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ARTICLE

THE SO-CALLED “NEW” PROVISIONS OF THE MARYLAND COMMERCIAL RECEIVERSHIP ACT

**By: Paul M. Nussbaum, Todd M. Brooks*
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The Maryland Commercial Receivership Act (the “Receivership Act”) will take effect on October 1, 2019.¹ Some have described the Receivership Act as a “radical change” of law. In reality, however, experienced insolvency attorneys and receivers will have no learning curve because such practitioners have been navigating through these so-called “new” provisions of the Receivership Act for decades.

Historically, the Maryland courts have overseen three main categories of receivership cases. The first category is expansive; the Maryland courts have always had the inherent authority to appoint an “equity” or “chancery” receiver to take over the affairs of a company that has allegedly engaged in fraud, is suffering from mismanagement or is facing an “imminent danger of [its] property being lost, injured, diminished in value, destroyed, squandered, wasted, or removed from the jurisdiction.”² The second category is less expansive, but the Maryland courts have also long had the power to appoint a receiver pursuant to certain specific statutes enacted by the Maryland legislature—*i.e.*, a “statutory” receiver. For example, the General Assembly has dictated that a “director, stockholder, or creditor of a Maryland corporation ... may petition a court ... [for] the liquidation of the corporation” “by one or more receivers appointed by the court.”³ The third category is designed for lenders and the rights they regularly obtain from their

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¹ See MD. CODE ANN., COM. LAW §§ 24-101–24-801 (West 2019).

² *Hamzavi v. Bowen*, 126 Md. App. 492, 498, 730 A.2d 274, 277 (1999); see also *Grant v. Allied Developers, Inc.*, 44 Md. App. 560, 564–65, 409 A.2d 1123, 1125 (1980) (“As early as *Blondheim v. Moore*, 11 Md. 365 (1857), it was recognized as a well-settled proposition in this State that a court of equity possesses the inherent power to appoint a receiver ...”). Equity receivers also may be called upon only to take over specific property rather than the business, operations and affairs of the property’s owner. See, e.g., *PDL BioPharma, Inc. v. Wellstat Diagnostics, LLC*, No. 395722V (Montgomery Cty. Cir. Ct. Sept. 24, 2014) (“Order Appointing Receiver” at 1 [Dkt. No. 6]) (“[I]t is ... ORDERED that Gray & Associates, LLC ... is appointed receiver of that certain property belonging to Respondent Wellstat Diagnostics, LLC.”).

³ MD. CODE ANN., CORPS. & ASS’NS § 3-411(a)–(b) (West 2004).

borrowers to appoint a receiver “pursuant to the terms of a mortgage or deed of trust” or “the terms of a security agreement”⁴

For decades prior to the enactment of the Receivership Act, only “equity” and certain “statutory” receivers have been *required* to follow a set of receivership rules and procedures that are currently found in Title 13 of the Maryland Rules (the “Receivership Rules”).⁵ But even in cases in which the Receivership Rules did not technically apply, receivers would follow them or otherwise use the Receivership Rules as guidelines for the administration of a receivership case.⁶ Now, under the Receivership Act, each of the three traditional forms of Maryland receivership cases will operate under the same set of legal requirements,⁷ which are largely based upon the Receivership Rules.⁸ As such, insolvency attorneys and receivers will be able to easily traverse these familiar provisions of the Receivership Act.

⁴ Cf. MD. RULE 13-102(b)(1), (2).

⁵ See MD. RULES 13-101–13-703.

⁶ E.g., Alexander Gordon IV, *Gordon on Maryland Foreclosures* § 9.5 n.6 (4th ed. 2004) (explaining that, even when the Receivership Rules were technically inapplicable, “[m]ost courts, nonetheless, require[d] all the bonding, noticing, and accounting of a standard receivership” per the Receivership Rules).

