
**Assignment for Benefit of Creditors, Receivership
and Bankruptcy
(Client Overview Chart)**

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	<u>ASSIGNMENT FOR BENEFIT OF CREDITORS</u> (“ABC”)	<u>RECEIVERSHIP</u>	<u>BANKRUPTCY</u>
Jurisdiction	State	State/Federal	Federal
Initiation	<p>Generally, any clear written agreement between assignor and assignee effectuates assignment.</p> <p>Some states require filing with a court or county clerk’s office.</p> <p>Generally, no consent of creditor required.</p>	Complaint, Motion, and Order Appointing the Receiver (“Receivership Order”).	Voluntary or Involuntary Petition.
Duty of Trustee, Receiver or Assignee	Generally, must accept assets, liquidate them, make pro rata distributions to creditors.	<p>Generally, stated in Receivership Order.</p> <p>Generally, collect and manage assets, liquidate, pay creditors.</p>	Collect and liquidate the estate’s assets, and distribute the estate’s assets to creditors.

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Debtor Disclosure Obligations	Some states require assignor to disclose or file schedules of assets and value. Others are silent regarding disclosure requirements.	Receivership order may require debtor and debtor's agents to make disclosures and grant receiver right to issue subpoenas or discovery requests.	Petition, Statements and Schedules – Extensive Disclosures.
Professional Compensation	Reasonable compensation for administration.	Reasonable compensation for administration. Judicial review and approval.	Compensation for actual and necessary services and costs. Judicial review and approval.
Oversight/Reporting	Some states require inventories or periodic reports. Interested persons may sue assignee for accounting or distribution.	Court oversees receiver. Court may demand reports/accountings, or may set schedule for periodic reports/accountings. Interested persons may request that the Court require receiver to provide information or accounting.	Chapter 11 Debtor Monthly Reports. Court oversight.

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Banking Requirements Re: Estate Funds	<p>Generally, no requirements.</p> <p>Duty of good faith and reasonable diligence and duty to preserve estate may be relevant.</p>	<p>Unless imposed by the Receivership Order or Court, no specific banking requirements.</p> <p>Duty of good faith and reasonable diligence and duty to preserve estate may be relevant.</p>	<p>Generally, estate funds must be in insured accounts, or must be otherwise bonded or secured.</p>
Stay of Litigation or Collection	<p>Generally, collection of judgments related to assigned assets is stayed.</p> <p>No automatic stay of litigation against assignor.</p>	<p>Generally, no stay of litigation that is pending at appointment of Receiver.</p> <p>Court may stay litigation brought after receivership, but its power to do so may be limited by jurisdictional issues.</p>	<p>Filing petition automatically stays litigation, lien enforcement, or other actions related to claims that could have been commenced or arose prepetition.</p>

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Power to Liquidate Property	<p>Unless restricted by assignment agreement, assignee may liquidate property as necessary or expedient.</p> <p>Some states require public auctions (e.g. New York and Pennsylvania).</p> <p>Most states require some type of notice to creditors before sale.</p>	Allowed, upon Court approval.	Trustee may sell estate property, after notice to parties in interest and a hearing.
Discharge of Debts	Debts and liability are not discharged.	Debts and liability are not discharged.	<p>Individual Chapter 7 – Generally yes</p> <p>Business Chapter 11 – Generally yes</p> <p>Business Chapter 7 – No</p>

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Assignment of Debtor's Contractual Obligations	Generally, allowed, but subject to contract terms.	Generally, allowed, but subject to contract terms.	Trustee requires Court approval to assign contractual obligation of Debtor. Contract terms may be altered.
Method for Asserting Claim	Varies by jurisdiction. Generally, must provide written notice to assignee by certain deadline.	Generally, set out in Receivership Order. Generally, similar to presenting claim in Bankruptcy Court.	Generally, must file Proof of Claim. Proof of Claim constitutes "prima facie evidence of the validity and amount of the claim."
Order of Distribution	States differ regarding specific order. Some have no specific order. Generally, distribution is similar to bankruptcy scheme.	<u>Generally:</u> 1. Receivership costs. 2. Property belonging to third parties held in trust by defendant. 3. Taxes, wage claims. 4. Secured creditors. 5. Unsecured creditors.	1. Property securing secured creditor claims. 2. "Priority " claims under 11 U.S.C. § 507. 3. Allowed unsecured claims (timely filed). 4. Allowed unsecured claims (not timely filed). 5. Interest on claims in categories 1-4.

