

RECEIVERSHIP BASICS

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Dealing with troubled businesses can be a frustrating and seemingly hopeless exercise for creditors, shareholders and others outside management. Money and other assets might be pilfered or wasted as substantive issues in dispute are resolved. Those in control of the business remain in control while litigation works its way through the courts. While battles might be won along the way, the war can be lost simply as a result of the passage of time.

Moreover, the cost of reorganizing a financially distressed business under federal bankruptcy laws continues to increase and the number of proceedings that result in truly successful reorganizations is a very small percentage of the cases filed. And, quite importantly, not all “trouble” relates to financial distress. Deadlocks, “freeze-outs,” “squeeze-outs” and mismanagement can create significant problems that do not directly threaten the solvency of a business.

As problems turn into disputes, lawyers and their clients should be cognizant of the various remedies that might be available in the event that litigation ensues. For various reasons, there is renewed interest in equity receiverships – a very old, but often overlooked remedy – as a way to address and ameliorate a variety of issues attendant to a financially distressed or otherwise troubled business. Because many 21st century litigators are wholly unfamiliar with this form of relief, the purpose of this paper is to provide an overview of receivership basics and to encourage lawyers and their clients to think creatively about whether a receivership might provide a good solution for a thorny business problem.

The Equity Receiver

Under federal and state law, the appointment of an equity receiver is a form of equitable relief.² Like other equitable remedies, the creation of an equity receivership is grounded in the court's inherent equitable powers,³ and is a form of relief available where remedies at law are not sufficient. Even so, it is important to understand that a receivership is not a form of substantive, permanent relief. Rather, it is ancillary to the primary relief sought.⁴

Equity receivers are officers of the court who manage litigation property under the court's direction until a judgment is rendered.⁵ The receiver is a fiduciary of the appointing court and answers to and "works for" the appointing court (as distinguished from the parties to the action).⁶ As a fiduciary, a receiver may be "held to a higher standard than that of people dealing in the market place."⁷ At the very least, Receivers are bound to act with the care and diligence that an ordinary and prudent person would employ in handling the matters of his own estate.⁸

In practice, receivers deal directly with the parties to the litigation, as well as others who have an interest in the assets that are the subject of the receivership. In dealing with all interested parties, the receiver has a duty of strict impartiality to each of the parties interested in the receivership assets or estate in question.⁹

In keeping with their role as officers of the court, "[r]eceptors are required to discharge their trust according to the orders or decrees of the courts appointing them, and are at all times subject to their orders, and may be brought to account and removed at pleasure." The trial courts may, "in their discretion, require receivers to give bond conditioned for the faithful discharge of the trust reposed, and shall fix the amount and determine the sufficiency of the security, where the giving of bond is so ordered."¹⁰

Grounds for Appointment

Federal Law

In federal court, the appointment of a receiver is considered an extraordinary remedy. There is no federal statute that sets forth the grounds for the appointment of a receiver. Federal case law confirms that a receiver is appointed only when the attendant circumstances are extreme and the interests of the parties in the property in question are clearly at risk.¹¹ Important factors that a federal court will likely consider in determining whether to appoint a receiver include:

- the probability that fraudulent conduct has occurred or may occur and would frustrate the claims at hand;
- the absence of a less drastic equitable remedy;
- the danger that the property in dispute may be lost, destroyed, concealed or diminished in value;
- the inadequacy of available legal remedies; and,
- the probability that such an appointment will result in more benefit than harm in the particular situation.¹²

Understandably, these types of cases are fact specific. By way of example, federal courts have been willing to appoint equity receivers under the following circumstances:

- to protect the interests of a secured creditor in real property pending the foreclosure of a mortgage;¹³
- in enforcement actions filed by regulatory agencies such as SEC when money and other assets are the product of an alleged fraud;¹⁴
- to preserve corporate assets during litigation between a minority shareholder and controlling shareholders;¹⁵

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- to conserve and manage a trust corpus during litigation, including collecting all rents generated by property in the trust, and managing real property existing in the trust;¹⁶
- to collect rent on behalf of mortgage holder from tenants of properties that are part of a foreclosure action;¹⁷ and
- to marshal and preserve the assets of an individual who guaranteed the debt (to a judgment creditor) of the company that he was president of, and that was subsequently unable to pay the debt.¹⁸

It is important to emphasize that with respect to certain circumstances (in the case of a failing savings and loan institution, for instance), there are specific federal statutes that provide for the appointment of a receiver.¹⁹ Obviously, these statutes govern the appointment of a receiver in those types of cases. Though similar, those receivers are not “equity receivers.”

