Equitable Receivership as an Alternative to Bankruptcy

by John M. (Jack) Tanner

An equitable receivership may provide better relief for investors in or creditors of a troubled company than a bankruptcy reorganization. Receiverships immediately replace management, are more flexible, and can be more closely tailored to the situation.

"If the only tool you have is a hammer, you treat every problem like a nail."
—*Abraham Maslow*

When a company gets in financial trouble, the immediate reaction of many creditors and investors is to seek to put it into bankruptcy. Although this approach sometimes works, many times it makes matters worse. Often, an equitable receivership may be the better course of action. For purposes of this article, an "equitable receivership" is a receivership that is neither: (1) simply care-taking the property during a foreclosure; nor (2) initiated at the request of the government pursuant to statutes or regulations.

There are two primary advantages of an equitable receivership over a bankruptcy. First, a receivership immediately replaces management (with the receiver), whereas a Chapter 11 bankruptcy proceeding tends to entrench management and give it even greater authority as a debtor-in-possession. Where the company would be sound but for management, a receiver often is the better solution. Stated differently, if money is really the problem, bankruptcy may be a good course of action. If money is just a symptom, however, and the actual problem is management, a receivership may be a far superior approach for creditors and investors.

The second advantage of an equitable receivership is that there are virtually no statutes or rules that control a receivership in the manner that the Bankruptcy Code and Rules control a bankruptcy. Therefore, a receivership has much greater flexibility than does a bankruptcy. There is no panel or pool of lawyers from which receivers are selected, allowing a party seeking the appointment of a receiver to select the individual or company best suited to serve as receiver. A receivership judge, in the appointing or subsequent orders, can set out virtually any procedures, rules, or mechanisms that are appropriate under the circumstances. This allows the receivership to be tailored to the circumstances of the case to a much finer degree than a bankruptcy.

Bases for Appointment of an Equitable Receiver

Colorado Rule of Civil Procedure (C.R.C.P. or Rule) 66 provides for appointment of a receiver when the plaintiff "establishes a prima facie right" to property, an interest therein, or that the property (or profits therefrom) are in danger of being lost, injured, or removed from the jurisdiction. It further provides for a receiver at the behest of a judgment creditor or "in other cases where proper and in accordance with the established principles of equity." Federal Rule of Civil Procedure 66 is even simpler, providing for appointment of a receiver in "accord with the historical practice in federal courts or with a local rule."

In either case, appointment is considered an "extraordinary remedy" and usually is done only when there is no adequate remedy at law, or even a less drastic equitable remedy, available.[1] A receiver can be appointed for the company itself, or for some or all the assets of the company. The appointment of a receiver creates an estate, similar to a bankruptcy or trust estate.

The test for appointment is simply that, considering all the factors a court sitting in equity should consider, the appointment of a receiver is appropriate to preserve assets in which the plaintiff may have an interest.[2] The appointment of a receiver is reviewable on an abuse-of-discretion standard.[3]

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The circumstances in which a receiver might be a good idea are limitless. There are, however, some recurring situations where an equity receiver is appointed with some regularity. These are discussed below.

Impotent Management of a Business

This situation occurs where management is not being effective and the usual methods of replacement do not work. Following are some examples.

Deadlocked shareholders or partners. In many privately owned companies, the stock (or equity) is owned equally by a small number of people. When this number is even, there is the chance (some would say the certainty) that the shareholders or partners will cease seeing eye-to-eye on how to run the business. Two 50% shareholders or partners whose failure to agree is causing the company injury is an excellent scenario for the appointment of a receiver.[4]

Bad management. At times a controlling shareholder may not be doing what is best for the company, but is not really susceptible to a shareholder derivative suit. He or she may be judgment proof or have abandoned his or her role, or perhaps the suit will take too long and significant damage to the company is imminent. The appointment of a receiver may solve these problems.[5]

Mistrusted management/limited receivership. A receiver may be appointed for a limited function when there is concern about who really is management. In the *Yellow Cab* case, the receiver was appointed to supervise the election of management where there was a concern about voting fraud in the election of management. The idea was that the receiver would make sure the election was fair, and it was only after the election process was completed that the parties would know who management truly was.[6]

Trusts

As with a business, a trust may give rise to circumstances where the appointment of a receiver is useful. Following are some examples.