⁷ See, e.g., MD. CODE ANN., COM. LAW § 24-103(a)(1)–(3) (providing that the Receivership Act applies to (i) a “receivership for an interest in real property;” (ii) a “receivership established under § 3-411 or § 3-415 of the Corporations and Associations Article,” which address statutory receivers appointed in connection with a voluntary “liquidation” or “involuntary dissolution” of a corporation; and (iii) “[a]ny other receivership in which a receiver is appointed to take possession and control of . . . substantially all of a person’s [or entity’s] property” or to “wind up the affairs of [a] business”); see also MD. CODE ANN., COM. LAW § 24-201(a)(1)(i), (b)(2)(ii)(2) (proving that a Maryland court “may appoint a receiver (i) “to protect a party that demonstrates an apparent right to property . . . [that is] being subjected to or is in danger of waste, loss, dissipation, or impairment” and (ii) if “[t]here is a default under [a] mortgage” and the borrower “agreed . . . to the appointment of a receiver on default.”).

⁸ For example, the Receivership Act has borrowed numerous standards from the Receivership Rules on subjects such as (i) who may serve as a receiver, *compare* MD. RULE 13-105, *with* MD. CODE ANN., COM. LAW § 24-203; (ii) the receiver providing notice to creditors, *compare* MD. RULES 13-201, 13-202, *with* MD. CODE ANN., COM. LAW § 24-302(a)–(b); (iii) the receiver’s employment of professionals, such as attorneys and accountants, *compare* MD. RULE 13-301, *with* MD. CODE ANN., COM. LAW § 24-303(a); (iv) the receiver’s and its professionals’ compensation, *compare* MD. RULE 13-303, *with* MD. CODE ANN., COM. LAW § 24-301(b)(6); (v) creditors filing claims against the receivership debtor and its estate, *compare* MD. RULE 13-401, *with* MD. CODE ANN., COM. LAW § 24-302(b)(2)–(c); (vi) objecting to, and resolving, creditors’ claims, *compare* MD. RULES 13-402, 13-403, *with* MD. CODE ANN., COM. LAW § 24-302(b)(2)–(e); (vii) the receiver filing periodic reports with the court, *compare* MD. RULE 13-501, *with* MD. CODE ANN., COM. LAW §§ 24-601, 24-602; (viii) the receiver making distributions to creditors, *compare* MD. RULE 13-503, *with* MD. CODE ANN., COM. LAW §§ 24-205(a)(1)(i), 24-301(b)(9), 24-602(a)(5), (b)(2); and (ix) the receiver abandoning property that has little or no value to the receivership estate. *Compare* MD. RULE 13-601, *with* MD. CODE ANN., COM. LAW § 24-301(b)(8). To

In addition to incorporating the general framework of the Receivership Rules, the Receivership Act also seeks to standardize the traditional forms of Maryland receivership cases into scaled-down versions of federal bankruptcy cases over which the Maryland trial courts will preside.⁹ Although the Receivership Act has now formally adopted aspects of long-established federal bankruptcy standards,¹⁰ skilled insolvency practitioners and receivers have been employing those standards in Maryland receivership cases for decades.

An overview and summary of the Receivership Act—by way of tracing a typical “equity” receivership case from its commencement through its conclusion—follows.¹¹

Commencing a Receivership Case: Petitioning a Maryland Court to Appoint a Receiver

As with the Receivership Rules, the Receivership Act does not succinctly outline the procedure for commencing a receivership case. The Receivership Act identifies a “petition” as “the pleading filed to commence the ... receivership proceeding,”¹² but there is no provision in the Receivership Act that sets forth precisely what a petitioning creditor should include in, and with, the petition. As a matter of practice, a petitioning creditor should style a receivership petition in the general form of a (plaintiff versus defendant) complaint that (i) describes the nature of the action, (ii) identifies the parties

be sure, these corresponding standards of the Receivership Act are, in some instances, more developed than those of the Receivership Rules, but they are nevertheless concepts with which experienced practitioners and receivers are accustomed.

⁹ Unlike federal bankruptcy cases, however, state court receivership cases are almost exclusively a creditor’s or lender’s “remedy.” See, e.g., *Spivery-Jones v. Receivership Est. of Trans Healthcare, Inc.*, 438 Md. 330, 334 n.5, 91 A.3d 1172, 1174 n.5 (2014). So, for example, an individual cannot file a voluntary receivership petition (rather than a federal bankruptcy petition) to address his or her declining financial condition. The Receivership Act has no impact on this distinction between receivership and bankruptcy cases. See generally MD. CODE ANN., COM. LAW §§ 24-103, 24-201, 24-202 (addressing the scope of the Receivership Act and the circumstances in which a receiver may be appointed).