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Avoidance Powers	<ol style="list-style-type: none"> 1. Fraudulent Transfer: Allowed in some states (e.g. New York). 2. Preferences: New York and Pennsylvania have four-month look-back periods, as opposed to Bankruptcy Code’s 90-day period. 	<ol style="list-style-type: none"> 1. Fraudulent Transfer 2. Preferences (Under State UFTA) 	<ol style="list-style-type: none"> 1. Fraudulent Transfer 2. Preferences 3. Unauthorized, Post-Petition
Creditors' Committees	Generally, not contemplated by ABC law, but not necessarily prohibited.	Generally, not contemplated by receivership law, but not necessarily prohibited.	<p>Optional. Primarily designed to advise Debtor.</p> <p>Standing to address certain issues with Court.</p>

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Sovereign Immunity	ABC does not limit sovereign immunity.	Receivership does not limit sovereign immunity.	<p>No sovereign immunity with respect to most specifically-enumerated causes of action under Title 11. 11 U.S.C. §106(a)(1). Government not required to waive sovereign immunity first.</p> <p>No sovereign immunity with respect to non-bankruptcy causes of action. 11 U.S.C. § 106(b). Sovereign immunity waived by filing Proof of Claim.</p>

Receivership Order

Sample

whatsoever related in any manner to his investment advisory business as further described in the Complaint for Injunctive Relief, including, without limitation, all of MCM's and the Fund's cash, bank and deposit accounts; accounts receivable, notes receivable, and other receivables; business investments and interests, whether legal or equitable, direct or indirect, in other business enterprises; tangible personal property; general intangibles; inventory; investment property; payment intangibles; real property; claims, causes of action, and choses of action of any kind or nature; instruments, documents, chattel paper, intellectual property, and letter-of-credit rights; together with: (i) all substitutions and replacements for and products of any of the foregoing; (ii) proceeds of any and all of the foregoing; (iii) in the case of all tangible goods, all accessions; (iv) all accessories, attachments, parts, equipment and repairs now or hereafter attached or affixed to or used in connection with any tangible goods whether now owned or hereafter acquired, and (v) all other things of value owned by MCM and the Fund, including without limitation the books, records and other papers of any business or entity operated by Sean Michael Mueller ("Mueller"), MCM and the Fund, as well as related entities Mueller Partners, LP, MCM, LLC, and Mueller Fund LP (collectively, the "Estate").

4. C. Randel Lewis is a Managing Director of Cloyes Partners, LLC, whose address is 1441 18th Street, Suite 200, Denver, CO, and is an experienced and suitable party to be appointed Receiver for the Estate.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

1. C. Randel Lewis is appointed as Receiver for the Estate (hereinafter referred to as the "Receiver").

2. The Receiver shall post a bond in the amount of \$10,000 with the Court within five court days hereof, the expense of which shall be charged as an expense of this Receivership proceeding; and shall forthwith file his oath of Receiver. The Bond shall be maintained until further order of this Court.

3. The Receiver is hereby directed and empowered to take immediate control and possession of the Estate, and to hold the Estate for this Court *in custodia legis*. The Receiver shall operate, manage, maintain, protect, and preserve the Estate, subject to the supervision and exclusive control of this Court, for the benefit of creditors and owners of the Estate.

4. Mueller, MCM and the Fund, and all persons in active concert and participation with him, including, without limitation, his current and former employees, shareholders, agents, representatives, managers, members, attorneys, accountants, banks, contractors, subcontractors and all who claim under them, be, and the same hereby are, ordered to deliver immediately over to the Receiver all of the Estate.