Georgia Law

In Georgia, there is a statutory framework applicable to equity receiverships.²⁰ Appointment of receivers is limited to “clear and urgent cases” and the power of appointment is to be “prudently and cautiously exercised.”²¹ In Georgia, the subject property and the respective rights of parties in the property are the focal points of any decision to appoint a receiver. As set forth in O.C.G.A. §§ 9-8-1, 9-8-2 and 9-8-3, a receiver may be appointed:

- (i) when any fund or property is in litigation and the rights of either or both parties cannot otherwise be fully protected; or,
- (ii) when there is a fund or property having no one to manage it; or,
- (iii) to protect trust or joint property and funds whenever a risk of destruction or loss “requires such interference”; or

(iv) to take possession of assets charged with the payment of debts where there is “manifest danger” of loss, destruction or injury to interested parties.

As these statutes make clear, the primary purpose of a receivership is to preserve contested property and “provide full protection to the parties’ rights to the property during the pendency of litigation ‘until the final disposal of all questions, legal or equitable.’”²² Though the concept of “property” may be fairly broad, Georgia courts generally require that the subject property be the subject of litigation before appointing an equity receiver.²³ For example, in *Chrysler Insurance Co. v. Dorminey*, the court held that it was improper to appoint a receiver to manage funds from the sale of an employee’s house based on the employer’s suspicion that the employee used embezzled funds to pay for the house.²⁴ In so ruling, the court found that the house proceeds were not a “fund or property which is in litigation within the meaning of the receivership statutes.”²⁵ The mere possibility that the property was purchased with embezzled money was not enough to make the house the subject of the embezzlement litigation; thus, a receivership was not warranted.²⁶

In determining whether to appoint a receiver because “there is a fund or property having no one to manage it,”²⁷ Georgia courts have found that property is unmanaged when it lacks physical management, when it lacks proper and efficient management, or when property is managed by one who is inimical to the property’s best interest.²⁸ For example, in *Warner v. Warner*, the court appointed a receiver when the managing owner of jointly held property “failed to distribute profits from the building, stopped making mortgage payments, urged the mortgagee to foreclose, commingled the funds from the property with his personal funds, and deposited certain receipts from the property into an account which he maintained in a fictitious name.”²⁹

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Georgia courts have appointed receivers to protect property and funds in a wide variety of cases. The following list, while not exhaustive, illustrates some of the situations in which receivers have been appointed in Georgia:

- Corporate deadlock;³⁰
- Partnership dissolution;³¹
- Suits between cotenants of real estate;³²
- Suits between adverse claimants to property;³³
- Partitions;³⁴
- When a trustee refuses to perform in accordance with the trust document;³⁵
- Where real property placed into a trust is in danger of being neglected and allowed to regress into a poor physical state;³⁶
- Where a purchaser has innocently placed valuable improvements on trust property;³⁷
- Where a trustee dies or resigns without a replacement;³⁸
- When a defendant is allegedly using its assets for its own benefit in order to deplete those assets prior to the entry of a judgment against it;³⁹
- To protect a creditor-wife's interest in property of debtor-husband;⁴⁰ and
- When a purchaser of land defaults on the note executed for that land, and neglects the land while the original seller sues to repossess it.⁴¹

Despite this broad range of cases in which receivers have been appointed, it should be noted that the appointment of a receiver is far from categorical and, instead, turns largely on the facts of each situation. For example, in *Pritchett v. Kennedy*, the court ruled that it was appropriate to appoint a receiver to a partnership seeking dissolution and accounting because each of the parties had violated their reciprocal partnership duties and had taken exclusive

possession of firm assets.⁴² However, in a similar partnership dissolution case, the court denied a partner's request for a receiver because the partner offered no evidence to substantiate his allegations that his co-partners were mismanaging the business, were misappropriating the partnership's assets, or were personally insolvent.⁴³ The court ultimately determined that there was no proof that "the rights of the parties could not be fully protected without the appointment of a receiver."⁴⁴

The Receiver's Authority

While there are statutes that relate to a receiver's authority in both federal and Georgia state courts, their overall impact on the administration of a receivership is limited.⁴⁵ The scope of the receiver's authority is defined by the court making the appointment.⁴⁶ Hence, the order appointing the receiver is especially important in making certain that the receiver is authorized to do all of the things necessary to achieve the objectives of the receivership.