¹⁰ See, e.g., *infra* notes 41, 51.

¹¹ Although most of the provisions of the Receivership Act apply to all forms of receivership cases within its scope, certain provisions do not apply depending on the nature of the receivership case before the court. For example, if a receiver is appointed to take control over real estate and personal property related to (or used to operate) the real estate, the receiver is not automatically permitted to file a lawsuit to recover “fraudulent” or “preferential” transfers of property. See MD. CODE ANN., COM. LAW §§ 15-101(e)(1)–(2), 24-103(a)(1), 24-301(10). This article does not highlight all of the nuanced exceptions and limitations of the Receivership Act, and a party that becomes involved in a receivership case should consult counsel to determine its particular rights, remedies and defenses.

¹² MD. CODE ANN., COM. LAW § 15-101 (West 2019).

involved (including the party or property over which the petition seeks to appoint a receiver), (iii) discusses the court's right to hear the petition (*i.e.*, a jurisdiction and venue statement), (iv) alleges facts about the respondent and why the petitioning creditor is seeking to appoint a receiver over the respondent or its property, (v) asserts law justifying why the court has the power to, and should, appoint a receiver, (vi) identifies the petitioning creditor's proposed receiver, and (vii) summarizes precisely what the petitioning creditor seeks from the court.¹³

Care should be given to selecting the appropriate court in which to file a receivership petition. All circuit courts in Maryland "may exercise personal jurisdiction ... over a[n entity] domiciled in, ... organized under the laws of, or who maintains his principal place of business in the State."¹⁴ Venue is appropriate in any "county where the defendant ... carries on a regular business" or "where it maintains its principal offices in the State."¹⁵ Importantly, however, "[w]here the assets of the defendant corporation are located outside the boundaries of [Maryland], it may become necessary to have an ancillary receiver appointed by the courts of the foreign jurisdiction where the property is located."¹⁶ The Receivership Act maintains this principle.¹⁷

In addition to the petition itself, the petitioning creditor should include two affidavits: one that supports each of the factual allegations in the petition and a second, signed by the proposed receiver, demonstrating its eligibility to be appointed by the court.¹⁸ And, of paramount significance, the petitioning creditor should include with the petition a proposed "receivership order" that outlines in detail, among other things, what rights, powers, duties and obligations the receiver will have.¹⁹

In the past, when a receivership petition was filed in the ordinary course, the respondent (a/k/a the perhaps-soon-to-be receivership debtor) was typically afforded a 30-day period to respond to the petition in writing and

¹³ See, e.g., *Far Hydrant, LLC v. Ft. Howard Dev., LLC (In re Ft. Howard Dev., LLC)*, No. 03-C-18-001606 (Balt. Cty. Cir. Ct. Feb. 15, 2018) ("Petition for Appointment of Receiver and Request for Expedited Hearing" [Dkt. No. 1]) (example).

¹⁴ See MD. CODE ANN., CTS. & JUD. PROC. § 6-102(a) (West 1976).

¹⁵ See MD. CODE ANN., CTS. & JUD. PROC. § 6-201(a) (West 2006).

¹⁶ *Grant*, 44 Md. App. at 566, 409 A.2d at 1126.

¹⁷ See, e.g., MD. CODE ANN., COM. LAW § 24-301(a)(9) (providing that "a receiver may ... [a]pply to a court of another state for appointment as ancillary receiver with respect to receivership property located in that state.").

¹⁸ See *infra* "Eligibility to Serve as the Receiver" for a general discussion and references to the provisions of the Receivership Act which, like the provisions of the Receivership Rules, prohibit certain parties from serving as a receiver.