Intra-beneficiary dispute. Where there is a dispute among the actual or potential beneficiaries of a trust, the appointment of a receiver may allow the trustee to satisfy his or her duty to distribute or otherwise maintain the status quo until the dispute is resolved.[7] It may be preferable to an interpleader action, because the distribution can be invested rather than simply placed in the registry of the court.

Beneficiary/trustee dispute. Where there is a dispute between the beneficiaries and the trustee of a trust, the appointment of a receiver may be in the interest of the beneficiaries, because the trustee often uses the trust corpus to fund the litigation.[8] Even if the beneficiaries prevail in such a typical case, the corpus may have been adversely affected in the meantime. If the receiver controls the trust, however, it will be much harder for the trustee to use the corpus to pay for the litigation.

Domestic

Often during a divorce, issues will arise regarding ownership or management of a family business.[9] A receiver may be advisable in such a situation to avoid management problems and preserve the business pending a final dissolution and disposition of assets and liabilities.

After Judgment

C.R.C.P. 66(a)(2) expressly provides that a receiver may be appointed after judgment to dispose of the property subject to the judgment. This will ensure that the disposition is handled in a reasonable manner and with a focus on obtaining appropriate value.

Mechanics of Appointment of Equity Receiver

A receivership action is still a court case, and at its beginning resembles most other civil litigation. After the receiver is appointed, however, it proceeds somewhat differently, as described below.

The Complaint and Motion

A receivership action is commenced by the filing of a complaint seeking the appointment of a receiver. A federal receiver can be appointed if federal jurisdiction otherwise exists and the request to appoint a receiver is ancillary to another claim for relief.[10] In Colorado state courts, thanks to changes in 1991 overruling prior case law, the request that a receiver be appointed may be the only claim for relief in a complaint.[11] The rules regarding notice pleading apply to a receivership complaint; however, because appointment is an extraordinary remedy, the greater the detail and specificity in setting out the grounds for a receiver, the greater the likelihood that an appointment will be made.[12]

A verified motion usually is filed to support the appointment. This immediately brings the issue of whether a receiver should be appointed to the court's attention. If the appointment of a receiver would be proper assuming all the facts in the complaint and motion are true, the motion may not be denied without a hearing.[13]

Proposing a Receiver

The plaintiff must propose a specific receiver to the court—there is no panel as there is for bankruptcy trustees. The receiver must be neutral and, once the receiver is appointed, the plaintiff has no legal control over the receiver's actions.[14] The receiver is an officer of the court[15] and has a fiduciary-like duty to the court and to whoever the court ultimately determines are the proper beneficiaries (usually creditors and equity).[16] The receiver does not and cannot owe the plaintiff any more duty than it owes others.

One way the plaintiff may exert influence over a receiver is in funding. Often a receivership estate lacks sufficient cash-flow, so the receiver sells receiver's certificates (liens against the estate—discussed below) to fund operations. As a practical matter, the plaintiff is the most likely the buyer of such certificates, and may decide to buy them only under certain conditions.

This power to select the receiver is one of the great advantages of receivership. While most bankruptcy trustees are lawyers, the plaintiff can select a receiver that is familiar with the particular industry of the business being put into receivership. The receiver can retain counsel to help with the legal aspects, if necessary. Like other expenses of the estate, the receiver selects and pays counsel subject to approval by the appointing court.

Even if the case is a proper one for a receiver, the plaintiff's proposed receiver may be rejected by the court. The defendant may propose its own receiver, which also may be rejected by the court. The court can select its own receiver if it so desires.

The Appointing Order

The order appointing a receiver should be as broad and as detailed as possible. Unlike a bankruptcy, which is given substance and structure by the Bankruptcy Code and Rules, the statutes and rules regarding receiverships are scant. This flexibility, which is one of the greatest advantages of a receivership, also comes with a price: the powers of a receiver are limited to those set out in the Order Appointing Receiver.[17] As such, the order needs careful thought and consideration.