There is no "form" order of appointment. These orders can and should be tailored to meet the specific circumstances of a given case. In defining the scope of a receiver's authority and responsibility, the following list may provide a good starting point:

- to take custody, control and possession of all records, assets, funds, property premises and other materials of any kind that constitute property in receivership (i.e., the "receiver estate");
- to manage, control, operate and maintain the receiver estate;
- to open bank accounts or other depository accounts in the name of the receiver on behalf of the receiver estate;
- to use income, earnings, rents and profits of the receiver estate, with full power to sue for, collect, recover, receive and take into possession all goods, chattels, rights, credits, monies, effects, lands, books and records of accounts and other documents, data and materials;

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- to make such ordinary and necessary payments, distributions, and disbursements as he deems advisable or proper for the marshaling, maintenance or preservation of the receiver estate;
- to sell, rent, lease or otherwise hypothecate or dispose of the assets of the receiver estate;
- to contact and negotiate with any creditors of the receiver estate for the purpose of compromising or settling any claim, including the surrender of assets to secured creditors;
- to receive and collect any and all sums of money due the receiver estate whether the same are now due or shall hereafter become due and payable, and is authorized to incur such expenses and make such disbursements as are necessary and proper for the collection, preservation, maintenance, administration and operation of the receiver estate;
- to renew, cancel, terminate, or otherwise adjust any pending lease agreements;
- to institute, defend, compromise or adjust such actions or proceedings in state or federal courts now pending and hereafter instituted, as may in his discretion be advisable or proper for the protection of the receivership estate or proceeds therefrom, and to institute, prosecute, compromise or adjust such actions or proceedings in state or federal court as may in his judgment be necessary or proper for the administration, preservation and maintenance of the receivership estate;
- to prepare any and all tax returns and related documents regarding the assets and operation of the receiver estate; and
- to take any action that could be taken by the officers, directors, managers, members, partners, trustees or other principals of the receiver estate.

Obviously, the examples of authority noted above may not be necessary in all cases just as additional, unique measures may be deemed necessary to safeguard the receivership estate in other situations.

In defining the scope of requested authority, movants should remember that this is a form of relief that will likely be unfamiliar to the appointing court. Given that it is the court that will ultimately decide the scope of the receiver's authority, it is important to demonstrate a clear

correlation between the receiver's authority and the nature of the litigation and the subject property.

Depending upon the circumstances of the case, the party seeking appointment of a receiver might also request additional ancillary relief. Indeed, the court overseeing a receivership possesses broad equitable powers to issue blanket stay orders and injunctions against particular acts in order to prevent interference with the receivership estate.⁴⁷ It may also be appropriate to seek an asset freeze. While the appointment of a receiver is generally held to invoke an asset freeze,⁴⁸ the inclusion of such language in the order will likely make administration of the receiver estate easier.

A court order appointing a receiver in an SEC enforcement action filed in the federal district court in Atlanta is attached. Given the nature of those types of cases, receivers are typically vested with very broad authority, and the orders often include ancillary provisions that may be useful in administering the receiver estate and accomplishing the objectives of the receivership. In addition to defining the receiver's authority Sections (VII, VII, IX, X, XII, XIV, XVII and XIX), the attached order provides for an asset freeze (Section III); an injunction against interference with the receiver (Section VI); required cooperation with the receiver (Section XI, XII); an injunction and stay against creditors filing claims or otherwise enforcing rights against the receiver estate (Section XVI); and, protects the receiver from liability except for acts of gross negligence or intentional misconduct (Section XXI).

