rejection of it shall be served upon the receiver within thirty days following the date the receiver gives notice of such rejection to such person, which notice shall indicate the right to file a claim within the thirty day period.

4. A receiver's power under this section to assume an executory contract or unexpired lease shall not be affected by any provision in such contract or lease that would effect or permit a forfeiture, modification, or termination of it on account of either the receiver's appointment, the financial condition of the debtor, or an assignment for the benefit of creditors by the debtor.

5. A receiver may not assume an executory contract or unexpired lease of debtor without the consent of the other

person party to such contract or lease if:

- (1) Applicable law would excuse a person, other than the debtor, from accepting performance from or rendering performance to anyone other than the debtor even in the absence of any provisions in the contract or lease expressly restricting or prohibiting an assignment of the person's rights or the performance of the debtor's duties;
- (2) The contract or lease is a contract to make a loan or extend credit or financial accommodations to or for the benefit of the debtor, or to issue a security of the debtor; or
- (3) The executory contract or lease expires by its own terms, or under applicable law prior to the receiver's assumption thereof.

6. A receiver may not assign an executory contract or unexpired lease without assuming it, absent the consent of the other parties to the contract or lease.

7. If the receiver rejects an executory contract or unexpired lease for:

- (1) The sale of real property under which the debtor is the seller and the purchaser is in possession of the real property;
- (2) The sale of a real property timeshare interest under which the debtor is the seller;
- (3) The license of intellectual property rights under which the debtor is the licensor; or
- (4) The lease of real property in which the debtor is the lessor;

then the purchaser, licensee, or lessee may treat the rejection as a termination of the contract, license agreement, or lease, or alternatively, the purchaser, licensee, or lessee may remain in possession in which circumstance the purchaser, licensee, or lessee shall continue to perform all obligations arising thereunder as and when they may fall due, but may offset against any payments any damages occurring on account of the rejection after it occurs. The purchaser of real property in such a circumstance is entitled to receive from the receiver any deed or any other instrument of conveyance which the debtor is obligated to deliver under the executory contract when the purchaser becomes entitled to receive it, and the deed or instrument has the same force and effect as if given by the person. A purchaser, licensee, or lessee who elects to remain in possession under the terms of this subsection has no rights against the receiver on account of any damages arising from the receiver's rejection except as expressly provided for by this subsection. A purchaser of real property who elects to treat rejection of an executory contract as a termination has a lien against the interest in that real property of the debtor for the recovery of any portion of the purchase price that the purchaser has paid.

8. Any contract with the state shall be deemed rejected if not assumed within sixty days of appointment of a general receiver unless the receiver and state agency agree to its assumption.

9. Nothing in sections 515.500 to 515.665 affects the enforceability of anti-assignment prohibitions provided under contract or applicable law.

Mo Rev. Stat. § 515.590. Unsecured Credit or Debt, Receiver May Obtain, When.

1. If a receiver is authorized to operate the business of a debtor or manage a debtor's property, the receiver may obtain unsecured credit and incur unsecured debt in the ordinary course of business as an administrative expense of the receiver without order of the court.
2. The court after notice and a hearing may authorize a receiver to obtain credit or incur debt other than in the ordinary course of business. The court may allow the receiver to mortgage, pledge, hypothecate, or otherwise encumber estate property as security for repayment of any debt that the receiver may incur, including that the court may provide that additional credit extended to a receiver by a secured creditor of the debtor be afforded the same priority as the secured creditor's existing lien.

3. When determining the propriety of allowing a receiver to obtain credit or incur debt pursuant to subsection 2 of this section, the court shall consider the likely impact on the interests of unsecured creditors of the debtor.

Mo. Rev. Stat. § 515.595. Right to Sue and be Sued--Action Adjunct to Receivership Action--Venue--Judgment Not a Lien on Property, When.

1. A receiver has the right to sue and be sued in the receiver's capacity as such, without leave of court, in all circumstances necessary or proper for the conduct of the receivership. However, an action seeking to dispossess a receiver of any estate property or otherwise to interfere with the receiver's management or control of any estate property may not be maintained or continued unless permitted by order of the court obtained upon notice and a hearing.

2. An action by or against a receiver is adjunct to the receivership action. The clerk of the court may assign or refer a case number that reflects the relationship of any action to the receivership action. All pleadings in an adjunct action shall include the case number of the receivership action as well as the adjunct action case number assigned by the clerk of the court. All adjunct actions shall be referred to the judge, if any, assigned to the receivership action.

3. A receiver may be joined or substituted as a party in any action or proceeding that was pending at the time of the receiver's appointment and in which the debtor is a party, upon application by the receiver to the court, agency, or other forum before which the action or proceeding is pending.

4. Venue for adjunct actions by or against a receiver shall lie in the court in which the receivership is pending, if the court has jurisdiction over the action. Actions in other courts in this state shall be transferred to the court upon the receiver's filing of a motion for change of venue, provided that the receiver files the motion within thirty days following service of original process upon the receiver. However, actions in other courts or forums in which a state agency is a party shall not be transferred on request of the receiver absent consent of the affected state agency or grounds provided under other applicable law.

5. An action by or against a receiver does not abate by reason of death or resignation or removal of the receiver, but continues against the successor receiver or against the debtor, if a successor receiver is not appointed.

6. Whenever the assets of any domestic or foreign corporation, that has been doing business in this state, has been placed in the hands of any general receiver and the receiver is in possession of its assets, service of all process upon the corporation may be made upon the receiver.

7. A judgment against a general receiver or the debtor is not a lien on estate property, nor shall any execution issue thereon. Upon entry of a judgment against a general receiver or the debtor in the court in which a general receivership is pending, or upon filing in a general receivership of a certified copy of a judgment against a general receiver or the debtor entered by another court in this state or a foreign jurisdiction, the judgment shall be treated as an allowed claim in the receivership. A judgment against a limited receiver shall be treated and has the same effect as a judgment against the debtor, except that the judgment is not enforceable against estate property unless otherwise ordered by the court upon notice and a hearing.

Mo Rev. Stat. § 515.600. Immunity from Liability, When.

1. A receiver appointed pursuant to sections 515.500 to 515.665, and the agents, attorneys, and employees of the receivership employed by the receiver pursuant to section 515.605 shall enjoy judicial immunity for acts and omissions arising out of and performed in connection with his or her official duties on behalf of the court and within the scope of his or her appointment. A person other than a successor receiver duly appointed by the court does not have a right of action against a receiver under this section to recover property or the value thereof for or on behalf of the estate except as provided in subsection 2 of this section. A successor receiver may recover only actual damages incurred by the receivership estate from a prior receiver.

2. A person, other than a successor receiver duly appointed by the court, shall not have the right to bring an action against a receiver or the agents, attorneys, and employees of the receivership employed by the receiver pursuant to section 515.605 for any act or omission while acting in the performance of their functions and duties in connection

with the receivership unless such person first files a verified application with the appointing court requesting leave to bring such action and the court grants such application after notice and hearing. The appointing court shall only approve the application to bring claims against the receiver under this section upon a prima facie showing by the person making such request that the receiver's actions are not protected by the grant of immunity set forth in subsection 1 of this section. No other court apart from the appointing court shall have the authority to review or approve the application to bring claims against the receiver under this section.

3. If a person requests leave to bring claims under subsection 2 of this section and such leave is denied, the court shall grant judgment in favor of the receiver for the costs of the proceeding and reasonable attorney's fee if the court finds that the position of the person was not substantially justified.