The following boilerplate should be in every receivership order:[18]

1) a finding regarding jurisdiction and venue;
2) findings of fact that support the appointment of the receiver;
3) a conclusion of law that a receiver should be appointed;
4) an order appointing the receiver effective immediately, with a requirement of a prompt filing of an oath and posting of a bond;
5) an order that the receiver is directed and empowered to take into custody all assets that will be within the estate;
6) an order that the receiver is given those powers traditionally and customarily held by receivers (an "including but not limited to" list is not a bad idea, and could include such things as running the business in the ordinary course and rejecting contracts when the receiver thinks it appropriate);

7) an order allowing the receiver to sell receiver's certificates to raise money;
8) an order fixing the receiver's compensation and setting the priority in which bills are to be paid (usually the receiver's and the receiver's counsel's fees, then the receiver's certificate holders, then the receiver's other out-of-pocket costs); and
9) an order allowing the receiver to hire professionals, staff, and other personnel as required to effectively manage the estate.

The plaintiff and the proposed receiver need to negotiate what other provisions of the appointing order would be helpful. These will vary from case to case, but may include the following:

10) if difficulty collecting the assets is anticipated, an order that the sheriff or U.S. Marshall assist in the collection;
11) if difficulty with the defendant (or its principals) is anticipated, an order that the defendant (and its principals) not hold itself out as the defendant or take any action on behalf of the defendant;
12) how often reports should be filed (rarely more often than monthly);
13) an order modifying the common law rule that the plaintiff is responsible for the receiver's fees if the estate is deficient (this may affect the quality of receiver the plaintiff can get and should be the subject of negotiation between the plaintiff and the potential receiver); or
14) an order naming parties who maliciously damaged the property going into the estate and making their claims contingent absent further order; this may prevent an attempted end-run around the receivership to bankruptcy court.

The Receivership

If and when a receiver is appointed, the case begins to function *in rem*. It no longer proceeds the way typical *in personam* civil actions do.

Immediate Effect of Appointment

As a matter of law, the appointment of a receiver puts all property subject to the suit *in custodia legis*—that is, "in the custody of the law."[19] A receivership is *quasi in rem*, meaning that personal jurisdiction has to exist to commence a case, but once a receiver is appointed the matter acts *in rem* over the property of the estate against all parties with actual or constructive notice of the receivership.[20] An order either granting or denying a motion to appoint a receiver, like any other injunction, is immediately appealable.[21] Although taking physical possession is helpful as a practical matter and should be done as soon as possible, it is not required. Whether it is the receiver or the court that physically has possession is legally irrelevant—for these purposes, the receiver is the registry of the court.[22] Any interference with the receiver's functions is punishable by contempt.[23]

A receiver, being a judicial branch appointee, is an officer of the court that appoints it.[24] A receiver has a fundamentally different relationship with the court than a bankruptcy trustee. The executive branch is involved in a trustee's appointment, and the trustee acts pursuant to the Bankruptcy Code enacted by Congress. The trustee is a party before the court that appoints it, whereas a receiver is not a party to the receivership action and functions exclusively pursuant to order of its appointing court.[25] The law is not clear on whether a receiver and its appointing judge can speak *ex parte*. Even if they can, it is not clear that they should (this is one of the many issues that arose in the *Yellow Cab* receivership).[26]

Early Actions

Unlike a bankruptcy, there is no automatic stay preventing the prosecution of suits against the company in receivership. There are, however, a handful of actions and routine orders that can be obtained early in the receivership that give the receivership nearly the same protection.

Nationwide notice (federal receiverships). In federal receiverships, a receiver has jurisdiction only over property in judicial districts where the receiver was appointed or where, within ten days of appointment, the receiver files a copy of the complaint and order of appointment.[27] If the receiver is unsure where property might be located, the prudent (although time-consuming and expensive) process is to file in every district. The law is unclear as to what happens when a receiver does not file such notice in another district and later discovers property there.[28]

Equitable stay. An order that works as a direction to the receiver entered by another judge in another case can create problems. For example, if a receiver has control of assets he or she is holding for the benefit of all creditors, and a court other than the one that appointed the receiver orders the receiver to turn over the property to a specific creditor, the receiver is faced with conflicting orders. To prevent this, the appointing court can and should enter an order prohibiting any other court from entering orders that purport to order the receiver to do (or not do) anything. This would include execution on a money judgment previously obtained, orders compelling discovery in an ongoing suit, and similar orders.[29]