¹⁹ See *infra* "The Receiver's Powers and Duties" for a discussion about the legal tools with which any receiver should be armed to successfully administer a case.

explain to the court why, in its view, a receiver should not be appointed.²⁰ Then, after the respondent filed an opposition to the petition, the court would typically conduct an evidentiary hearing to decide whether the appointment of a receiver was warranted. However, in emergency circumstances, a petitioning creditor had the right to seek the appointment of a receiver on an *ex parte* basis (*i.e.*, without affording the receivership debtor an opportunity to be heard)—although *ex parte* petitions are generally disfavored.²¹

The Receivership Act maintains these basic standards. A receivership debtor will still have a 30-day period to respond to a receivership petition and, ordinarily, “the court may issue an order ... only after notice and an opportunity for a hearing.”²² But the court also retains discretion to grant a receivership petition and appoint a receiver either on an *ex parte* basis²³ or on shortened notice.²⁴

Eligibility to Serve as the Receiver

As noted above, prior to the enactment of the Receivership Act, a petitioning creditor with experienced counsel would affirmatively recommend to the court a specific receiver to be appointed. Although the courts have always had the ability to select a receiver of their choosing, the petitioning creditor’s counsel should know (i) who will qualify as a receiver under the applicable rules and (ii) who will best serve the court as a receiver under the particular facts and circumstances of the case.²⁵ Indeed, the

²⁰ See MD. RULE 2-321(a) (providing that “[a] party shall file an answer ... within 30 days after being served.”).

²¹ See, e.g., *Spivery-Jones*, 438 Md. at 337, 91 A.3d at 1176 (discussing the long-held rule that “unless the necessity be of the most stringent character, the court will not appoint [a receiver] until the defendant is first heard in response to the application”); *First Union Sav. & Loan, Inc. v. Bottom*, 232 Md. 292, 297, 193 A.2d 49, 52 (1963) (explaining that *ex parte* relief may be warranted upon a clear showing of “fraud, spoliation, or imminent danger of loss of property unless immediate possession thereof be taken by the Court.”).

²² MD. CODE ANN., COM. LAW § 24-501(a).

²³ See MD. CODE ANN., COM. LAW § 24-201(c)(1) (“A court may ... appoint ... a receiver without prior notice ... or without a prior hearing”). As an effort to curtail unnecessary *ex parte* petitions, the petitioning creditor must now, under the Receivership Act, post some form of “security” to pay the respondent’s “damages,” “[r]easonable attorneys’ fees” and “costs” “[i]f the court concludes that the appointment [of the receiver] was not justified” *Id.*

²⁴ See MD. RULE 1-204(a), (c) (providing that “the court, on motion of any party and for cause shown, may ... shorten the period remaining” for “an act to be done” including “responding to original process”—*i.e.*, filing an answer, or otherwise responding, to a receivership petition).

²⁵ See *In re Ft. Howard Dev., LLC*, No. 03-C-18-001606 (Balt. Cty. Cir. Ct. Feb. 15, 2018). For example, in a recent receivership case in the Circuit Court for Baltimore County, the petitioning creditor recommended that the court appoint Gray & Associates, LLC (“G&A”).

Receivership Act now expressly provides that the “person seeking appointment of a receiver may nominate a person to serve as receiver.”²⁶

Also prior to the enactment of the Receivership Act, a receiver could not have certain prior relationships with the receivership debtor or “otherwise ... represent[] an interest adverse to the [receivership] estate.”²⁷ Under the Receivership Act, similar prohibitions are in place. For example, the proposed receiver cannot be “an affiliate of a party” to the receivership case or “[o]therwise ha[ve] an interest materially adverse to ... a party or the receivership estate, or ... any creditor”²⁸

The Receiver’s Powers and Duties

Retaining experienced counsel is especially important with respect to a receiver’s rights and powers because they “are not usually fixed by law alone but rather by the order of appointment.”²⁹ Accordingly, a petitioning creditor’s counsel must always consider what particular rights and powers should be vested in the receiver to successfully administer the receivership estate with minimal interference or complication.

The Receivership Act gives a receiver the most basic rights and powers that experienced counsel (and receivers) always have included in a proposed receivership order. But, invariably, the petitioning creditor and its counsel will need to consider whether additional rights and powers must be sought in the proposed order of appointment. The Receivership Act now provides that a receiver may:

- 1) as the person in control of the receivership debtor and its business operations, affairs and property:

G&A and its principal, G. Richard Gray (the co-author of this article), have been appointed as a receiver in hundreds of cases in and outside of Maryland to take over the affairs and/or property of entities across a broad range of industries including medical diagnostics, hotels, retail, manufacturing, casinos, insurance, telecommunications, mining and health care facilities, racetracks, investment advisory, data communications, recyclers, hospitality, distribution, radio stations, educational facilities, and multifamily and development projects. The court accepted the petitioning creditor’s recommendation to appoint G&A as receiver, and Mr. Gray (through G&A) successfully administered the receivership case, defended numerous motions brought by aggrieved parties, and obtained the court’s approval to sell the receivership debtor’s assets.