5. The Receiver is hereby given the powers and authority usually held by receivers and reasonably necessary to accomplish the purpose of this Receivership including, without limitation, the specific power to:

a. take from Sean Michael Mueller, or any others in control of the Estate, immediate control of the Estate, to the exclusion of all others;

b. take control of the Estate and operate, manage, maintain, protect, and preserve the Estate as reasonably necessary to maximize the value and prevent diminution of its value; take possession of all bank and other deposit accounts of the Estate and all funds therein; and open, transfer and change all bank and trade accounts relating to the Estate, so that all such accounts are in the name of the Receiver;

c. close bank accounts in the name of the Estate and transfer the funds to one or more bank accounts at a bank or banks, financial institutions, mutual fund, brokerage institution or other commercial depositories in the Denver, Colorado metropolitan area selected by the Receiver, in the name of the Receiver;

d. collect rents and revenues, income, profits, and other benefits from the operation and management of the Estate;

e. collect all accounts, accounts receivable, notes receivable, income, profits and proceeds that are part of the Estate or represent proceeds of the Estate; including, as necessary, negotiate and deposit checks made payable to the Estate into accounts maintained by the Receiver, and, as necessary to collect and review mail directed to the Estate in order to collect incoming accounts receivable;

- f. invest funds of the Estate, without further permission of the Court, in savings accounts or in securities backed by the full faith and credit of the United States including mutual funds;
- g. change any and all locks on any and all physical property of the Estate and limit access thereto;
- h. operate, manage, maintain, protect, and preserve the Estate, including, to the extent the Receiver deems appropriate, the going concern value of any business operated by the Estate;
- i. investigate the assets and liabilities of the Estate, and report to this Court, within ninety (90) days after entry of this Order, regarding the nature of the assets and liabilities of the Estate, including recommendations to the Court regarding the further disposition of the Estate for the benefit of those claiming an interest therein;
- j. with prior Court approval, sell or otherwise dispose of the Estate; provided, however, that the Receiver need not obtain prior Court approval to sell or otherwise dispose of any tangible personal property having a depreciated aggregate value, as reflected on the Estate's books, less than \$20,000;
- k. abandon, upon prior court approval, any property of the Estate of inconsequential value and benefit, or any property of the Estate that may be burdensome to the Estate;
- l. establish, with prior court approval, a claims administration procedure for the assertion and resolution of Claims affecting the Estate;
- m. investigate and prosecute, as appropriate, claims and causes of action of the Estate against third parties;
- n. incur and pay, in the ordinary course of business, all reasonable expenses of administration of the Estate, including, but not limited to, the authority to:

i. pay taxes, insurance, utility charges and other expenses and costs reasonably incurred in managing, preserving, and liquidating the Estate;

ii. hire as an expense of the Estate, on a contract basis wherever possible, or as employees where required by applicable federal law, the personnel necessary to manage, preserve and liquidate the Estate, including, as the Receiver deems appropriate, personnel previously employed by the Estate;

iii. hire as an expense of the Estate, on a contract basis, the personnel necessary to maintain a complete and accurate accounting of the income and expenses of the Estate, including, in the Receiver's discretion, the retention of personnel of individuals hired by the Estate to maintain such accounting, and to pay the reasonable value for the services rendered;

iv. hire as an expense of the Estate such employees, accountants, consultants, attorneys and other professionals, as his counsel, as is necessary and proper for the administration of the Estate. The employment of such attorney or accountant shall first be approved by the Commissioner. The Receiver shall make an application of the Court for payment of reasonable and necessary fees, costs and expenses incurred as Receiver, including but not limited to, disbursement of professional fees and expenses to himself, his counsel, or accountant, and shall be entitled to payment of said fees and expenses as hereinafter provided. Copies of the application to the Court shall be provided to counsel for the parties and to the Commissioner. Such parties shall have ten (10) calendar days following the filing of such application to file any objections with the Court. Objections will not be general in nature, but are to be specific, stating all amounts objected to on an item-by-item basis and stating the amount, in detail, if any, which is not objected to by the objector. If no objections are filed with the Court within ten (10) calendar days, the Receiver may thereupon draw funds from his trust account sufficient to pay such fees, disbursements and expenses without

further order of the Court. If any objections are filed, the Receiver may draw funds from his trust account sufficient to pay the amount not objected to, and the Court will conduct a hearing on any objections within twenty (20) days from the filing of the objection. At such hearing, the compensation of the Receiver or other professional as well as allowable disbursements and expenses will be determined by the Court.