Order to present and file claims/bar date. A bar date is more important in receiverships than in a bankruptcy case. A monetary judgment obtained against a company in receivership after the appointment of a receiver (remember, there is no automatic stay and the receivership court can only stay equitable actions in another court) is binding on the receiver if timely and properly filed as a claim.[30] This means that if a suit is ongoing at the time of appointment, the receiver may have to fight that suit in a foreign jurisdiction, which may take away much of the efficiency of a receivership. The solution is to have an Order to Present and File Claims that has a quick bar date for parties with notice and that requires a filing party to dismiss any other claims (such as pending litigation) before filing, if the claimant wants to participate in any distribution from the estate.

This type of order does not require dismissal of the pending suit *per se* (the court probably lacks jurisdiction to enter such an order). Unless trial is imminent, however, the plaintiff in the other suit (that is, the potential claimant) will realize if it prosecutes the case to judgment, it will miss the bar date. In the vast majority of instances, the other suit is dropped. In the rare cases where it is not, the bar date is missed and the claim is disallowed. When an order to present and file claims is entered, it immediately should be sent to all potential claimants, especially those who already have litigation pending.

Order protecting agents. Receivers have nearly the same judicial immunity as the judges who appoint them.[31] Receivers often retain other professionals to help them, and having those agents sued in other courts can be problematic. An order stating that all agents of the receiver have all the protections of the receiver, including immunity from suit outside the court appointing the receiver, may solve this problem. The order may provide a mechanism to list those agents, such as in the regular reports.

Discovery. If there is other litigation pending, or even if there is not, parties often want discovery from the receiver. This can interfere with the receiver's primary duties of gathering and protecting the assets and selling them or reorganizing the company. The court should enter an order that allows discovery but interferes as little as possible with the receiver's primary duties.

Receiver's Reports

The most effective way for a receiver to keep the court and the estate informed, and to obtain court orders approving the receiver's actions, is to file regular reports with the court and request that those reports be made orders of the court. The reports serve at least three functions. First, they inform the court and the estate what already has happened. This saves time because the receiver does not have to speak to beneficiaries of the estate or the court repeatedly on an individual basis.

Second, a Receiver's Report, if approved, protects the actions of the receiver from later attack. This is especially helpful because the receiver is operating a business, paying bills, paying itself, and so on. Not knowing for years after the fact that the court approved of its actions would be a burden.

Third, a Receiver's Report can suggest the direction a receiver is considering. This can flush out objections (from the court or the estate) early in the proceedings, before the receiver has too much time or too many resources invested along that path.

As a general rule, the Receiver's Reports should be ministerial and non-adversarial. If the receiver desires to do something to which a party or claimant is expected to object, it is probably best to put it in a separate motion. That way, the approval of the report (and approval of noncontroversial matters contained therein) is not delayed while the disputed matter is being resolved. Alternatively, the report can be broken into two parts, with one being the "ministerial" section and one being a report on pending litigation or other contested matters, with the court being asked only to approve the first section.

The report should be signed under oath by the receiver. It must be sent to any party who has entered an appearance, and should be sent to all claimants and any other interested parties. If the estate is large, a receiver may set up a distribution tree to get reports to all the beneficiaries of the estate, or use more modern technology and post reports on the Internet.

Gathering and Protecting Assets

The receiver's charge is to gather and protect assets. If the assets are tangible, it may require a lot of leg work and the help of a sheriff or U.S. Marshall. If the assets are intangible, protecting them becomes more esoteric. In the *Indian Motorcycle* receivership, protecting the primary assets—claims to the Indian Motorcycle trademark—involved buying several companies, filing extensive litigation, hiring a licensing agent and entering into many licenses, and greatly expanding the business beyond its original parameters.[32]

Raising Money

To pay himself or herself, counsel, and other post-appointment creditors, the receiver may sell receiver's certificates. These certificates act as a lien on the assets of the estate.[33] The certificate usually bears interest, and may contain some kind of kicker as well, such as an interest in the company that will emerge from the receivership.

Paying Expenses

When a receiver enters into any contract, the contract should be approved before the receiver acts pursuant to it. This can be done in the appointing order, monthly receiver's reports, or by separate motion. Once approved, the receiver need not get approval for each subsequent act further to the contract.