²⁶ See MD. CODE ANN., COM. LAW § 24-203(d)(1).

²⁷ See MD. RULE 13-105(a).

²⁸ See MD. CODE ANN., COM. LAW § 24-203(b).

²⁹ *Goldstein v. 91st St. Joint Venture*, 131 Md. App. 546, 573, 750 A.2d 602, 616 (2000) (citing 1 RALPH EWING CLARK, A TREATISE ON THE LAW AND PRACTICE OF RECEIVERS § 43 at 44 (3d ed. 1959)).

- a) operate the receivership debtor’s business;³⁰
 - b) collect, control, manage, conserve, and protect the receivership debtor’s property;³¹
 - c) use, transfer or sell the receivership debtor’s property (in some circumstances, free and clear of a lien on, or other interest in, the property);³²
 - d) employ and terminate the receivership debtor’s employees;³³
 - e) incur unsecured debt and pay debts in the ordinary course of the receivership debtor’s business;³⁴
 - f) assume or reject contracts in which both the receivership debtor and its counterparty remain obligated to perform some material function (e.g., the receivership debtor is to provide a service after which the counterparty is to make payment);³⁵
 - g) pursue and defend lawsuits;³⁶ as the person responsible for administering the receivership case:
 - h) employ professionals (such as attorneys, accountants, appraisers, auctioneers and brokers);³⁷
 - i) pay itself and any court-approved professionals that have been employed;³⁸
- 2) as the person responsible for addressing creditors’ claims:

³⁰ See MD. CODE ANN., COM. LAW § 24-301(a)(2).

³¹ See MD. CODE ANN., COM. LAW § 24-301(a)(1).

³² See MD. CODE ANN., COM. LAW §§ 24-301(b)(4), 24-304.

³³ See MD. CODE ANN., COM. LAW § 24-301(a)(4).

³⁴ See MD. CODE ANN., COM. LAW § 24-301(a)(3)(i)–(ii).

³⁵ See MD. CODE ANN., COM. LAW §§ 24-301(b)(5), 24-305.

³⁶ See MD. CODE ANN., COM. LAW § 24-301(a)(5).

³⁷ See MD. CODE ANN., COM. LAW §§ 24-301(a)(8), 24-303(a)(1). In some cases, it may be prudent for the petitioner to include language in the (proposed) receivership order that authorizes the receiver’s employment of a specific attorney or law firm, rather than wait and have the receiver file an application to employ that attorney or law firm.

³⁸ See MD. CODE ANN., COM. LAW §§ 24-301(b)(6), 24-303(c)(2).

- a) object to a creditor's claim against the estate or otherwise recommend allowance of such claim;³⁹
- b) distribute property to creditors with allowed claims.⁴⁰

The foregoing is merely a summary of most of the rights and powers of a receiver under the Receivership Act—many of which come with certain bankruptcy-modeled qualifications and caveats that typically will require consultation with counsel.⁴¹ And, importantly, the foregoing rights and powers “may be expanded ... by court order.”⁴² Accordingly, to avoid any oversights in giving the receiver the rights and powers that it needs to successfully administer a receivership case, a petitioning creditor should consult knowledgeable counsel prior to filing a petition. Likewise, a creditor with significant claims against a receivership debtor and its estate should strongly consider retaining experienced counsel upon receiving notice of the receivership case.⁴³

Cooperation with, and Protection of, the Receiver

Prior to the enactment of the Receivership Act, prudent counsel for a petitioning creditor would have included language in the proposed receivership order providing that the receivership debtor's owners, directors, officers, employees and other agents (“Control Persons”) were both (i) prohibited from interfering with the receiver's rights, powers and duties and (ii) required to cooperate with the receiver upon request. Now, in the Receivership Act, such Control Persons are expressly required to, among other things, “[a]ssist and cooperate with the receiver,” “turn over to the

³⁹ See MD. CODE ANN., COM. LAW §§ 24-301(b)(7), 24-302(e).