v. hire as an expense of the Estate, on a contract basis, attorneys, accountants, consultants and other professionals previously utilized by the Estate to provide such services as the Receiver may direct;

vi. contract and pay for and obtain such services, utilities, supplies, equipment, and goods as are reasonably necessary to manage, preserve, and liquidate the Estate as the Receiver may reasonably deem necessary; provided that no contract shall extend beyond the termination of the Receivership without the permission of the Court.

o. to pay expenses of the operation of the Estate that arose pre-receivership, as determined by the Receiver to be necessary for the preservation of value of the Estate;

p. negotiate and enter into such leases (including equipment leases), contracts and other agreements as the Receiver may reasonably deem appropriate to manage, preserve and liquidate the Estate; provided that no such lease, contract, or agreement shall extend beyond the termination of the Receivership without the permission of the Court;

q. reject, assume, or decline to assume any leases or unexpired contracts of the Estate that are burdensome, upon Court approval;

r. exercise all rights of the Estate as a shareholder, member, equity owner, or Trustee or beneficiary of any Voting Trust, of any other business enterprise, including, but not limited to, the right to vote on any

issues requiring the approval of equity owners, and the right to receive distributions on account of the equity interests;

s. obtain and renew all insurance policies that the Receiver deems reasonably necessary to manage and preserve the Estate and the interest of the Receiver and the parties to this action; and notify any insurers of the Estate of the pendency of these proceedings and that, subject to the prior rights of any person possessing a lien on the Estate, any proceeds paid under such policies shall be paid to the Receiver;

t. upon prior Court approval, borrow from third parties on such reasonable terms as may be acceptable to the Receiver, funds to meet the needs of the Estate in excess of the income of the Estate, and issue Receiver's Certificates, bearing interest not to exceed the rate of 15% per annum, in exchange for funds so advanced, with all such Receiver's Certificates, collectively, to hold a first and prior lien and a preference claim upon the property of the Estate, or a portion of it at the Receiver's election;

u. apply for, obtain, maintain, and renew as reasonably necessary all trademarks, copyrights, patents, licenses, permits and other intellectual property rights required for the preservation of the Estate;

v. institute, prosecute, and continue the prosecution of such legal actions as the Receiver deems reasonably necessary, including actions necessary to enforce this Order, to collect accounts and debts, enforce agreements relating to the Estate, to protect the Estate, and to recover possession of the Estate from persons who may now or in the future be wrongfully possessing or occupying the Estate, or any part thereof, and bring such actions as may be necessary, in the judgment of the Receiver, to set aside any transfer, conveyance, encumbrance or lien affecting all or any portion of the Estate, including, but not limited to, any transfer of an asset of the Estate avoidable under applicable law, in this and other jurisdictions, and to settle or compromise any such proceedings, and to appeal or seek judicial review in respect of any order or judgment entered in any such proceeding;

w. issue such subpoenas or subpoenas duces tecum, interrogatories, and/or requests for production of documents as necessary and appropriate under Rules 26 and 28 through 34, C.R.C.P.

x. do such other lawful acts not inconsistent with this Order as the Receiver reasonably deems necessary to manage and preserve the Estate and to perform such other functions and duties as may from time to time be required and authorized by this Court, by the laws of the State of Colorado or by the laws of the United States of America.

6. In addition to the powers and authority granted the Receiver in paragraph 5 of this Order, the Receiver shall have the right and the sole authority to exercise all of the powers of the Estate entities, through or in place of their boards of directors, managers, members, and officers, to the extent necessary to manage the affairs of each of MCM and the Fund in the best interests of its shareholders and creditors. Such corporate governance powers and authority shall include, without limitation, the authority to petition for protection under the Bankruptcy Code, 11 U.S.C. § 101 *et seq.* (the "Code"), for MCM and/or the Fund, and in connection therewith be and be deemed a debtor-in-possession for MCM and/or the Fund in proceedings under Chapter 11 of the Code, and prosecute such adversary proceedings and other matters as may be permitted under the Code and/or applicable law. Upon and concurrent with the filing of bankruptcy petitions for MCM and/or the Fund as authorized by this paragraph, the Receivership Case pending in this Court shall be suspended, and all further action concerning the Receivership estate in this Court shall be stayed. The corporate governance powers and authority vested in the Receiver pursuant to this paragraph are in addition to, and not derivative of, the usual and customary receivership powers vested in the Receiver pursuant to Paragraph 5 of this Order.