The general rule stated above also applies to the receiver and the receiver's counsel. Unlike a bankruptcy, a receiver's fees (and counsel's fees) do not have to be put through an approval process for each payment. Assuming the order appointing the receiver provided the rate of compensation for the receiver (which every order appointing receiver should) and once the motion to hire specific counsel is approved (which may be done by motion or in a receiver's report), each month the receiver simply pays himself or herself and counsel from the estate. The receiver then reports to the court in its next receiver's report what was paid.[34] The court's approval of these payments (by approving the next report or otherwise) can be reversed only for an abuse of discretion.[35]

In addition to the obvious expediency of this procedure, there is another advantage. Because there typically is no detailed bill submitted to the court, the company's competitors or litigation opponents do not have a chance to peruse the bills of the receiver and counsel to gather information to aid them in their competition with the company in receivership.

Winding up of the Receivership

Typically, there is no trial at the end of a receivership case. The company is either successfully reorganized or it is liquidated. In both cases, as described below, the receiver is then discharged and the case terminated.

Reorganization

In some instances, receiver will be able to successfully reorganize the company. Because a receivership cannot discharge debt, this means all bills are either paid in full or new arrangements are reached with all creditors (or at least enough creditors that the company can succeed). In this case, the bills are paid and the receiver is discharged. The company has been successfully reorganized.

Sale

If the company cannot be reorganized, its assets must be sold or distributed in kind. The sale can be on any terms and conditions the court sets, and is reviewable only for the grossest abuse of discretion.[36]

An often frustrating aspect of the sale is when a buyer wants warranties and representations from the receiver as though the deal were a standard commercial sale. This is misguided because a receiver cannot warrant or represent much regarding the assets—generally their acquisition predated the receiver's tenure. Further, a warranty or representation from a receiver is useless once the assets have been distributed and the case has been closed. The receiver is not individually liable for receivership obligations.[37]

What the receiver can do is deliver title, pursuant to court order, free and clear from all claims, liens, and encumbrances of parties with actual or constructive notice of the receivership[38] (unlike a bankruptcy, a receivership does not discharge a debt).[39] This has a practical effect comparable to a Bankruptcy Court Sale Order under 11 U.S.C. § 363.

Distribution of Assets

The distribution of assets (or cash proceeds for their sale) is the next step in a liquidation. It cannot occur until the claims against the estate are determined, because before that the receiver will not know to whom to distribute.

Determination of claims. Receivers should try to set up the most expedited process reasonable to determine claims. Often, in an attempt to leverage a more favorable settlement, a claimant tries to initiate full-blown complex litigation under the Rules of Civil Procedure to establish and quantify its claim. It is well established, however, that due process is satisfied as long as the claimant has notice and an opportunity to be heard (which may be on the papers without actual oral presentation).[40] Generally, a receiver should not spend his or her efforts litigating with the estate if it can be reasonably avoided.

Payment of claims. Once the sale is completed, the receiver distributes the assets pursuant to a formula, which is usually proposed by the receiver. The court will hear objections and then order how the cash is to be distributed.[41] Usually, the receiver and his or her counsel are paid first (to the extent they have not already been paid), receivership certificate holders are paid second, the receiver's other administrative creditors third, and pre-appointment creditors after that. As in bankruptcy, pre-appointment creditors tend to fall into classes, but the classes are neither rigid nor statutorily imposed.[42] There typically is a presumption based on the "absolute priority" rule as follows: secured, unsecured (priority), unsecured (general), and then equity.[43] In the end, however, the payment scheme is entirely up to the court, usually on the advice of the receiver.

For example, a claimant may have a secured claim, but if that claimant is a bad actor, the court may put that claimant at the back of the line. This is because a receivership is an entirely equitable proceeding. Although equitable subordination under § 510 of the Bankruptcy Code can reach the same result, there is a difference in presumptions and burdens of proof. In a receivership, whatever the receiver proposes to the court as fair is the starting point, and an objecting creditor has the burden to overcome that. In bankruptcy, the Code sets the presumptive distribution and the trustee has the burden to alter that scheme.