Jurisdiction and Venue

Federal Jurisdiction and Venue

In federal court, subject matter jurisdiction over a receivership is based on the same considerations as any other claim or controversy. The court must be presented with either a

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federal question,⁴⁹ a statute giving the court a jurisdictional basis⁵⁰ or an indication that the requisites for diversity and amount in controversy have been met.⁵¹ Additional suits brought by the receiver in order to execute his duties that would otherwise have no jurisdictional basis are then proper under ancillary or supplemental jurisdiction so long as the actions commenced by the court appointed receiver seek to accomplish the ends sought and directed by the suit in which the appointment was made.⁵²

A receiver has complete jurisdiction over property located within the jurisdiction in which he is appointed. Additionally, once jurisdiction has been established in the court appointing the receiver, if the estate has real or personal property in other jurisdictions, the receiver can obtain “complete jurisdiction” over that property by filing a copy of the complaint and the order of appointment within 10 days of his appointment in the district court in which the property is located pursuant to 28 U.S.C. § 754.⁵³ When § 754 applies, its companion statute, 28 U.S.C. § 1692,⁵⁴ is triggered. Section 1692 effectively expands the territorial jurisdiction of the court that appoints the receiver to any district in the United States where property believed to be that of the receivership estate is found, provided that the proper documents have been filed in each such district as required by § 754. The grant of extraterritorial jurisdiction promotes judicial efficiency by permitting courts to manage claims regarding receivership property in a single forum.⁵⁵

Georgia Jurisdiction and Venue

The appointment of an equity receiver is a form of equitable relief; thus, the rules applicable to other equity actions are also appropriate for equitable receiverships. Accordingly, the superior courts have subject matter jurisdiction over equity receivers.⁵⁶ However, once a court establishes jurisdiction and appoints a receiver, that court maintains exclusive jurisdiction

over the receivership for its duration.⁵⁷ If the court appoints a receiver for the duration of a corporate dissolution, the court appointing the receiver has exclusive jurisdiction over the corporation and all its property wherever located.⁵⁸

In Georgia, the appropriate venue for actions seeking equitable relief is “the county of residence of one of the defendants against whom substantial relief is prayed.”⁵⁹ In *Vizard v. Moody*, the plaintiff sought both a legal judgment to recover land and an equitable judgment in the form of an injunction and the appointment of a receiver.⁶⁰ The court concluded that while venue for the legal action was proper in the county where the land sat, venue for the appointment of the receiver and other equitable relief was proper in the county where the defendant resided.⁶¹

With respect to property subject to the receivership, a Georgia court may only exercise jurisdiction over property located within this state.⁶² Accordingly, under certain circumstances, a receiver appointed in a Georgia state court proceeding might have to commence ancillary proceedings in other states where property is located in order to obtain jurisdiction over that property as a part of the receivership.⁶³

Administration of the Receivership

The actions taken in administering the receivership estate are tempered by the fiduciary duty placed upon the receiver.⁶⁴ The administration itself will vary depending on the scope of the order appointing the receiver.⁶⁵ For example, receivers are generally prohibited from further encumbering the assets of the estate by taking out bank loans or granting liens or other security interests without obtaining court permission,⁶⁶ unless of course such powers were granted in the original order of appointment.

The duties of the receiver will inevitably involve the administration of claims against the receivership estate. To be provable in a receivership proceeding a claim must be: actionable on



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the date of appointment, and a direct obligation on that date or an unmatured obligation which has since matured or will later mature.⁶⁷ Therefore, claims that are contingent on the date of appointment are not provable and will not share in a distribution of the estate unless the contingency occurs and the claim becomes due and definite before the date for filing claims as fixed by the court.⁶⁸ In determining the priority of claims, the general rule is that the receiver shall preserve the priorities of claims against the receivership estate as they existed at the time of his or her appointment.⁶⁹ With regard to general claims and those creditors to be paid out of the general funds of the estate, however, equity controls the distribution, usually resulting in an equal right to distribution for each claimant.⁷⁰ It follows that any attachments made or advantages gained by a creditor after he or she receives knowledge of the pending proceeding, but before appointment of a receiver, will be required to be set aside by most courts before such creditors will be allowed to file claims and share in the estate distribution.⁷¹

Receivership property may be distributed to creditors only upon court order, which “should not be made until there has been a proper determination of the status of claims, and the order of their priority, and the assets available for their satisfaction.”⁷² If the receiver makes payments to a claimant without a court order, then the court can either order the claimant to return the payments to the receiver⁷³ or subsequently ratify the receiver’s actions if the court would have given prior authority if properly petitioned.⁷⁴ Before the court orders distributions to claimants, notice and an opportunity to be heard must be given to competing creditors.⁷⁵ Although these claimants are not a party to the litigation, they have a right to be heard regarding how the funds are apportioned.⁷⁶