7. The Receiver is hereby authorized to apply the proceeds of the Estate in the following order of priority:

- a. first, to pay the cost of the bond;
- b. second, to pay the Receiver's fees incurred in connection with this Receivership, and to prepay or reimburse the out-of-pocket

expenses of the Receiver, and to pay the Receiver's professional fees, including attorneys' fees, accountant's fees, and consultant's fees;

c. third, to pay the necessary and reasonable administrative costs of managing and preserving the Estate; and

d. fourth, to repay any Receiver's Certificates, with interest as provided for therein.

All funds in possession of the Receiver after satisfaction of the foregoing obligations shall be maintained by the Receiver pending further order of this Court.

8. The Receiver shall be compensated at the hourly rate of \$365.00 for his services hereunder. The Receiver's compensation for services under this Order and the Receiver's reasonable out-of-pocket expenses shall be paid on a monthly basis. The Receiver shall submit to the Commissioner and counsel for any party to this proceeding itemized monthly billing statements for his professional services and other expenses, and shall submit to the Commissioner and counsel for any party to this proceeding itemized monthly billing statements for services performed by the Receiver's attorneys, accountants, and consultants.

9. Within 30 days of the date of this Order, the Receiver shall notify all known investors and creditors with the Estate, or their successors, of the appointment of a receiver in this action. Within 30 days of the date of this Order, the Receiver shall also notify the Internal Revenue Service and the Colorado Department of Revenue of the appointment of a receiver in this action. The Receiver shall file with the Court and serve upon the parties, within 60 days after entry of this Order, a preliminary report setting out the identity, location and value of the Receivership Assets, and any liabilities pertaining thereto. The Receiver shall make and file with the court, and provide copies to the Commissioner, the parties to this action, and the investors, quarterly reports of the condition of the Estate on the last day of the month after the end of each quarter, for each prior quarter. Upon prior notice in a Receiver's Report, the Receiver may report less frequently. The Receiver shall not be required to, but as reasonably necessary may, follow generally accepted accounting principles, or use auditors or accountants in the preparation of his reports to the Court. The quarterly reports shall include an inventory of all Property of the Estate, the current status or

liquidation thereof, Claims against the Estate, receipts, disbursements, debts and obligations contracted and expenditures made. The Receiver shall keep the court and all parties to this proceeding apprised of all material developments concerning the operation of the receivership, and subject to preservation of any and all privileges, including the attorney-client and attorney work product privileges, shall provide to all parties to this proceeding upon request any documents or information under the control of the Receiver.

10. Except as may be expressly authorized by this Court upon notice and a hearing, Mueller and the Estate is enjoined from:

- a. collecting the Estate, or any proceeds, revenues, accounts, issues, profits or other revenues thereof;
- b. withdrawing funds from any bank or other depository account belonging to the Estate;
- c. terminating or causing to be terminated any license, permit, lease contract or agreement relating to the Estate;
- d. altering, erasing, or destroying any Records, as defined in Paragraph 10(b) below, without the prior written consent of the Receiver; and
- e. otherwise interfering with the operation of the Estate or the Receiver's exercise of any power hereunder or the Receiver's discharge of his duties.

Upon receipt of a copy of this Order, or upon actual knowledge of the entry of this Order, any other person or business enterprise shall also be bound by this Paragraph 9.

11. Mueller and the Estate shall:

- a. advise the Receiver of the existence of any property of the Estate in such party's possession and deliver immediately over to the

Receiver or his agents all collections of proceeds of the Estate, including accounts receivable, properly endorsed to the Receiver when necessary;

b. advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the Estate or the business or affairs of the Estate, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (collectively, the "Records") in such party's possession or control; provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto; and provide assistance to the Receiver in gaining immediate access to the information in the Records as the Receiver may in its discretion require, including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information; provided however that nothing in this paragraph shall require the delivery of Records, or the granting of access to Records, consisting of the personal property of the party in possession thereof, and not the Estate, which may be subject to any attorney-client privilege;

c. continue to deliver immediately to the Receiver all collections of proceeds of the Estate, including accounts receivable, other collections, books and other records relating to the operation, maintenance and management of the Estate, and to permit the Receiver to carry out his duties hereunder without interference; and

d. when necessary or when requested by the Receiver, explain the operation, maintenance, preservation, and liquidation of MCM's and the Fund's assets to the Receiver or his agents.