Mo Rev. Stat. § 515.605. Employment of Professionals.

1. The receiver, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons that do not hold or represent an interest adverse to the receivership to represent or assist the receiver in carrying out the receiver's duties.

2. A person is not disqualified for employment under this section solely because of the person's employment by, representation of, or other relationship with a creditor or other party in interest, if the relationship is disclosed in the application for the person's employment and if the court determines that there is no actual conflict of interest or inappropriate appearance of a conflict.

3. This section does not preclude the court from authorizing the receiver to act as attorney or accountant if the authorization is in the best interests of the receivership.

4. The receiver and any professionals employed by the receiver shall maintain itemized billing records containing a description of services, the time spent, billing rates of all who perform work to be compensated, and a detailed list of expenses. The receiver, and any professionals employed by the receiver may file a motion requesting the allowance of fees and expenses. Notice of the motion shall be served on all persons required to be identified on the master mailing list maintained pursuant to section 515.610, advising that objections to the application shall be filed within ten days from the date of the notice, and if objections are not timely filed, the court may approve the motion without further notice or hearing. If an objection is filed, the receiver or professional whose compensation is affected may notice the objection for a hearing. Upon request of any person required to receive notice pursuant to this subsection, the receiver and any professionals employed by the receiver shall provide a copy of their itemized billing records upon which their motion for fees and expenses is based within five days of the date of the request.

Mo Rev. Stat. § 515.610. Creditors Bound by Acts of Receiver--Right to Notice and May Appear in Receivership--Notice Requirements.

1. Creditors and parties in interest to whom are given notice as provided by sections 515.500 to 515.665 and creditors or other persons submitting written claims in the receivership or otherwise appearing and participating in the receivership are bound by the acts of the receiver and the orders of the court relating to the receivership whether or not the person is a party to the receivership action.

2. Creditors and parties in interest have a right to notice and a hearing as provided in sections 515.500 to 515.665 whether or not the person is a party to the receivership action.

3. Any party in interest may appear in the receivership in the manner prescribed by court rule and shall file with the court a written notice including the name and mailing address of the party in interest, and the name and address of the party in interest's attorney, if any, with the clerk, and by serving a copy of the notice upon the receiver and the receiver's attorney of record, if any. The receiver shall maintain a master mailing list of all parties and of all parties

in interest that file and serve a notice of appearance in accordance with this subsection and such parties in interest's attorneys, if any. The receiver shall make a copy of the current master mailing list available to any party or upon request.

4. Any request for relief against a state agency shall be mailed to or otherwise served on the agency and on the office of the attorney general.

5. The receiver shall give not less than ten days' written notice of any examination by the receiver of the debtor to all persons required to be identified on the master mailing list.

6. All persons required to be identified on the master mailing list are entitled to not less than thirty days' written notice of the hearing of any motion or other proceeding involving any proposed:

(1) Allowance or disallowance of any claim or claims;

(2) Abandonment, disposition, or distribution of estate property, other than an emergency disposition of property subject to eroding value or a disposition of estate property in the ordinary course of business;

(3) Compromise or settlement of a controversy that might affect the distribution to creditors from the receivership;

(4) Motion for termination of the receivership or removal or discharge of the receiver. Notice of the motion shall also be sent to the department of revenue and other applicable regulatory agencies;

(5) Any opposition to any motion to authorize any of the actions under subdivisions (1) to (4) of this subsection shall be filed and served upon all persons required to be identified on the master mailing list at least ten days before the date of the proposed action.

7. Whenever notice is not specifically required to be given under sections 515.500 to 515.665 or otherwise by court rule, the court may consider motions and grant or deny relief without notice or hearing, unless a party or party in interest would be prejudiced or harmed by the relief requested.

Mo. Rev. Stat. § 515.615. Claims Administration Process.

1. The claims administration process identified in this section shall be administered by a general receiver and may be ordered by the court to be administered by a limited receiver.

2. All claims, other than claims of duly perfected secured creditors, arising prior to the receiver's appointment shall be in the form required by this section and served and noticed as required by this section. Any claim not in the form required by this section and so served and noticed is barred from participating in any distribution to creditors.

3. Claims shall be served on the receiver within thirty days from the date notice is given under this section, unless the court reduces or extends the period for cause shown, except that a claim arising from the rejection of an executory contract or an unexpired lease of the debtor may be served within thirty days after the rejection. Claims by state agencies shall be served by such state agencies on the receiver within sixty days from the date notice is given by mail under this section.

4. Claims shall be in written form entitled "Proof of Claim", setting forth the name and address of the creditor and the nature and amount of the claim, and executed by the creditor or the creditor's authorized agent. When a claim or an interest in estate property securing the claim is based on a writing, the original or a copy of the writing shall be included as a part of the proof of claim together with evidence of perfection of any security interest or other lien asserted by the claimant. Unless otherwise ordered by the court, creditors may amend such claims and such amendments shall relate back to the original filing of such claim.

5. Notices of claim shall be filed with the court. A notice shall be filed with the court relating to each served claim.

A notice of claim shall not include the claim or supporting documentation served upon the receiver. A notice of claim shall include the name and address of the creditor asserting the claim, together with the name and address of the attorney, if any representing the creditor, the amount of the claim, whether or not the claim is secured or unsecured, and if secured, a brief description of any estate property and other collateral securing the claim.

6. A claim properly noticed, executed, and served in accordance with this section constitutes prima facie evidence of the validity and amount of the claim.

Mo. Rev. Stat. § 515.620. Objection to a Claim, Procedure.

1. At any time prior to the entry of an order approving the general receiver's final report, the receiver or any party in interest may file with the court an objection to a claim, such objection shall be in writing and shall set forth the grounds for the objection to the claim. A copy of the objection shall be mailed to the creditor who shall have thirty days to file with the court any suggestions in support of the claim. Upon the filing of any suggestions in support of the claim, the court may adjudicate the claim objection or set a hearing relating to the claim objection. Claims that comply with the requirements of section 515.615 that are not disallowed by the court are entitled to share in distributions from the receivership in accordance with the priorities provided for by sections 515.500 to 515.665 or otherwise by law.

2. Upon order of the court, the general receiver, or any party in interest objecting to the creditor's claim, an objection may be subject to mediation prior to adjudication of the objection. However, state claims are not subject to mediation absent agreement of the state.

3. Upon motion of the general receiver or other party in interest, the following claims may be estimated for purpose of allowance under this section under the rules or orders applicable to the estimation of claims under this section:

(1) Any contingent or unliquidated claim, the fixing or liquidation of which, as the circumstance may be, would unduly delay the administration of the receivership; or

(2) Any right to payment arising from a right to an equitable remedy for breach of performance.

Claims subject to this subsection shall be allowed in the estimated amount thereof.

Mo. Rev. Stat. § 515.625. Distribution of Claims.