Other Receivership Issues**The Attorney-Client Privilege**

In general, an equity receiver who exerts ultimate control over an enterprise also controls the attorney-client privilege belonging to the enterprise.⁷⁷ This power vests at the receiver's appointment.⁷⁸ Because the equity receiver essentially replaces former managers, the equity receiver's decisions regarding the privilege, even decisions to waive it, supersede the direction and control of the displaced managers and the affected lawyers. For example, in *Commodity Futures Trading Commission v. Standard Forex, Inc.*, a receiver was appointed to a company in litigation with the Commodities Futures Trading Commission. The CFTC subpoenaed the company's law firm to give documents to the receiver, and the law firm claimed the attorney-client privilege. In light of this objection, the court determined that control of the attorney-client privilege rested with the equity receiver, who held ultimate control over the company. However, the court did indicate that there existed "valid reasons" for allowing the receiver to control the company's privilege.⁷⁹

In Pari Delicto

The *in pari delicto* defense is, under both federal and Georgia law, an equitable doctrine that precludes a plaintiff from recovering damages from a defendant for an alleged wrongdoing when the plaintiff has participated in that wrongdoing.⁸⁰ The policy underlying the doctrine is that "courts should not lend their good offices to mediating disputes among wrongdoers" and "denying judicial relief to an admitted wrongdoer is an effective means of deterring illegality."⁸¹

This issue arises in receivership cases when the receiver replaces dishonest managers and then asserts claims against third-parties, who may have participated in or otherwise been involved with the activities of the enterprise in receivership. In response to such a claim, the



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third-parties often raise the *in pari delicto* defense, claiming that they should not be liable to the receiver because of the dishonest and illegal acts of the former managers.

Though courts have decided the issue both ways, the general trend is for courts *not* to apply the doctrine of *in pari delicto* to bar a receiver's claims—i.e., courts have found that a receiver acting on behalf of an enterprise that has jettisoned dishonest managers has standing to prosecute claims to recover funds for its creditors.⁸² For instance, in *FDIC v. O'Melveny & Myers*, the Ninth Circuit addressed whether torts of corporate officers could be attributed to a corporation's receiver.⁸³ The *O'Melveny* court held that a receiver is not estopped from pursuing his claims against a law firm allegedly assisting with the torts in question when corporate insiders—rather than the corporation itself—benefit from the wrongdoing. And, the court noted, conduct aggravating the corporation's insolvency and fraudulently prolonging its life does not benefit the corporation. Even if the corporation somehow profited from the insiders' wrongdoing, the court found that their conduct is not attributable to the corporation if a recovery by the receiver would serve tort liability objectives by compensating the victims of the wrongdoing and deterring future torts.

CONCLUSION

As indicated in the introductory paragraphs, this paper is not intended to be an exhaustive exploration of issues associated with equity receiverships. It is merely a primer intended to acquaint lawyers and their clients with an old, but revitalized, remedy that might be useful in resolving certain business disputes. Hopefully, this modest goal has been accomplished.

ENDNOTES

¹ Mr. Dantzler is the Practice Group Leader of the Securities Litigation Practice Group at Troutman Sanders LLP. The focus of his practice is corporate and securities litigation. He has extensive experience representing receivers appointed in regulatory enforcement actions. Mr. Dantzler wishes to acknowledge and thank Tom Borton, Bill Arnold, Ben Chastain and Melissa Lu, who are also attorneys at Troutman Sanders LLP and were essential to the preparation of this paper. The Paper is reprinted by permission of Mr. Dantzler and the National Attorneys General Training and Research Institute/National Association of Attorneys General, for whom this paper was originally prepared.

² *New York Life Ins. Co. v. Watt West Investment Corp.*, 755 F. Supp. 287, 289 (E.D. Ca. 1991).