12. Except as may be expressly authorized by the Receiver or by application to this Court, no person may buy, sell, or otherwise transfer any portion of the Estate not in the control of the Receiver.

13. Any provision of law to the contrary notwithstanding, the Receiver controls the assets and documents of the Estate until further order of this Court.

14. All claims and demands against the Estate, the Receiver, or the Estate shall be brought in this Court. No equitable proceeding or enforcement process in any court or tribunal in this Jurisdiction shall be commenced or continued against the Receiver except with the written consent of the Receiver or upon order of this Court. All actions within this Jurisdiction whether legal or equitable in nature or which purport to seek equitable relief against the Receiver, Mueller, or the Estate are hereby stayed pending further action of this Court. No new actions, whether legal or equitable in nature, shall be brought against the Receiver, Mueller and/or the Estate without the party seeking to bring such action first obtaining permission of this Court.

15. All persons having notice of this Order, and having oral or written agreements with the Estate, or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, utility or other services to the Estate are hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver; and the Receiver shall be entitled to the continued use of the Estate's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the entry of this Order shall be paid by the Receiver in accordance with the ordinary course of business of the Estate and such supplier, or such other practices as may be agreed upon by the Receiver and the supplier, or as may be ordered by this Court.

16. Sheriff's assistance to enforce the terms of this Order in the form of peace-keeping duties is hereby authorized.

17. All real and personal property lessors to the Estate are hereby enjoined, for a period not to exceed thirty days from entry of this Order, from seizing, or preventing the Receiver from taking possession of the Estate, or any portion thereof. Delivery of a copy of this Order on any such lessor shall serve as formal notice of this Order and the lessor's obligations under this paragraph.

18. All who are acting, or have acted, on behalf of the Receiver at the request of the Receiver, including his attorneys and accountants, are protected and privileged with the same protections of this Court as that of the Receiver. In order to avail the agents of the Receiver with these protections and privileges, the Receiver should file a notice of the agency with this Court.

19. The Receiver shall serve any request for relief or approval of any action required by this Order on the Commissioner, his counsel, the Estate, its counsel, and any other party filing an entry of appearance in this proceeding. Unless an objection to the motion is filed with the Court within ten (10) calendar days after service thereof, approval of the Court shall be deemed granted and the Receiver shall be authorized to take such action. As appropriate, the Receiver may nevertheless request entry of a Court order granting such motion. If an objection to the motion is filed with the Court, the Court shall promptly hold a hearing on the motion, on at least three (3) days' notice to all objecting.

20. The Receiver's Bond and the Oath of Receiver may be filed by facsimile transmission or other electronic means and this Order shall become effective upon the Court's receipt of such transmission provided, however, that the Receiver replace the facsimiles with originals within seven days of filing.

21. The Receiver may from time to time request that the Court enter additional orders to supplement, clarify or amend this Order, upon notice in accordance with this Order.

22. Any notice required hereunder shall be deemed served on the date it is deposited in the United States mail, first class postage prepaid, to counsel of record for any party, or directly to any party not represented by counsel, and any computation of time for purposes of this Order shall be governed by the provisions of Colorado Rules of Civil Procedure, Rule 6.

23. The Receiver shall forthwith provide a copy of this order to any other persons in possession of any portion of the Estate or any other persons otherwise affected by this order.

24. Notwithstanding anything to the contrary contained in this Order, the Receiver shall not take any action with regard to ownership, operation, control, storage, generation, or disposal of: (a) any substance deemed a "hazardous substance", "pollutant", "contaminant", or similar substance under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675, the Conservation and Recovery Act of 1976, the Solid Waste Amendments of 1984, the Superfund Amendments and Reauthorization Act of 1986, and any other amendments; or (b) any other chemical, toxin, pollutant or substance defined as hazardous or dangerous to human health under any other federal, state or local law, regulation, rule or ordinance, including, without limitation thereto, petroleum, crude oil, or any fraction thereof (all collectively referred to herein as "Hazardous Substances"), without first applying for an obtaining an Order of this Court specifically setting forth the action or actions proposed to be taken by Receiver. Without first applying for and obtaining such an Order of this Court, the Receiver shall have no ownership, control, authority or power (neither shall receiver have any obligation to exercise ownership, control, authorize or power) over the operation, storage, generation or disposal of any Hazardous Substance. All decisions relating to the ownership, operation, control, storage, generation and disposal of any Hazardous Substances shall be resolved by this Court.