1. Claims not disallowed by the court shall receive distribution under sections 515.500 to 515.665 in the order of priority under subdivisions (1) to (8) of this section and, with the exception of subdivisions (1) to (3) of this subsection, on a pro rata basis:

(1) Any secured creditor that is duly perfected under applicable law, whether or not such secured creditor has filed a proof of claim, shall receive the proceeds from the disposition of the estate property that secures its claim. However, the receiver may recover from estate property secured by a lien or the proceeds thereof the reasonable, necessary expenses of preserving, protecting, or disposing of the estate property to the extent of any benefit to a duly perfected secured creditor. If and to the extent that the proceeds are less than the amount of a duly perfected secured creditor's claim or a duly perfected secured creditor's lien is avoided on any basis, the duly perfected secured creditor's claim is an unsecured claim under subdivision (8) of this subsection. Duly perfected secured claims shall be paid from the proceeds in accordance with their respective priorities under otherwise applicable law;

(2) Actual, necessary costs and expenses incurred during the administration of the receivership, other than those expenses allowable under subdivision (1) of this subsection, including allowed fees and reimbursement of reasonable charges and expenses of the receiver and professional persons employed by the receiver. Notwithstanding subdivision (1) of this subsection, expenses incurred during the administration of the estate have priority over the secured claim of any secured creditor obtaining or consenting to the appointment of the receiver;

(3) A secured creditor that is not duly perfected under applicable law shall receive the proceeds from the disposition of the estate property that secures its claim if and to the extent that unsecured claims are made subject to those liens under applicable law;

(4) Claims for wages, salaries, or commissions, including vacation, severance, and sick leave pay, or contributions to an employee benefit plan earned by the claimant within one hundred eighty days of the date of appointment of the receiver or the cessation of any business relating to the receivership, whichever occurs first, but only to the extent of ten thousand nine hundred fifty dollars;

(5) Unsecured claims, to the extent of two thousand four hundred twenty-five dollars for each natural person, arising from the deposit with the person debtor before the date of appointment of the receiver of money in connection with the purchase, lease, or rental of estate property or the purchase of services for personal, family, or household use that were not delivered or provided;

(6) Claims for a marital, family, or other support debt, but not to the extent that the debt is assigned to another person, voluntarily, by operation of law, or otherwise; or includes a liability designated as a support obligation unless that liability is actually in the nature of a support obligation;

(7) Unsecured claims of governmental units for taxes which accrued prior to the date of appointment of the receiver;

(8) Other unsecured claims.

2. If all of the classes under subsection 1 of this section have been paid in full, any residue shall be paid to the debtor.

Mo. Rev. Stat. § 515.630. Secured Claims Permitted Against Estate Property. Except as otherwise provided for by statute, estate property acquired by the estate, the receiver, or the debtor of the receiver is subject to an allowed secured claim to the same extent as would exist in the absence of a receivership.

Mo. Rev. Stat. § 515.635. Noncontingent Liquidated Claims, Interest Allowed, Rate. To the extent that funds are available in the estate for distribution to creditors in a general receivership, the holder of an allowed noncontingent, liquidated claim is entitled to receive interest at the legal rate or other applicable rate from the date of appointment of the receiver or the date on which the claim became a noncontingent, liquidated claim. If there are sufficient funds in the estate to fully pay all interest owing to all members of the class, then interest shall be paid proportionately to each member of the class.

Mo Rev. Stat. § 515.640. Burdensome Property, Abandonment of, When. The receiver or any party upon order of the court following notice and a hearing and upon the terms and conditions the court considers just and proper may abandon any estate property that is burdensome to the receiver or is of inconsequential value or benefit. However, a receiver may not abandon property that is a hazard or potential hazard to the public in contravention of a state statute or rule that is reasonably designed to protect the public health or safety from identified hazards. Property that is abandoned no longer constitutes estate property.

Mo. Rev. Stat. § 515.645. Use, Sale, or Lease of Estate Property by Receiver.

1. The receiver with the court's approval after notice and a hearing may use, sell, or lease estate property other than in the ordinary course of business.

2. The court may order that a general receiver's sale of estate property either under subsection 1 of this section, or consisting of real property that the debtor intended to sell in its ordinary course of business, be effected free and clear of liens, claims, and of all rights of redemption, whether or not the sale will generate proceeds sufficient to fully satisfy all claims secured by the property, unless either:

(1) The property to be sold is real property used principally in the production of crops, livestock, or aquaculture, or the property is a homestead, and the owner of the property has not consented to the sale

following the appointment of the receiver; or

(2) A party in interest, including but not limited to, an owner of the property to be sold or a secured creditor as regards to the property to be sold serves and files a timely opposition to the receiver's sale, and the court determines that the amount likely to be realized by the receiver's sale is less than the amount that may be realized within a reasonable time in the absence of the receiver's sale.

Upon any sale free and clear of liens authorized by this section, all liens encumbering the property sold shall transfer and attach to the proceeds of the sale, net of reasonable expenses incurred in the disposition of the property sold, in the same order, priority, and validity as the liens had with respect to the property sold immediately before the conveyance. The court may authorize the receiver at the time of sale to satisfy, in whole or in part, any lien on the property sold out of the proceeds of its sale if the interest of any other creditor having a lien against the proceeds of the sale would not thereby be impaired.

3. At a public sale of estate property under subsection 1 of this section, a creditor with a lien against the property to be sold may credit bid at the sale of the property. A creditor with a lien against the property to be sold who purchases the property from a receiver may offset against the purchase price its secured claim against the property, provided that such secured creditor tenders cash sufficient to satisfy in full all secured claims payable out of the proceeds of sale having priority over such secured creditor's secured claim. If the lien or the claim it secures is the subject of a bona fide dispute, the court may order the holder of the lien or claim to provide the receiver with adequate security to assure full payment of the purchase price in the event the lien, the claim, or any part thereof is determined to be invalid or unenforceable.

4. If estate property includes an interest as a co-owner of property, the receiver shall have the rights and powers of a co-owner afforded by applicable state or federal law, including but not limited to, any rights of partition.

5. The reversal or modification on appeal of an authorization to sell or lease estate property under this section does not affect the validity of a sale or lease under that authorization to any person that purchased or leased the property in good faith, whether or not the person knew of the pendency of the appeal, unless the authorization and sale or lease were stayed pending the appeal.

6. The notice of a proposed use, sale, or lease of estate property required by subsection 1 of this section shall include the time and place of any public sale, the terms and conditions of any private sale and the time fixed for filing objections, and shall be mailed to all parties in interest, and to such other persons as the court in the interests of justice may require.

7. In determining whether a sale free and clear of liens, claims, encumbrances, and of all rights of redemption is in the best interest of the estate, the court may consider, among such other factors as the court deems appropriate, the following:

- (1) Whether the sale shall be conducted in a commercially reasonable manner considering assets of a similar type or nature;
- (2) Whether an independent appraisal supports the purchase price to be paid;
- (3) Whether creditors and parties in interest received adequate notice of the sale, sale procedures, and details of the proposed sale;
- (4) Any relationship between the buyer and the debtor;
- (5) Whether the sale is an arm's length transaction; and
- (6) Whether parties asserting a lien as to the property to be sold consent to the proposed sale.

Mo. Rev. Stat. § 515.650. Receiver May be Appointed as a Receiver by Out-of-State Court, When.

1. A receiver appointed in any action pending in the courts of this state, without first seeking approval of the court, may apply to any court outside of this state for appointment as receiver with respect to any property or business of the person over whose property the receiver is appointed constituting estate property which is located in any other jurisdiction, if the appointment is necessary to the receiver's possession, control, management, or disposition of property in accordance with orders of the court.