Discharge of the Receiver

Once the company is reorganized or the sale is complete and the claimants are paid, the receiver is discharged. This ends the estate and creditors with actual or constructive knowledge of the receivership generally cannot pursue either the receiver, the estate, or the buyer for debts that existed before the closure of the estate.

Conclusion

Although a receivership needs to be pursued with great care, the results can make the extra work worthwhile. Receiverships offer greater flexibility than bankruptcies. A receivership immediately eliminates bad management and puts the company under the supervision of the court. The receiver can be chosen for his or her knowledge of the industry of the troubled company. In the proper case, a receivership can be an effective process for investors or creditors of a troubled company.

Notes

1. *E.g., Waag v. Hamm* 10 F.Supp.2d 1191, 1193 (D.Colo. 1998).
2. *Savageau v. J. & R. A. Savageau, Inc.*, 285 P.2d 810 (Colo. 1955).
3. *Jouflas v. Wyatt*, 646 P.2d 946 (Colo.App. 1983).

4. *But cf. Savageau, supra* note 2 (affirming order declining to appoint receiver where shareholders deadlocked but company nevertheless still profitable).

5. *Eller Indus. v. Indian Motorcycle Mfg., Inc.*, 929 F.Supp. 369 (D.Colo. 1995) (the caption of this case was later changed to "*In re Receivership Estate of Indian Motorcycle Manufacturing, Inc.*") (appointing receiver at behest of investor where management had abandoned company, formed competing venture, and was transferring assets to new venture).

6. *See Yellow Cab Cooperative Ass'n v. Mathis (In re Yellow Cab Cooperative Ass'n)*, Adversary No. 94-1499-SBB (D.Colo. 1994).

7. *Melville v. Weybrew*, 103 P.2d 7 (Colo. 1940) (appointing receiver to manage trust on motion of beneficiaries).

8. *Johnson v. El Paso Cattle Co.*, 725 P.2d 1180 (Colo.App. 1986) (affirming appointment of receiver in lieu of trustee for trust at behest of beneficiaries).

9. *Shreyer v. Shreyer*, 148 P.2d 1003 (Colo. 1944) (receiver appointed for taxi company jointly owned by husband and wife during pendency of divorce).

10. F.R.C.P. 66.

11. *E.g., Johnson v. McCaughan, Carter & Scharrer*, 672 P.2d 221, 223 (Colo.App. 1983) (court should only appoint receiver incident to complaint seeking some other, final relief). The vast majority of receiverships in Colorado take place during the pendency of non-judicial (public trustee) foreclosures. If not for this departure from the Federal Rules, a foreclosing lender would not be able to obtain a receiver without also suing the debtor for something else, thereby largely defeating the point of a public trustee nonjudicial foreclosure. This may explain the difference between F.R.C.P. 66 and the 1991 amendments to C.R.C.P. 66.

12. *E.g., Nelson v. Nelson*, 497 P.2d 1284, 1286 (Colo.App. 1972) (allegations in complaint insufficient to justify appointment of receiver).

13. *Diaz v. Fernandez*, 910 P.2d 96 (Colo.App. 1995) (reversing trial court's summary denial of motion to appoint receiver and ordering an evidentiary hearing).

14. *E.g.*, Clark, *Clark on Receivers* § 112(b) (3d ed., 1959) ("It is a rule of general application that a receiver should be a person wholly impartial and indifferent toward all parties interested in the fund. . . .). *But cf. Boyd v. Brown*, 247 P. 181 (Colo. 1926) (noting that appointing party as receiver "unusual but not unlawful"); *rev'd on other grounds Boyd v. Brown*, 267 P. 200 Colo. (Colo. 1928).

15. The receiver is an officer of the court in a much stricter sense than attorneys are officers of the court. The leading commentator on receiverships writes that a receiver is not just an agent of the court, but an actual arm of the court; Clark, *supra* note 14 at § 36.

16. *Application of Northwestern Mut. Life Ins. Co. v. First Interstate Bank of Denver*, 703 P.2d 1314 (Colo.App. 1985); Clark, *supra* note 14 at § 43.

17. *Zeligman v. Juergens*, 762 P.2d 783 (Colo.App. 1986).

18. *E.g.*, Clark, *supra* note 14 at §§ 104 and 673.