⁴⁰ See MD. CODE ANN., COM. LAW §§ 24-301(b)(9), 24-302(g), 24-602(a)(5).

⁴¹ For example, prior to the Receivership Act, a receiver was permitted to sell the receivership debtor's property. See MD. RULE 13-103(c) (noting the “procedures for making a sale of property of the [receivership] estate”). Now, under the Receivership Act, the standards for asset sales are modeled after the statutory scheme for asset sales in federal bankruptcy cases. Compare MD. CODE ANN., COM. LAW § 24-304, with 11 U.S.C. § 363 (West 2010). Similarly, provisions concerning a receiver's ability to assume or reject certain categories of contracts are now stated in a set of new provisions under the Receivership Act, but they are likewise modeled after long-established standards of federal bankruptcy law. Compare MD. CODE ANN., COM. LAW § 24-305, with 11 U.S.C. § 365 (West 2005).

⁴² See MD. CODE ANN., COM. LAW § 24-301(d).

⁴³ See *Infra* “Paying Creditors of the Receivership Debtor” for a discussion of the receiver's duty to notify creditors of the receiver's appointment and the deadline to file a claim against the receivership debtor and its estate.

receiver all receivership property,” and “[r]efrain from interfering with, obstructing, or preventing in any way the receiver’s actions regarding the receivership property.”⁴⁴ Nevertheless, as with the scope and breadth of a receiver’s rights and powers, a petitioning creditor and its counsel should consider whether the proposed receivership order will proscribe or mandate certain additional specific activities to facilitate the administration of the receivership estate.

Also prior to the enactment of the Receivership Act, a carefully-considered receivership order would contain a provision protecting the receiver and its professionals from baseless lawsuits brought by aggrieved parties-in-interest. For example, implementing the federal *Barton* doctrine,⁴⁵ such protective language would mandate that “any party seeking to pursue a claim against the Receiver (and/or one or more of the professionals it has employed) arising out of the Receiver’s (or professional’s) performance of its duties, powers, rights, authority, obligations and functions under the terms of this Receivership Order shall first be required to seek leave from the Court to pursue such claim.”⁴⁶ Now, the Receivership Act insulates the receiver and its professionals from groundless lawsuits by requiring a party to “receive approval from the court ... before” pursuing an “action against the receiver” or “against a professional person that has provided services to the receiver.”⁴⁷

The Automatic Prohibition Against Creditors Unilaterally Enforcing Their Rights

The Receivership Act, taking another lead from federal bankruptcy law, now automatically prohibits creditors, upon the court’s entry of a receivership order, from (i) commencing (or continuing to prosecute) a lawsuit against the receivership debtor, (ii) obtaining or recovering the receivership debtor’s property, (iii) or obtaining a perfected lien on the receivership debtor’s

⁴⁴ See MD. CODE ANN., COM. LAW § 24-301(a)–(b) (identifying applicable Control Persons and listing eight separate categories of activities in which Control Persons must (or cannot) engage).

⁴⁵ See *McDaniel v. Blust*, 668 F.3d 153, 156–57 (4th Cir. 2012) (“The Supreme Court established in [*Barton v. Barbour*, 104 U.S. 126, 26 L.Ed. 672 (1881)] that before another court may obtain subject-matter jurisdiction over a suit filed against a receiver for acts committed in his official capacity, the plaintiff must obtain leave of the court that appointed the receiver.... The *Barton* doctrine serves the principle that a [receiver] is an officer of the court that appoints him, and therefore that court has a strong interest in protecting him from unjustified personal liability for acts taken within the scope of his official duties.”) (internal quotation marks and citations omitted).

⁴⁶ See *In re Ft. Howard Dev., LLC*, No. 03-C-18-001606 (Balt. Cty. Cir. Ct. Mar. 29, 2018) (“Receivership Order” at 9 [Dkt. No. 18]).