2. A receiver appointed by a court of another state, or by a federal court in any district outside of this state, or any other person having an interest in that proceeding, may obtain appointment by a court of this state of that same receiver with respect to any property or business of the person over whose property the receiver is appointed constituting property of the foreign receivership that is located in this jurisdiction if the person is eligible to serve as receiver and the appointment is necessary to the receiver's possession, control, or disposition of the property in accordance with orders of the court in the foreign proceeding. Upon the receiver's request, the court shall enter the orders not offensive to the laws and public policy of this state, necessary to effectuate orders entered by the court in the foreign receivership proceeding. A receiver appointed in an ancillary receivership in this state is required to comply with sections 515.500 to 515.665 requiring notice to creditors or other parties in interest only as may be required by the superior court in the ancillary receivership.

Mo. Rev. Stat. § 515.655. Removal or Replacement of Receiver, Procedure.

1. The court shall remove or replace the receiver on application of the debtor, the receiver, or any creditor, or any party or on the court's own motion if the receiver fails to perform the receiver's duties or obligations under sections 515.500 to 515.665, as ordered by the court.

2. Upon removal, resignation, or death of the receiver the court shall appoint a successor receiver if the court determines that further administration of the estate is required. The successor receiver shall immediately take possession of the estate and assume the duties of receiver.

3. Whenever the court is satisfied that the receiver so removed or replaced has fully accounted for and turned over to the successor receiver appointed by the court all of the property of the estate and has filed a report of all receipts and disbursements during the person's tenure as receiver, the court shall enter an order discharging that person from all further duties and responsibilities as receiver after notice and a hearing.

Mo. Rev. Stat. § 515.660. Discharge of Receiver.

1. Upon distribution or disposition of all property of the estate, or the completion of the receiver's duties with respect to estate property, the receiver shall move the court to be discharged upon notice and a hearing.

2. The receiver's final report and accounting setting forth all receipts and disbursements of the estate shall be included in the petition for discharge and filed with the court.

3. Upon approval of the final report, the court shall discharge the receiver.

4. The receiver's discharge releases the receiver from any further duties and responsibilities as receiver under sections 515.500 to 515.665.

5. Upon motion of any party in interest, or upon the court's own motion, the court has the power to discharge the receiver and terminate the court's administration of the property over which the receiver was appointed. If the court determines that the appointment of the receiver was wrongfully procured or procured in bad faith, the court may assess against the person who procured the receiver's appointment all of the receiver's fees and other costs of the receivership and any other sanctions the court determines to be appropriate.

6. A certified copy of an order terminating the court's administration of the property over which the receiver was appointed shall operate as a release of any lis pendens notice recorded pursuant to section 515.545 and the same shall be recorded within the land records in any county in which such real property may be situated, together with a legal description of the real property if one is not included in that order.

Mo. Rev. Stat. § 515.665. Orders Subject to Appeal. Orders of the court pursuant to sections 515.500 to 515.665 are appealable to the extent allowed under existing law, including subdivision (2) of section 512.020.

NEBRASKA

Neb. Rev. Stat. § 25-1081. Appointment of Receiver; Grounds. A receiver may be appointed by the district court (1) in an action by a vendor to vacate a fraudulent purchase of property, by a creditor to subject any property or fund to his or her claim, or between partners, limited liability company members, or others jointly owning or interested in any property or fund on the application of any party to the suit when the property or fund is in danger of being lost, removed, or materially injured, (2) in an action for the foreclosure of a mortgage or in an action to foreclose a trust deed as a mortgage when the mortgaged property or property subject to the trust deed is in danger of being lost, removed, or materially injured or is probably insufficient to discharge the mortgage debt secured by the mortgage or trust deed, (3) in connection with the exercise of the power of sale under a trust deed and following the filing of a notice of default under the Nebraska Trust Deeds Act when the property subject to the trust deed is in danger of being lost, removed, or materially injured or is probably insufficient to discharge the debt secured by the trust deed, (4) in an action brought pursuant to section 52-1705 to enforce a written assignment of rents provision contained in any agreement and the agreement provides for the appointment of a receiver, (5) in any other case in which a mortgagor or trustor has agreed in writing to the appointment of a receiver, (6) after judgment or decree to carry the judgment into execution, to dispose of the property according to the decree or judgment, or to preserve it during the pendency of an appeal, (7) in all cases provided for by special statutes, and (8) in all other cases when receivers have heretofore been appointed by the usages of courts of equity.

Neb. Rev. Stat. § 25-1082. Notice of Application for Appointment; Service. No receiver shall be appointed except in a suit actually commenced and pending, and after notice to all parties to be affected thereby, of the time and place of the application, the names of the proposed receiver, and of his or her proposed sureties, and of the proposed sureties of the applicant. Such notice shall state upon what papers the application is based, and be served at least five days before the proposed hearing upon the adverse party in the manner provided for service of a summons in a civil action or upon the adverse party's attorney in the manner provided for service of a notice on an attorney.

Neb. Rev. Stat. § 25-1083. Property; Possession by Sheriff; When Authorized; Restitution. Should the delay occasioned by the giving of the notice provided for in section 25-1082 be hazardous to the rights of any party, the court or judge may, by order, direct the sheriff of the county in which such action is pending to take temporary possession of the property, and shall appoint an early day for the hearing of the application, and if at such hearing the application is refused, restitution shall be made of the property to the party from whom the same was taken.

Neb. Rev. Stat. § 25-1084. Applicants for Receiver; Bonds Required; Contents; Filing. Every order appointing a receiver shall require the applicant to give a good and sufficient bond, conditioned to pay all damages which the other parties to the suit or any of them may sustain by reason of the appointment of a receiver, in case it shall be finally decided that the order ought not to have been granted, and shall also require the receiver to give a bond conditioned to faithfully discharge his duties as receiver and obey all orders of the court. The bonds shall each run to the defendant and all adverse parties in interest, shall be for the use of any party to the suit, shall be in a penal sum to be fixed by the court, but not, however, to be in excess of a sum equal to double the value of the property in question, shall be executed by one surety where such surety is an incorporated surety company authorized by the laws of this state to transact such business, and by two or more sureties where such sureties are natural persons, to be approved by the court or judge making the appointment, and shall be filed in the office of the clerk of the district court; nor shall the same be considered executed until they are so filed.

Neb. Rev. Stat. § 25-1085. Application; Form; Content. If a complainant desires the appointment of a receiver at the commencement of the action, the complainant shall request such appointment in the complaint. If the occasion for a receiver arises while the suit is pending, the application shall be made by a motion setting forth the facts and circumstances making such appointment necessary or proper.

Neb. Rev. Stat. § 25-1086. Qualifications of Receiver; Sureties; Objections; Nomination by Other Parties. Any party to the suit may, upon the hearing of the application, show, by affidavit or otherwise, objections to the proposed sureties and to the proposed receiver, and what is the value of the property to be taken possession of, and that a receiver ought not to be appointed. He may also nominate a person to be receiver, giving at the same time the names of his proposed sureties. No person shall be appointed receiver who is party, solicitor, counsel, or in any manner interested in the suit.

Neb. Rev. Stat. § 25-1087. Order of Appointment; Special Directions. Every order appointing a receiver shall contain special directions in respect to his powers and duties, and upon application of any party to the suit, after due notice thereof, such further directions may be made in that behalf by the court or judge as may in the further progress of the cause become proper.

Neb. Rev. Stat. § 25-1088. Receivers; Extent of Representation. Every receiver shall be considered the receiver of any party to the suit, and no others.

Neb. Rev. Stat. § 25-1089. Appointment of Receiver Without Notice; Void; Suspension of Order, When. Every order appointing a receiver without the notice provided for herein shall be void, and every such order heretofore made, under which the appointee has not possessed himself of the property in question, shall be suspended until an order shall have been made and the bonds executed and filed in accordance with the provisions of sections 25-1081 to 25-1092.