19. *Eller Indus., supra* note 5. *See also* Clark, *supra* note 14 at §§ 36 (receiver is an arm or administering hand of the court) and 332 (effect of appointment of receiver is to put property in custody of court).

20. Clark, *supra* note 14 at § 70.

21. C.A.R. 1(a)(4).

22. *See Atlantic Trust Co. v. Chatman,* 208 U.S. 360, 372 (1908) (receiver is officer of court, and its property is *in custodia legis*); *Brunswick Corp. v. J & P Inc.,* 424 F.2d 100, 103 (10th Cir. 1970) (funds *in custodia legis* are the same as if actual possession is with an officer of the court).

23. *E.g., Clear Creek Power & Dev. Co. v. Cutler*, 245 P. 939 (Colo. 1929).

24. *McClain v. Saranac Mach. Co.*, 28 P.2d 1009 (Colo. 1934).

25. *See* Clark, *supra* note 14 at §§ 45 and 112(c).

26. *See Yellow Cab, supra* note 6. One of the major complaints of the claimants in the *Yellow Cab* receivership was that the court was having *ex parte* contacts with the receiver, leaving the estate in the dark as to what was transpiring.

27. 28 U.S.C. § 754.

28. *Compare* 28 U.S.C. § 754 ("The failure to file such copies in any district shall divest the receiver of jurisdiction and control over all such property in that district."), *with FTC v. NHS Systems, Inc.*, 708 F.Supp.2d 456, 463 (E.D.Pa. 2009) (allowing receiver to take jurisdiction over assets in district where receiver did not file timely notice, because no prejudice was caused by the delay).

29. *Riehle v. Margolies*, 279 U.S. 218 (1929) (appointing court had authority to enjoin equitable actions against receiver, but not legal ones).

30. *Id.* (pre-appointment legal action for collection of money could not be stayed by receivership court, and post-appointment determination by another court of amount due binding on receivership estate).

31. *See* Clark, *supra* note 14 at § 388 *ff.* (judicial immunity of receivers). The word "nearly" in the text is used because receivers do not have judicial immunity regarding post-appointment federal income taxes. *See* 31 U.S.C. § 3713.

32. A small part of the procedural history of *Indian* is set out in *In re Receivership Estate of Indian Motorcycle Mfg., Inc.*, 2006 WL 2471767 (D.Colo. 2006).

33. *E.g.*, Clark, *supra* note 14 at § 455 *ff*; *Frank v. Bonnevie*, 77 P. 363 (Colo.App. 1904).

34. A good precaution might be to have the receiver pay itself only a portion of its fees (*e.g.*, 80%) until his or her report is approved; that way, if a party objects the objection is not moot.

35. *Bemis Co. v. Fimple*, 470 P.2d 88 (Colo.App. 1970); *Welch v. Renshaw*, 59 P. 967 (Colo.App. 1900).

36. *Rossi v. Colorado Pulp & Paper Co.*, 299 P. 19 (Colo. 1931).

37. *Bayles v. Kansas Pac. R. Co.*, 22 P. 341 (Colo. 1889). As explained in note 31, *supra*, there is an exception to this general rule—the receiver can be individually liable for post-appointment federal taxes.

38. This generality may be subject to several qualifications, including whether the company itself or the assets are in receivership, whether the assets are security for a particular debt, and whether all the claims against the estate are paid.

39. *See generally,* Clark *supra* note 14 at § 500.

40. *S.E.C. v. Am. Capital Inv., Inc.*, 98 F.3d 1133 (9th Cir. 1996).

41. *Application of Northwestern Mut. Life Ins. Co. v. First Interstate Bank of Denver*, 703 P.2d 1314 (Colo.App. 1985). Note that sometimes there is no sale, but instead the distribution of assets is in kind. The comments in text apply equally to in-kind distribution.

42. An exception to the referenced "lack of rigidity" is that per statute, wage claims are "priority" over other unsecured creditors. CRS §§ 8-10-101 and -103. Wage claims do not, however, create a lien and turn the claimants into secured claimants. *E.g., Central Sav. Bank v. Newton*, 147 P. 690, 692 (Colo. 1915).

43. *N. Pac. Ry. v. Boyd*, 228 U.S. 482 (1913). ■