⁴⁷ See MD. CODE ANN., COM. LAW § 24-702(b)(1)–(2).

property.⁴⁸ But be warned; additional prohibitions may be included in the receivership order.⁴⁹ Creditors must be extremely careful not to violate any of these new prohibitions under the Receivership Act (or within a receivership order) because a violation may result in the court sanctioning the creditor, including entering an order against the creditor to pay the receiver's "damages," "[attorneys'] fees and costs."⁵⁰ Thus, again, retaining knowledgeable insolvency professionals is crucial to avoid these hazards cast from bankruptcy law.⁵¹

Paying Creditors of the Receivership Debtor

With nuanced differences, the Receivership Act maintains the basic standards for addressing creditors, their claims against the receivership estate and, ultimately, any distribution that will be made to them.

The goal of paying creditors has always started (and continues to start) with the court's appointment of a receiver; under the Receivership Rule and, now, the Receivership Act, the newly-appointed receiver must provide notice of the receivership case to creditors and advise them of the 120-day deadline to file a claim in the receivership case.⁵² Then, after the deadline passes for the submission of creditor claims, the receiver will have an opportunity to evaluate each claim and determine whether to object—*e.g.*, because the claim is overstated and should only be allowed in a reduced amount; this is a function that existed prior to the Receivership Act.⁵³

After the receiver determines how to best administer the receivership estate (including by selling receivership property and/or objecting to particular claims), the receiver will make distributions to creditors if funds are available. The Receivership Act does not alter Maryland's long-standing priority scheme for distributions. After secured creditors' claims are fully

⁴⁸ See MD. CODE ANN., COM. LAW § 24-401(a)(1)–(4).

⁴⁹ See MD. CODE ANN., COM. LAW § 24-401(c) (listing additional activities and conduct that cannot be performed if "an order is entered" prohibiting them).

⁵⁰ See MD. CODE ANN., COM. LAW § 24-401(g) (1)–(2).

⁵¹ Compare 11 U.S.C. § 362(a), with MD. CODE ANN., COM. LAW § 24-401(a)–(c).

⁵² Compare MD. RULE 13-201, with MD. CODE ANN., COM. LAW § 24-302(a)–(b). However, under the Receivership Act, "[i]f the court concludes that receivership property is likely to be insufficient to satisfy claims of each creditor holding a perfected lien on the property, the court may order that ... [t]he receiver does not need to give notice ... to all unsecured creditors." See MD. CODE ANN., COM. LAW § 24-302(f) (1).

⁵³ Compare MD. RULE 13-402 (providing that "[a]n objection to a . . . claim may be filed" and "the claimant or the objecting party is entitled to a hearing"), with MD. CODE ANN., COM. LAW § 24-302(e)(1)–(2) (providing that "the receiver may file with the court an objection to a claim of a creditor" and "[t]he court shall allow or disallow the claim" after considering the receiver's objection and the claimant's response thereto.).

satisfied, distributions from any remaining property are made “in the order” listed below:

- (1) approved administrative claims, which include the costs and expenses of the receivership estate and the receiver’s and its professionals’ fees and expenses;
- (2) unpaid employee wages earned within the three months prior to the filing of the receivership petition;
- (3) certain lien claims “of the State, a county ... or other political subdivision of the State”;
- (4) unsecured claims “in connection with the purchase, lease or rental of property, or the purchase of services for the ... household use of individuals,” except that such priority claims are capped at \$900 per claimant;
- (5) rent for properties located in Maryland that came due within the three months prior to the filing of the receivership petition;
- (6) certain “[c]harges in connection with the transportation of goods”
- (7) taxes that are not otherwise included in Priority Level (3) above; and
- (8) claims of unsecured creditors.⁵⁴

As with bankruptcy cases, there are no guarantees that unsecured creditors will be paid—much less receive a distribution that substantially pays down the receivership debtor’s obligations to them. But there are also instances in which a receiver will be able to collect substantial sums, payoff secured claims and have funds remaining for distributions to unsecured creditors.

* * * * *

In summary, the Receivership Act’s incorporation of long-standing provisions of the Receivership Rules and federal bankruptcy law may present challenges for the unwary. However, experienced insolvency counsel and experienced receivers will be able to efficiently and effectively navigate across these so-called “new” rules.

⁵⁴ See MD. CODE ANN., COM. LAW § 15-102(b)(1)–(8) (West 2019).