Neb. Rev. Stat. § 25-1090. Inconclusive Decree; Appointment of Master; Disposition of Property; Orders; Appeal. When a decree is rendered in a suit in which a receiver has been appointed and such decree does not finally determine the rights of the parties, any one of them may apply to the court for the possession of the property and proceeds thereof in the receiver's hands. If such application is resisted, the matter may be referred to a master to take and report to the court the testimony of the parties. Upon the filing of the report, the court shall, by its order, award the possession of the property and the proceeds thereof to the party entitled thereto, and thereupon the receiver shall surrender the property and the proceeds thereof to such party. All orders appointing receivers, giving them further directions, and disposing of the property may be appealed to the Court of Appeals in the same manner as final orders and decrees.

Neb. Rev. Stat. § 25-1091. 25-1091. Receivers; Disobedience of Orders; Punishment; Sheriff May Act. Whenever, in the exercise of their authority, the court or judge shall have ordered the deposit or delivery of money or other things, and the order is disobeyed, the court or judge, in addition to punishing such disobedience as for contempt, may make an order requiring the sheriff to take the money or thing, and deposit or deliver it, in conformity with the direction of the court or judge.

Neb. Rev. Stat. § 25-1092. Receivers; Compensation. Receivers shall receive for their services such compensation as the court may award, subject to the following restrictions:

- (1) Receivers appointed for the purpose of preserving and protecting property pending litigation, or for the purpose of continuing the business of the debtor or corporation pending litigation, or when financially embarrassed, may be awarded a salary or lump sum;
- (2) Receivers appointed for the purpose of winding up the affairs of a debtor or corporation, reducing the assets to cash and distributing them, shall be awarded as compensation for such services a percentage upon the cash received and properly accounted for by them, which percentage may be increased where extraordinary services have been performed, and correspondingly reduced where the services have not been meritoriously performed.

OKLAHOMA

12 Okl.St. Ann. § 1551. Appointment of Receiver. A receiver may be appointed by a Judge of the Supreme Court or a district court judge:

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed or materially injured.
2. In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property or in connection with a mortgagee foreclosing his mortgage by power of sale under the Oklahoma Power of Sale Mortgage Foreclosure Act:
 - a. where it appears that the mortgaged property is in danger of being lost, removed or materially injured, or
 - b. that a condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt, or
 - c. that a condition of the mortgage has not been performed and the mortgage instrument provides for the appointment of a receiver.
3. After judgment, to carry the judgment into effect.
4. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceeding in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment.
5. In the cases provided in this Code, and by special statutes, when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.
6. In all other cases where receivers have heretofore been appointed by the usages of the courts of equity.

12 Okl.St. Ann. § 1552. Persons Ineligible. No party, or attorney, or person interested in an action, shall be appointed receiver therein except by consent of all parties thereto.

12 Okl.St. Ann. § 1553. Oath and Bond. Before entering upon his duties, the receiver must be sworn to perform them faithfully, and with one or more sureties, approved by the court or judge; execute an undertaking to such person and in such sum as the court or judge shall direct, to the effect that he will faithfully discharge the duties of receiver in the action, and obey the orders of the court therein.

12 Okl.St. Ann. § 1554. Powers of Receiver. The receiver has, under the control of the court, power to bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, to collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the courts may authorize.

12 Okl.St. Ann. § 1555. Investment of Funds. Funds in the hands of a receiver may be invested upon interest, by order of the court; but no such order shall be made, except upon the consent of all the parties to the action.

12 Okl.St. Ann. § 1556. Disposition of Property Litigated. When it is admitted, by the pleading or oral examination of a party, that he has in his possession or under his control any money or other thing capable of delivery, which, being the subject of litigation, is held by him as trustee for another party, or which belongs or is due to another party, the court may order the same to be deposited in court or delivered to such party, with or without security, subject to the further direction of the court.

12 Okl.St. Ann. § 1557. Punishment for Disobedience of Court. Whenever, in the exercise of its authority, a court shall have ordered the deposit or delivery of money or other thing, and the order is disobeyed, the court, besides punishing the disobedience as for contempt, may make an order requiring the sheriff to take the money, or thing, and deposit or deliver it, in conformity with the direction of the court.

12 Okl.St. Ann. § 1558. Repealed.

12 Okl.St. Ann. § 1559. Vacation of Appointment by Supreme Court. In all cases in the Supreme Court in which a receiver has been appointed, or refused, by any Justice of the Supreme Court, the party aggrieved may, within ten (10) days thereafter have the right to file a motion to vacate the order refusing or appointing such receiver, and hearing on such motion may be had before the Supreme Court, if the same be in session, or before a quorum of the Justices of said Court in vacation, at such time and place as the said Court or the Justices thereof may determine, and pending the final determination of the cause, if the order was one of the appointment of a receiver, the moving party shall have the right to give bond with good and sufficient sureties, and in such amount as may be fixed by order of the Court or a Justice thereof, conditioned for the due prosecution of such cause, and the payment of all costs and damages that may accrue to the state, or any officer, or person by reason thereof, and the authority of any such receiver shall be suspended pending a final determination of such cause, and if such receiver shall have taken possession of any property in controversy in said action, the same shall be surrendered to the rightful owner thereof, upon the filing and approval of said bond.

12 Okl.St. Ann. § 1560. Foreclosure of Licensed Medical Marijuana Business--Continuation of Operations.

A. In the event that a licensed medical marijuana dispensary, commercial grower or processor is foreclosed, is the subject of an order appointing a receiver, becomes insolvent, bankrupt or otherwise ceases operations, a secured party or receiver may continue operations at the dispensary, grower or processor upon submitting to the Oklahoma Medical Marijuana Authority, State Department of Health, proof that the secured party or receiver, or if the secured party or receiver is a business entity, any individual who has a financial interest in the secured party or receiver, meets the requirements and restrictions set forth in:

1. For licensed medical marijuana dispensaries, Section 421 of Title 63 of the Oklahoma Statutes;
2. For licensed commercial medical marijuana growers, Section 422 of Title 63 of the Oklahoma Statutes; or
3. For licensed medical marijuana processors, Section 423 of Title 63 of the Oklahoma Statutes.

The Authority may prescribe the form and manner of submitting proof under this subsection. Neither the state nor agency of this state shall require an additional fee from the secured party or receiver, other than payment of annual fees which may become due during the operation by the secured party or receiver.

B. Subject to the requirements of subsection A of this section, the Oklahoma Medical Marijuana Authority, State Department of Health, shall promulgate rules for the manner and conditions under which:

1. Marijuana items left by a deceased, insolvent or bankrupt person or licensee, or subject to a security interest or a court order appointing a receiver, may be foreclosed, sold under execution or otherwise disposed whether by foreclosure or by sale as a going concern;
2. The business of a licensee who is deceased, insolvent, bankrupt, or the subject of an order appointing receiver or a foreclosure by a secured party, may be operated for a reasonable period following the death, insolvency, appointment of a receiver or bankruptcy; and

3. A secured party or court-appointed receiver may continue to operate a business for which a license has been issued under Section 421, 422 or 423 of Title 63 of the Oklahoma Statutes for a reasonable period after default on the indebtedness by the debtor or after the appointment of the receiver

FEDERAL RECEIVERSHIP RULES AND STATUTES

Fed. R. Civ. P. 66. These rules govern an action in which the appointment of a receiver is sought or a receiver sues or is sued. But the practice in administering an estate by a receiver or a similar court-appointed officer must accord with the historical practice in federal courts or with a local rule. An action in which a receiver has been appointed may be dismissed only by court order.