³ *F.T.C. v. H.N Singer*, 668 F. 2d 1107, 1122 (9th Cir. 1982); *See Plata v. Schwarzenegger*, No. C01-1351TEH, 2005 U.S. Dist. LEXIS 8878, at *22 (N.D. Cal. May 10, 2005); *Kruzel v. Leeds Bldg. Prods.*, 266 Ga. 765, 766-67 (1996); *South Carolina & C. R. Co. v. Augusta S. R. Co.*, 107 Ga. 164, 184 (1899).

⁴ *See SEC v. Presto Telecomm., Inc.*, 153 Fed. Appx. 428, 430 (9th Cir. 2005).

⁵ *Hendricks v. Emerson*, 199 Ga. App. 208, 209 (1991); *McGarrah v. Bank of Southwestern Georgia*, 117 Ga. 556, 558 (1903).

⁶ O.C.G.A. §9-8-8; *Eller Industries, Inc. v. Indian Motorcycle Mfg., Inc.*, 929 F. Supp. 369, 371 (D. Colo. 1995); *Fleet Nat. Bank v. H & D Entertainment, Inc.* 926 F. Supp. 226, 240 (D. Mass. 1996); *Powell v. Maryland Trust Co.*, 125 F.2d 260, 263 (4th Cir. 1942).

⁷ *Northeast Factor & Disc. Co. v. Mortgage Invest.*, 107 Ga. App. 705, 710 (1963).

⁸ *Fleet Nat'l Bank*, 926 F. Supp at 240.

⁹ *Golden Pacific Bancorp v. FDIC*, 375 F.3d 196, 201 (2d Cir. 2004).

¹⁰ *Benton v. Turk*, 188 Ga. 710, 731 (1939).

¹¹ *FTC v. Crescent Publ'g Group, Inc.*, 129 F. Supp. 2d 311, 326 (S.D.N.Y. 2001).

¹² *Am. Bank & Trust Co. v. Bond Int'l Ltd.*, No. 06-CV-0317-CVE-FMH, 2006 U.S. Dist. LEXIS 58361, at *22-*23 (D. Okla. Aug. 17, 2006).

¹³ *Brill & Harrington Invs. v. Vernon Sav. & Loan Ass'n*, 787 F. Supp. 250, 253-254 (D.D.C. 1992).

¹⁴ *S.E.C. v. Elliot*, 953 F.2d 1560, 1564-1565 (11th Cir. 1992) *rev'd in part on other grounds*, 998 F.2d 992 (11th Cir. 1993).

¹⁵ *Lyman v. Spain*, 774 F.2d 495, 497-498 (D.C. Cir. 1985).

¹⁶ *Resolution Trust Corp. v. Bayside Developers*, 43 F.3d 1230, 1242 (9th Cir. 1995).

¹⁷ *Federal Home Loan Mortgage Corp. v. Tsinos*, 854 F. Supp. 113, 116 (E.D.N.Y. 1994).

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- ¹⁸ *Aviation Supply Corp. v. R.S.B.I. Aerospace, Inc.*, 999 F.2d 314, 316-317 (8th Cir. 1993).
- ¹⁹ *See, e.g.*, 12 U.S.C.S. § 1464(d)(6); *Biscayne Fed. Sav. & Loan Ass'n v. Federal Home Loan Bank Bd.*, 572 F. Supp. 997, 1034 (S.D. Fla. 1982), *rev'd in part on other grounds*, 720 F.2d 1499 (11th Cir. 1983).
- ²⁰ O.C.G.A. §9-8-1, et. seq.
- ²¹ O.C.G.A. §9-8-4; *Cleveland v. Tully*, 232 Ga. 377, 380 (1974).
- ²² *Richardson v. Roland*, 267 Ga. 34, 35 (1996).
- ²³ *Chrysler Insurance Company v. Dorminey*, 271 Ga. 555, 556 (1999).
- ²⁴ *Id.* at 556.
- ²⁵ *Id.* at 555-556.
- ²⁶ *Id.* at 555.
- ²⁷ *Patel v. Patel*, 280 Ga. 292, 293 (2006) *citing* O.C.G.A. § 5-6-34(a)(4).
- ²⁸ *Warner v. Warner*, 237 Ga. 462, 463 (1976); *Waycross Military Ass'n v. Hiers*, 209 Ga. 812, 814-815 (1953).
- ²⁹ 237 Ga. 462, 462-463 (1976).
- ³⁰ *Farrar v. Pesterfield*, 216 Ga. 311, 314 (1960).
- ³¹ *Pritchett v. Kennedy*, 140 Ga. 248 (1913).
- ³² *Warner v. Warner*, 237 Ga. 462 (1976); *Waycross Military Ass'n v. Hiers*, 209 Ga. 812 (1953).
- ³³ *Anthony v. Anthony*, 237 Ga. 872 (1976).
- ³⁴ *Waycross Military Ass'n v. Hiers*, 209 Ga. 812 (1953).
- ³⁵ *McDougald v. Dougherty*, 11 Ga. 570 (1852).
- ³⁶ *Jones v. Dougherty*, 10 Ga. 273 (1851).
- ³⁷ *Malone v. Buice*, 60 Ga. 152 (1878).
- ³⁸ *J.G. Bailie & Bro. v. McWhorter*, 56 Ga. 183 (1876), *Robert v. Tift*, 60 Ga. 566 (1878); *McFerran, Shallcross & Co. v. Davis*, 70 Ga. 661 (1883).
- ³⁹ *Bettis v. Leavitt*, 230 Ga. 607 (1973).
- ⁴⁰ *Peoples Loan Co. v. Allen*, 199 Ga. 537 (1945).
- ⁴¹ *Crockett v. Wilson*, 184 Ga. 539 (1937).