25. The Receiver serves herein, and discharges all his duties under this Order, as an officer of this Court, solely in a representative capacity, and not in an individual capacity, and does not, in being appointed as Receiver or by acting as Receiver consistent with this Order hereunder, thereby become personally liable to any person or governmental entity under any law, statute, regulation or other doctrine of law or equity.

26. The Receiver shall continue in possession of the Estate until discharged by the Court. The Receiver shall endeavor to wind up the Receivership expeditiously or otherwise at the direction of the Court, and to submit a final report and motion for discharge no later than forty-five (45) days after all the Estate has been collected, sold, liquidated, disposed of or abandoned by the Receiver, and all proceeds thereof have been distributed in accordance with this Order and subsequent orders of this Court. If no objections to the final report and motion for discharge have been delivered to the Court, the Receiver, and other parties having entered their appearance in this proceeding, by first-class mail to such address as is

reflected in the Court records, within fifteen (15) days after the final report and motion for discharge are filed with the Court, the final report will be accepted by the Court, and the Court will enter an order terminating the Receivership and discharging the Receiver. The Receiver's bond shall be dismissed following the approval of the final report and entry of the discharge order.

BY THE COURT THIS ^{29th} DAY OF April, 2010:

Catherine A. Pearson
District Court Judge

Lawrence R. Ahern, III

Brown & Ahern

ADR & Consulting
www.BrownAhern.com
P.O. Box 2743
Brentwood, TN 37024
615-579-2542
LAhern@BrownAhern.com

Practice Limited to Mediation and Other Alternate Dispute Resolution and
Consulting Engagements by Professionals Related to Bankruptcy and
Commercial Law, including Expert Testimony

Lawrence R. Ahern, III is a Partner in Brown & Ahern and is a Director of the AIRA. He serves as an Adjunct Professor of Law, both at Vanderbilt (teaching Secured Transactions), and at St. John's School of Law (teaching Bankruptcy Procedure). He is a Fellow of both the American College of Bankruptcy and the American College of Mortgage Attorneys and a Director of the Association of Insolvency and Restructuring Advisors. He is a Rule 31 Mediator in Tennessee and holds national certification as a Business Bankruptcy Specialist by both the American Board of Certification (ABC) and the Tennessee Commission on CLE and Specialization. Larry practiced bankruptcy and commercial law from his 1972 graduation from Vanderbilt until 2013, when he limited his practice to mediation and other alternate dispute resolution, legal consulting engagements by attorneys and financial professionals on issues involving bankruptcy and commercial law, expert testimony, writing, teaching and speaking. In addition to his positions at Vanderbilt and St. John's, Larry serves on the Advisory Board of the St. John's Bankruptcy LL.M. program and in 2002 was Visiting Professor at Cumberland School of Law, teaching Secured Transactions and Banking. He also chaired both the ABC and the Tennessee Commission and continues to serve the ABC as Director Emeritus. He has been listed in The Best Lawyers in America since 1989, in the categories of business reorganization, creditors' rights and bankruptcy litigation, and has been honored by various publications based on peer ratings as "best of the bar," and similar honors. Larry's other professional affiliations include the American Bankruptcy Institute (former Director) and the Mid-South Commercial Law Institute (former Director and President) and the TBA (former Chair of the Section of Bankruptcy, Commercial and Banking Law). He is author and co-author of numerous books and articles on bankruptcy and commercial law and he is a frequent speaker and writer.