Western District of Missouri Local Rule 66.1. RECEIVERSHIPS

(a) *Applicability.* This Rule applies to the administration of estates by receivers or by other similar officers appointed by the Court. In respects other than administration of the estate, any civil action in which the appointment of a receiver or other similar officer is sought, or which is brought by or against such an officer, is governed by the Federal Rules of Civil Procedure and by this Rule. This Rule does not supersede any special provisions made by the General or Special Bankruptcy Rules.

(b) *Inventories.* The receiver or similar officer must file an inventory of all the estate's property and assets in his or her possession, and in the possession of others who hold possession as the agent of the receiver or similar officer. In a separate schedule, the receiver or similar officer must file an inventory of all the estate's property and assets not possessed by him or her, but rather claimed and held by others. Unless the Court otherwise orders, the receiver or similar officer must file these inventories as soon as practicable after appointment, but not later than 30 days after he or she has taken possession of the estate.

(c) *Reports.* Within 3 months after the filing of the inventory, and at regular intervals of 3 months thereafter, the receiver or similar officer must file a report of receipts and expenditures, and a report of acts and transactions undertaken in an official capacity.

(d) *Compensation of Receivers, Attorneys, and Others.* In its discretion, the Court may ascertain and award the compensation of receivers or similar officers, of their attorneys, and of all those who may have been appointed by the Court to aid in the estate's administration. The Court may make such an allowance only on notice to creditors and other persons in interest, as the Court may direct. The notice must state the amount claimed by each applicant.

(e) *Administration of Estates.* Unless the Court orders otherwise, in all other respects, the receiver or similar officer must administer the estate as nearly as may be in accordance with the practice in the administration of estates in bankruptcy.

28 U.S.C. § 754. Receivers of property in different districts. A receiver appointed in any civil action or proceeding involving property, real, personal or mixed, situated in different districts shall, upon giving bond as required by the court, be vested with complete jurisdiction and control of all such property with the right to take possession thereof.

He shall have capacity to sue in any district without ancillary appointment, and may be sued with respect thereto as provided in section 959 of this title.

Such receiver shall, within ten days after the entry of his order of appointment, file copies of the complaint and such order of appointment in the district court for each district in which property is located. The failure to file such copies in any district shall divest the receiver of jurisdiction and control over all such property in that district.

28 U.S.C. § 959. Trustees and Receivers Suable; Management; State Laws.

(a) Trustees, receivers or managers of any property, including debtors in possession, may be sued, without leave of the court appointing them, with respect to any of their acts or transactions in carrying on business connected with such property. Such actions shall be subject to the general equity power of such court so far as the same may be necessary to the ends of justice, but this shall not deprive a litigant of his right to trial by jury.

(b) Except as provided in section 1166 of title 11, a trustee, receiver or manager appointed in any cause pending in any court of the United States, including a debtor in possession, shall manage and operate the property in his possession

as such trustee, receiver or manager according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof.

28 U.S.C. § 1692. Process and Orders Affecting Property in Different Districts. In proceedings in a district court where a receiver is appointed for property, real, personal, or mixed, situated in different districts, process may issue and be executed in any such district as if the property lay wholly within one district, but orders affecting the property shall be entered of record in each of such districts.

28 U.S.C. § 2001. Sale of Realty Generally.

(a) Any realty or interest therein sold under any order or decree of any court of the United States shall be sold as a whole or in separate parcels at public sale at the courthouse of the county, parish, or city in which the greater part of the property is located, or upon the premises or some parcel thereof located therein, as the court directs. Such sale shall be upon such terms and conditions as the court directs.

(b) Property in the possession of a receiver or receivers appointed by one or more district courts shall be sold at public sale in the district wherein any such receiver was first appointed, at the courthouse of the county, parish, or city situated therein in which the greater part of the property in such district is located, or on the premises or some parcel thereof located in such county, parish, or city, as such court directs, unless the court orders the sale of the property or one or more parcels thereof in one or more ancillary districts.

(c) After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.

(d) This section shall not apply to sales and proceedings under Title 11 or by receivers or conservators of banks appointed by the Comptroller of the Currency.

28 U.S.C. § 2002. Notice of Sale of Realty. A public sale of realty or interest therein under any order, judgment or decree of any court of the United States shall not be made without notice published once a week for at least four weeks prior to the sale in at least one newspaper regularly issued and of general circulation in the county, state, or judicial district of the United States wherein the realty is situated.

If such realty is situated in more than one county, state, district or circuit, such notice shall be published in one or more of the counties, states, or districts wherein it is situated, as the court directs. The notice shall be substantially in such form and contain such description of the property by reference or otherwise as the court approves. The court may direct that the publication be made in other newspapers.

This section shall not apply to sales and proceedings under Title 11 or by receivers or conservators of banks appointed by the Comptroller of the Currency.

28 U.S.C. § 2004. Sale of Personalty Generally. Any personalty sold under any order or decree of any court of the United States shall be sold in accordance with section 2001 of this title [28 USCS § 2001], unless the court orders otherwise.

This section shall not apply to sales and proceedings under Title 11 or by receivers or conservators of banks appointed by the Comptroller of the Currency.

AMERICAN BANKRUPTCY INSTITUTE

Federal Priority Statute: 31 U.S.C. § 3713

- (a)(1) A claim of the United States Government shall be paid first when--
- (A) a person indebted to the Government is insolvent and--
 - (i) the debtor without enough property to pay all debts makes a voluntary assignment of property;
 - (ii) property of the debtor, if absent, is attached; or
 - (iii) an act of bankruptcy is committed; or
 - (B) the estate of a deceased debtor, in the custody of the executor or administrator, is not enough to pay all debts of the debtor.
- (2) This subsection does not apply to a case under title 11.
- (b) A representative of a person or an estate (except a trustee acting under title 11) paying any part of a debt of the person or estate before paying a claim of the Government is liable to the extent of the payment for unpaid claims of the Government.

AMERICAN BANKRUPTCY INSTITUTE JOURNAL

The Essential Resource for Today's Busy Insolvency Professional

Feature

BY ALLEN J. GUON

Fiduciaries Must “CARE”

Personal Liability for PPP Loans Under Federal Priority Statute



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Any person in control of an insolvent debtor's assets making distributions to unsecured creditors prior to satisfying a Paycheck Protection Program (PPP) loan might face personal liability for that debt under the federal priority statute.¹ Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the U.S. Small Business Administration (SBA) guaranteed PPP loans made by private lenders to provide a financial lifeline to businesses during the COVID-19 pandemic. The priority statute ensures the superpriority of the SBA's guaranty claims against insolvent debtors upon any “act of bankruptcy” other than the filing of a case under the Bankruptcy Code.

If the loans are not forgiven, then officers, directors, receivers, assignees and other fiduciaries that do not prioritize PPP loans may face personal liability to the federal government for violating the priority statute. In order to avoid personal liability, fiduciaries must understand the applicability of the priority statute to loans guaranteed by the federal government.