⁴² 140 Ga. 248 (1913). (Noting that it was irrelevant that neither of the parties was insolvent.)

⁴³ *Rogers v. McDonald*, 224 Ga. 599, 602 (1968).

⁴⁴ *Id.* at 603.

⁴⁵ *See e.g.*, 28 U.S.C. § 754; 28 U.S.C. § 959; O.C.G.A. §§9-8-7 and 9-8-11.

⁴⁶ *Citibank, N.A. v. Nyland (CF8), Ltd.*, 839 F.2d 93, 98 (2d Cir. 1988); *Federal Home Loan Mortg. Corp. v. Tsinos*, 854 F. Supp. 113, 115 (E.D.N.Y. 1994); *Citibank, N.A. v. Nyland (CF8), Ltd.*, 839 F.2d 93, 98 (2d Cir. 1988).

⁴⁷ *S.E.C. v. United Financial Group, Inc.*, 576 F.2d 217, 221 n.8 (9th Cir. 1978).

⁴⁸ *Brill v. Citizens Trust Co.*, 492 A.2d 1215, 1217 (R.I. 1985).

⁴⁹ *See* 28 U.S.C. § 1331 (2006).

⁵⁰ *See* 28 U.S.C. § 1345 (2006).

⁵¹ *See* 28 U.S.C. § 1332 (2006).

⁵² 28 U.S.C. § 1367 (2006); *Haile v. Henderson Nat'l Bank*, 657 F.2d 816, 822 (6th Cir. 1981); *see also* *SEC v. Bilzerian*, 378 F.3d 1100, 1107 (D.C. Cir. 2004); *Am. Freedom Train Found. v. Spurney*, 747 F.2d 1069, 1073 (1st Cir. 1984); *Tcherepnin v. Franz*, 485 F.2d 1251, 1255-1256 (7th Cir. 1973); *U.S. Small Bus. Admin. v. Integrated Eenvtl. Solutions*, No. H-05-3041, 2006 U.S. Dist. LEXIS 55574, *4 (S.D. Tex. Aug. 10, 2006).

⁵³ 28 U.S.C. § 754 (2006). 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.

⁵⁴ 28 U.S.C. § 1692 (2006). 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.

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⁵⁵ *Quilling v. Cristell*, No. 3:04 CV 252, 2006 U.S. Dist. LEXIS 46287, *10 (July 7, 2006).

⁵⁶ O.C.G.A. §9-8-1.

⁵⁷ *350 Marietta, Inc. v. Reardon*, 246 Ga. App. 812, 814 (2000).

⁵⁸ O.C.G.A. § 14-2-1432(a)(2000).

⁵⁹ O.C.G.A. § 9-10-30 (2006).

⁶⁰ *Vizard v. Moody*, 115 Ga. 491, 492 (1902).

⁶¹ *Id.* at 493.