C. RANDEL LEWIS
FOUNDER/PRINCIPAL
WESTERN RECEIVER, TRUSTEE & CONSULTING
SERVICES LTD.

1600 WYNKOOP ST, SUITE 200
DENVER, CO 80202
303.601.3600
CRL@WESTERNRECEIVER.COM
WWW.WESTERNRECEIVER.COM



Randy is an experienced executive and consultant, with a deep understanding of business and legal management, particularly in financially or operationally difficult situations. He is an adjunct professor at the Daniels College of Business and the Sturm College of Law, both at the University of Denver. He is a mediator for complex commercial disputes, and a guest speaker at regional and national meetings for the Turnaround Management Association and the Association of Insolvency and Restructuring Advisors.

Randy's areas of expertise include serving as a Receiver/Trustee for financially distressed investments & companies; providing strategy and management advice to select law firms, providing strategy assessments of businesses and investments; complex project development and management; planning and execution of merger or acquisition strategies for private investors; and dispute strategy and resolution, with a emphasis on mediation.

Randy received his undergraduate degree in Economics from The Colorado College and his law degree from the Sturm College of Law at the University of Denver. He is a Fellow of the College of Law Practice Management, a Founding Fellow of The Redwood Law Firm Management Think Tank, and a Mediator for the Faculty of Federal Advocates Bankruptcy Mediation Program; he is a member of the Turnaround Management Association, the Association of Insolvency and Restructuring Advisors, the American Bankruptcy Institute, the Urban Land Institute.



John C. Smiley

Partner

Office (303) 454-0508
jsmiley@lindquist.com

600 17th Street
Suite 1800 South
Denver, Colorado 80202

Practice Areas

**Banking and Financial
Services**

**Financial Restructuring
and Bankruptcy**

Litigation

Commercial Litigation

Admissions

Colorado

Wyoming

U.S. District Court, District
of Colorado

Wyoming District Court

U.S. Court of Appeals

Education

**University of Wyoming
College of Law**
(J.D., 1986)

Colorado State University
(B.S., 1983)

J. Smiley is a partner in the Denver office of Lindquist & Vennum, where he practices in the areas of bankruptcy law and commercial litigation.

He has extensive experience in all aspects of commercial bankruptcy cases, and has represented debtors, creditors, trustees, committees, and parties interested in acquiring assets from bankruptcy estates. He has been appointed by bankruptcy judges as a Chapter 11 trustee and examiner, and has represented receivers in state court proceedings. In addition, he has served as lead litigation counsel in bankruptcy court, federal district court, and state courts on a number of complex bankruptcy and related commercial litigation matters, including all phases of bankruptcy litigation and related commercial litigation. He has argued a number of appeals before the Tenth Circuit Court of Appeals, the Tenth Circuit Bankruptcy Appellate Panel, and the Federal District Court for the District of Colorado.

J. has authored several published articles on numerous aspects of litigation and bankruptcy law, and also delivers speeches to various groups on evolving aspects of commercial litigation, debtor-creditor relations, and bankruptcy law.

He has served on a number of professional boards related to bankruptcy law and commercial litigation. He has been the bankruptcy representative on the Colorado Faculty of Federal Advocates, the Rules Committee for the United States Bankruptcy Court for the District of Colorado, and the Rules Committee for the Tenth Circuit Bankruptcy Appellate Panel.

Honors and Awards

Best Lawyers in America, 2012, 2013

American College of Bankruptcy, fellow

Colorado Super Lawyers, 2006–2013

Howard R. Tallman was appointed a U.S. Bankruptcy Judge for the District of Colorado in December, 2002. He became Chief Judge as of January, 2007. Prior to taking the bench, he served as the U.S. Trustee for Region 19, covering Colorado, Utah and Wyoming, from March, 2000. Previously, Tallman practiced with the Denver firm of Block Markus & Williams, L.L.C., where he specialized in the representation of debtors, creditors, trustees, committees, asset purchasers and other parties in workouts, restructurings, commercial litigation and bankruptcy cases and proceedings. He was also a member of the Chapter 7 panel of trustees for Colorado from 1996 until becoming U.S. Trustee. Tallman received his B.A. *summa cum laude* in 1972 from Villanova University, his J.D. from the University of Denver College of Law in 1975 and his M.B.A. in Finance from the University of Colorado Graduate School of Business in 1984. Tallman is certified as a business bankruptcy specialist by the American Board of Bankruptcy Certification.