SBA's Role as Guarantor of PPP Loans

Congress established the PPP through the CARES Act by expanding the traditional SBA 7(a) loan program to provide forgivable unsecured loans to help businesses retain employees during the pandemic. The SBA does not make PPP loans directly to borrowers; rather, private lenders make the loans, which are guaranteed by the SBA. Borrowers are eligible for PPP loan forgiveness if (1) the borrower maintains its employee and compensation levels; (2) the proceeds are used on certain eligible expenses; and (3) at least 60 percent of the proceeds are spent on payroll. The lender funds the PPP loan with the expectation that the

SBA will pay the portion of the loan that is forgiven and any portion of the loan that is not paid by the borrower.

However, if the PPP loan is not forgiven and the borrower defaults, the lender will request that the SBA honor its guarantee. If the lender complied with its obligations under the program, the SBA will then “purchase” the loan and pay off the lender. At that point, the SBA becomes a creditor of the borrower and the priority statute comes into play.

Government's Claims Must Be Paid First

The priority statute has been around since 1797 without significant modification.² Its purpose is to secure adequate revenue for the government, and courts liberally construe the statute in order to achieve that objective.³ The priority statute provides that a claim of the federal government shall be paid first when (1) a debt is due to the federal government; (2) by a debtor that is insolvent; and (3) the debtor either “makes a voluntary assignment of property,” an absent debtor has its property attached, or “an act of bankruptcy is committed.”⁴ A federal claim entitled to priority must be paid before all other claims regardless of state law.⁵

The party contesting the government's priority bears the burden of demonstrating that the priority statute is inapplicable.⁶ As discussed herein, in order to avoid personal liability, fiduciaries should determine whether (1) they are covered by the statute; (2) the government's claim falls within the statute's scope; and (3) the government's priority attached.

² *U.S. v. Emory*, 314 U.S. 423, 428 (1941). Thus, authorities cited in this article may cite to § 3713 or earlier codifications of the statute.

³ *Id.* at 425.

⁴ 31 U.S.C. § 3713(a)(1)(A).

⁵ *U.S. v. Oklahoma*, 261 U.S. 253, 260 (1923).

⁶ *Bramwell v. U.S. Fidelity & Gur. Co.*, 269 U.S. 483, 487 (1926).

¹ 31 U.S.C. § 3713.

Representatives Covered

The priority statute applies to all fiduciaries in control of an entity's assets. The statute provides that any "representative of a person or an estate (except a trustee acting under title 11) paying any part of a debt of the person or estate before paying a claim of the Government is liable to the extent of the payment for unpaid claims of the Government."⁷ This provision "make[s] those into whose hands control and possession of the debtor's assets are placed, responsible for seeing that the Government's priority is paid."⁸

Given that goal, neither the representative's title nor the mode of appointment is relevant. Rather, the test to determine whether the representative falls within the scope of the priority statute is determined by the degree of control that the fiduciary has over how the debtor's assets in his/her possession are allocated among creditors.⁹ Under this analysis, officers, directors, managers, receivers, assignees, disbursing agents, executors and administrators are all fiduciaries that may fall within the scope of the statute.¹⁰

Federal Claims Covered

While most commonly applied to tax claims, the priority statute applies to substantially all claims of the federal government.¹¹ It defines the term "claim" or "debt" as "any amount of funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by a person, organization, or entity other than another Federal agency."¹² This definition is followed by a nonexhaustive list that includes "funds owed on account of loans made, insured, or guaranteed by the Government," and ends with the catch-all "other amounts of money or property owed to the federal government."¹³ The term "claim" has also been broadly interpreted to include any "right to payment" whether or not reduced to judgment or liquidated.¹⁴ Loans made in participation with a lender or made by a lender and subsequently assigned to a federal agency all fall within the purview of the statute.¹⁵ Thus, how a government agency such as the SBA acquires its claim is irrelevant.

When the Government's Priority Attaches

The federal government's priority attaches when an insolvent debtor is divested of its assets in one of the methods specified in the priority statute (*i.e.*, makes an assignment of its property, has its property attached or commits an "act of bankruptcy").¹⁶ Although the phrase "act of bankruptcy" is not defined in the statute, it does not include the filing of a case under the Bankruptcy Code.¹⁷ Rather, courts have historically looked to the definition of "act of bankruptcy" from the repealed Bankruptcy Act to construe the term.¹⁸

Under the Bankruptcy Act, "acts of bankruptcy" include, among other things, an assignment for the benefit of creditors, the appointment of a receiver, and the making of preferential or fraudulent transfers.¹⁹ For example, corporate officers have been held liable for the government's debt after they made preferential or fraudulent transfers of an insolvent company's assets.²⁰ Unless an exception applies, the government's priority claim becomes absolute and unconditional upon the "act of bankruptcy."²¹

Limited Exceptions to Liability

There are a few judicially made exceptions to the priority statute. First, the government's claim must "exist" at the time the debtor is divested of its property. A debt assigned to the government *after* the debtor is divested of its property is not entitled to priority because the rights of creditors are "fixed" upon the "act of bankruptcy."²² Put another way, the government must have legal title to or beneficial ownership of the debt before the debtor is divested of its property.²³ Thus, the SBA is not entitled to priority on account of a loan guaranty if the SBA obtains an assignment of the indebtedness from the original lender after the borrower commits an act of bankruptcy.²⁴ Consequently, *when* the government obtains ownership of the debt is critical to determining whether the claim is entitled to priority.

Second, the government's priority is subject to a "specific and perfected lien" held by a secured creditor.²⁵ This exception is more complicated than it appears, however. In order for a lien to be sufficiently specific and perfected, "title to or possession of the debtor's property must have been conveyed to the lienor before the right of preference accrued to the United States."²⁶ The basis for this exception is that the government "has no claim against property no longer in the possession of the debtor."²⁷

The continued vitality of this requirement in the context of federal lending programs is questionable in light of the U.S. Supreme Court's decision in *Kimbell Foods*. In that case, the Court held that the "first in time, first in right" priority-lien analysis applies to federal government loans involving *solvent* debtors. The Court determined that government lending agencies such as the SBA are entitled to the same priority as private lenders under nondiscriminatory state laws, absent a congressional directive to the contrary.²⁸ Subsequently, at least one court has extended the *Kimbell* analysis to government loans involving *insolvent* debtors under the priority statute.²⁹ Thus, secured creditors that perfected their liens under state law prior to the government's priority attaching might be entitled to payment notwithstanding the priority statute. As the Supreme Court noted, however, whether the priority statute applies to "antecedent perfected liens has never

7 31 U.S.C. § 3713(b).

8 *King v. U.S.*, 379 U.S. 329, 337 (1964).

9 *Id.*

10 *Id.*; *Lakeshore Apts. Inc. v. U.S.*, 351 F.2d 349 (9th Cir. 1965); *U.S. v. Golden Acres Inc.*, 684 F. Supp. 96 (D. Del. 1988); *U.S. v. Moore*, 423 U.S. 77 (1975); *Emory*, 314 U.S. at 426; *U.S. v. Whitney*, 654 F.2d 607 (9th Cir. 1981).

11 *Commonwealth of Mass. v. U.S.*, 333 U.S. 611, 625 n.24 (1948).

12 31 U.S.C. § 3701(b)(1).

13 *Id.*

14 *U.S. v. Moriarty*, 8 F.3d 329, 334 (6th Cir. 1993); *Moore*, 423 U.S. at 78.

15 *SBA v. McClellan*, 364 U.S. 446 (1960); *Lakeshore*, 351 F.2d at 353.

16 *Guillemety v. Secretary of Edu.*, 241 F. Supp. 2d 727, 733 (E.D. Mich. 2002).