⁶² *Bullock v. Oliver*, 155 Ga. 151, 153-154 (1923) (holding “it is well-settled law that a chancery receiver has no extraterritorial jurisdiction nor power of official action . . . and the court appointing him can not confer upon him authority to go into a foreign jurisdiction and take possession of the debtor's property.”).

⁶³ *Id.* at 159-160.

⁶⁴ *See supra* § 1(B).

⁶⁵ *See supra* § 3(A).

⁶⁶ *Amick v. Hotz*, 101 F.2d 311, 312 (8th Cir. 1939).

⁶⁷ *In re Edgewood Park Junior College*, 192 A. 561, 563 (Conn. 1937).

⁶⁸ *Samuels v. E.F. Drew & Co.*, 292 F. 734, 736 (2d Cir. 1923).

⁶⁹ *Wiswall v. Sampson*, 55 U.S. 52, 64 (1852).

⁷⁰ *Progress Press Brick & Mach. Co. v. Sprague*, 65 S.W.2d 154, 159 (Mo. App. 1933).

⁷¹ *Miller v. Kansas City Brick & Stone Co.*, 191 S.W. 1092, 1094 (Mo. App. 1917); *Ward v. Connecticut Pipe Mfg. Co.*, 41 A. 1057, 1060 (Conn. 1899).

⁷² *National Surety Corp. v. Sharpe*, 232 N.C. 98, 103 (1950).

⁷³ *Progress Press Brick & Mach. Co. v. Sprague*, 228 Mo. App. 1116, 1130 (1933).

⁷⁴ *Id.* at 1128.

⁷⁵ *Burt Co. v. Burrowes Corp.*, 158 Me. 237, 240 (1962).

⁷⁶ *Kilarjian v. Kilarjian*, 299 N.Y.S.2d 750, 752 (2d Dep't 1969).

⁷⁷ *See, e.g., United States v. Plache*, 913 F.2d 1375, 1381 (9th Cir. 1990); *Commodity Futures Trading Comm'n v. Standard Forex, Inc.*, 882 F. Supp. 40 (E.D.N.Y. 1995).

⁷⁸ Plache, 913 F.2d at 1381.

⁷⁹ See *id.* at 44 (holding that there must be a valid reason for a receiver to exercise the attorney-client privilege).

⁸⁰ *Banco Indus. d. Venezuela, C.A. v. Credit Suisse*, 99 F.3d 1045, 1050 (11th Cir. 1996); *Bell v. Sasser*, 238 Ga. App. 843, 848 (1999); see also BLACK'S LAW DICTIONARY 794 (7th ed. 1999).

⁸¹ *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 306 (1985).

⁸² See *Scholes v. Lehmann*, 56 F.3d 750, 752, 754 (7th Cir. 1995) (“[T]he defense of *in pari delicto* loses its sting when the person who is *in pari delicto* is eliminated.”); *Hays v. Paul, Hastings, Janofsky & Walker LLP*, No. 1:06-CV-754-CAP, slip op. at 25-27 (N.D. Ga. Sept. 14, 2006) (applying Georgia law in declining to find that *in pari delicto* barred receivership claims; the court reasoned that applying the defense would protect alleged wrongdoers, and punish innocent investors); but see *Knauer v. Roberts*, 348 F.3d 230, 248 (7th Cir. 2003) (distinguishing *Scholes*, the *Knauer* court found that the receiver entities were too closely tied to the conduct of a Ponzi scheme's perpetrators to allow the receiver to maintain his claims); *FDIC v. Ernst & Young*, 967 F.2d 166, 170 (5th Cir. 1992) (the Fifth Circuit reached essentially the same conclusion as the *Knauer* court in a receiver for a bank's malpractice case against an accounting firm that negligently conducted an independent audit of the bank. Specifically, it found that the chairman of the bank, also its sole owner, who had made false entries in the bank's books and records, did not actually rely on the audit. The court further found that the chairman's knowledge/lack of reliance was imputable to the bank, thus precluding the receiver's claim on behalf of the bank against the accounting firm).

⁸³ 969 F.2d 744, 749 (9th Cir. 1992) (holding that an attorney has a duty to protect a client from liability flowing from a false securities offering to investors, and that he has a duty to make a reasonable, independent investigation to detect false materials), *overruled in part, on grounds irrelevant to this case*, by 512 U.S. 79 (1994).