17 31 U.S.C. § 3713(a)(2).

18 *Oklahoma*, 261 U.S. at 262; *Moore*, 423 U.S. at 83-84.

19 Bankruptcy Act § 3 (1898).

20 *Golden*, 684 F. Supp. at 101.

21 *Massachusetts*, 333 U.S. at 625.

22 *U.S. v. Marxen*, 307 U.S. 200, 208 (1939).

23 *U.S. v. Brocato*, 403 F.2d 105, 109-10 (5th Cir. 1968).

24 *Id.*

25 *U.S. v. Estate of Romani*, 523 U.S. 517, 529 (1998).

26 *Straus v. U.S.*, 196 F.3d 862 (7th Cir. 1999).

27 *U.S. v. Gilbert Assocs.*, 345 U.S. 361, 366 (1953).

28 *U.S. v. Kimbell Foods Inc.*, 440 U.S. 715, 740 (1979).

29 *U.S. v. S.K.A. Assoc's Inc.*, 600 F.2d 513 (5th Cir. 1979).

been answered definitively.”³⁰ Accordingly, a fiduciary should not assume that all prior perfected liens trump the government’s priority.

Third, courts have found implied exceptions to the priority statute where its application would be plainly inconsistent with another later enacted federal statute.³¹ In *Romani*, the Supreme Court analyzed whether the Tax Lien Act or the priority statute determined whether the government’s tax claim had priority over a judgment creditor’s lien. The Tax Lien Act grants a judgment lien creditor priority over a federal tax lien if the notice of the tax lien is not filed prior to the perfection of the judgment lien.

The Court explained that the Tax Lien Act was a later, more specific and comprehensive statute reflecting Congress’s clear intent to protect secured creditors from the enforcement of secret tax liens. Therefore, the Tax Lien Act controlled and the lienholder’s prior perfected lien was entitled to priority over the tax claim.³² However, the Supreme Court has made it clear that any implied exceptions are limited because “[o]nly the plainest inconsistency would warrant our finding an implied exception to the operation of so clear a command as that of [the priority statute].”³³ On that basis, the Court rejected the argument that the priority statute should not apply to SBA loans on the theory that granting priority to the government would make it harder for small businesses to obtain credit and thus conflict with the purpose of the Small Business Act.³⁴

Fourth, the government’s claims under the priority statute are subordinate to the reasonable expenses, including legal fees, incurred by a fiduciary in administering and preserving an insolvent estate. Those administrative expenses are entitled to priority based on the equitable principle that creditors should bear the expense of proceedings undertaken for their benefit.³⁵

Personal Liability of Fiduciaries

Congress gave the priority statute teeth by imposing personal liability on a fiduciaries that pay other creditors before paying the priority claims of the federal government.³⁶ To avoid unfairness, however, courts have read into the statute the requirement that the fiduciary must have actual or inquiry notice of the government’s claim before personal liability will be imposed.³⁷ The federal government need not file an appearance or a claim in any proceedings for personal liability to attach.³⁸ Any funds paid by a fiduciary in derogation of the priority statute might also be recovered from the recipients.³⁹

Courts have held fiduciaries personally responsible even when the distributions were made as a result of erroneous advice of counsel or made pursuant to a court order.⁴⁰ In *King*, the government brought a claim under the priority

statute against the probate estate of a disbursing agent that made distributions under a confirmed chapter XI plan under the Bankruptcy Act.⁴¹ Despite having knowledge of the government’s contingent and unliquidated claim, the disbursing agent paid out estate funds to nongovernmental creditors with the bankruptcy court’s approval. This left insufficient funds to pay the government’s claim when it was finally liquidated several years later. The Supreme Court held that the disbursing agent was personally liable under the priority statute because he knew that the government had a contingent and unliquidated claim at the time the funds under his control were paid to the nongovernmental creditors.

Navigating the Priority Statute with PPP Loans

Consider a hypothetical where an insolvent company that is not eligible for PPP loan forgiveness transfers its assets to an assignee for the benefit of creditors. Immediately prior to the assignment, the company’s president pays off an unsecured loan to a shareholder and the claim of a vendor with a personal guaranty from the president. The president is a fiduciary within the scope of the priority statute and knew about the PPP loan when he satisfied the shareholder’s loan and the vendor’s claim. The payments are likely preferential and constitute an act of bankruptcy triggering the priority statute. Ultimately, the president’s liability may come down to whether the SBA acquired the PPP loan from the lender prior to the preferential transfers. If the president is liable, the government may also recover the preferential payments directly from the shareholder and the vendor.

In addition, the assignee falls within the scope of the statute since it will determine how the company’s assets will be disbursed to creditors. The assignee must not blithely rely on the distribution schemes set forth under the Bankruptcy Code or state law when making distributions. There are a number of steps that a diligent assignee should take to avoid the risk of personal liability to the federal government.

First, the assignee should communicate with the SBA because the SBA’s failure to participate in the assignment will not insulate the assignee from liability. The assignee should confirm when the SBA assumed the PPP loan and whether the SBA asserts a priority claim over secured and unsecured debt. The assignee may also request that the SBA subordinate its claim. Any subordination would be an internal policy decision at the SBA, which, unlike the Internal Revenue Service, has no formal administrative process for evaluating such requests.⁴²

Second, even if the SBA does not assert priority over lienholders, the assignee must confirm that any lienholders are perfected under applicable state law. If not, the SBA may take the position that the assignee distributed funds to an unsecured creditor in violation of the priority statute.

Third, if the SBA’s claim is disputed, distributions should not be made until there is a final order, no longer subject

30 *Romani*, 523 U.S. at 529.

31 *Id.* at 528-34.

32 *Id.*

33 *Id.*

34 *McClellan*, 364 U.S. at 453.

35 *Abrams v. U.S.*, 274 F.2d 8, 12 (8th Cir. 1960).

36 31 U.S.C. § 3713(b); *Moore*, 423 U.S. at 80.

37 *U.S. v. Renda*, 709 F.3d 472, 480 (5th Cir. 2013).

38 *U.S. v. Boots*, 675 F. Supp. 550, 552 (E.D. Mo. 1987).

39 *Indian Motorcycle Mfg. Inc.*, 2006 WL 2471767, at *8 (D. Colo. July 28, 2006).

40 *Renda*, 709 F.3d at 484; *Nw. Jobbers Credit Bureau v. Comm’r*, 1 T.C. 863 (1943); *Farmer’s Co-Op.*, 200 Iowa 1160 (1925).

41 *King*, 379 U.S. at 330-37.

42 See Dep’t of Justice Tax. Div. Dir. No. 137.

to review, that determines the amount and priority of its claim. In any litigation, the assignee could argue that the priority statute is plainly inconsistent with purposes of the later enacted CARES Act (*i.e.*, to use the PPP loan proceeds to pay employees during the pandemic) and therefore no priority exists over unpaid wages or other PPP eligible claims. Where the SBA's claim is less than the total amount to be distributed, the assignee has the option of holding back a reserve in the amount of the SBA's asserted claim until the matter is fully litigated.⁴³

Conclusion

Any decision to make distributions to creditors without first paying the SBA in full should only be taken after evaluating the applicability of the federal priority statute. Failure to take that precautionary step could result in severe adverse consequences for the fiduciary. **abi**

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⁴³ *S.E.C. v. Credit Bancorp Ltd.*, 297 F.2d 127, 140 (2d Cir. 2002).

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