ALERTS | 10.06.2025

Spotlight on Suny v. KCP Advisory Grp., LLC: Court-Appointed Receivership Can Provide Less Costly, More Efficient Alternative to Bankruptcy

While Chapter 11 bankruptcy theoretically allows a distressed company to reorganize its business and maximize value for stakeholders, the bankruptcy process can be lengthy and expensive. The delays and costs associated with certain Chapter 11 bankruptcy proceedings can prove particularly frustrating for secured lenders who seek to recover the value of their loan and are faced with loss of control, delays in repayment, diminished collateral value, and increased professional fees, while almost invariably being asked to fund large amounts of incremental expenses.

As covered in a previous Choate Alert, several alternatives to bankruptcy may be appropriate in certain circumstances. For example, appointing an independent director or board of directors can provide a quicker and less costly approach to maximizing the value of a company. Another option worth considering is court-appointed receivership, which could more quickly stabilize the company, protect collateral value, and maximize recovery for secured lenders. The appointment of a receiver may be particularly attractive for lenders if: (i) the distressed business is highly regulated; (ii) the company is ill-suited or ineligible for bankruptcy; (iii) there is concern about fraud or other inappropriate actions by the borrower; or (iv) a deadlock exists among management or shareholders that is obstructing a value-maximizing process. Further, the protections afforded to court-appointed receivers under the doctrine of quasi-judicial immunity, as highlighted in a recent First Circuit decision, offer substantial comfort to individuals assuming the role of receiver.

Receivership

In a court-appointed receivership, a court authorizes a neutral third party – known as a receiver – to take control of a distressed company's operations. The appointed receiver assumes responsibility for the company's operations and finances and works to maximize the company's value. Receiverships can be useful to wind down a company, stabilize a business, protect collateral for creditors, insulate lenders from liability, resolve internal disputes, provide a flexible alternative to bankruptcy, etc. The following summary generally outlines the process of implementing a court-appointed receivership:

- Creditors, shareholders, and government agencies, among other interested parties, can initiate a receivership as part of a pending lawsuit (e.g., for breach of a loan agreement) or by initiating a new action specifically requesting receivership.
- The requesting party files a motion with the court seeking appointment of a receiver and includes support for the request. The requesting party often proposes a specific individual or entity to serve as the receiver. The debtor may oppose the motion, arguing, for example, that a receivership is unnecessary, would cause harm, or another option is preferable.
- The court will review the motion, likely hold a hearing and, if it determines receivership is appropriate, appoint a neutral third party to serve as the receiver.
- The court will then enter a "receivership order" that formally appoints the receiver, enumerates the receiver's powers and responsibilities, provides guidance on the receiver's duties, and often sets a time period for the receivership.
- Following entry of a receivership order, the receiver will take control of the distressed business.

- The receivership stays in place until the identified goals are achieved, the parties resolve the dispute, or the court otherwise discharges the receiver.

For certain secured lenders looking to recover on a defaulted loan, receivership can offer a more time and cost-efficient approach to maximize value as compared to Chapter 11 bankruptcy. The potential benefits of court-appointed receivership were recently highlighted in a decision by the U.S. Court of Appeals for the First Circuit, *Suny v. KCP Advisory Grp., LLC*, No. 23-1800, 2025 U.S. App. LEXIS 21146 (Aug. 19, 2025) *("Suny v. KCP")*, where the Court held that, at least in the First Circuit, the doctrine of absolute quasi-judicial immunity insulates court-appointed receivers from liability for actions taken in overseeing a distressed entity. This quasi-judicial immunity can encourage individuals to accept receivership appointments, particularly where they may otherwise be concerned about personal liability exposure related to overseeing distressed entities in contentious matters. The protections afforded to court-appointed receivers can also deter disgruntled parties from filing lawsuits and thus allow for a more efficient process.

Suny v. KCP Background

Suny v. KCP involved an alleged "resident-dumping scheme" at Wood Haven Senior Living ("Wood Haven"), a memory care facility in Tewksbury, Massachusetts. After the Massachusetts Executive Office of Elder Affairs ("EOEA") suspended Wood Haven's assisted-living facility certification, BI 40, LLC ("BI 40"), a company that financed Wood Haven's operations, filed an emergency motion in the U.S. District Court for the District of Massachusetts and requested that KCP Advisory Group ("KCP") be appointed as a receiver for Wood Haven. After a hearing on the motion, the District Court granted BI 40's request, appointed KCP as Receiver, and entered a Receivership Order granting KCP the power, among other things, to "manage, operate, preserve and maintain the Receivership Assets as a prudent person would…" KCP thereafter took control of Wood Haven and retained EF, LLC ("EF") to manage the facility's operations, with Robert Eisenstein of EF acting as Wood Haven's executive director.

A short time later, several issues with the Wood Haven facility arose, and Wood Haven management decided to close the facility and relocate residents. In communications with residents, Wood Haven representatives stated that the local fire department ordered an emergency evacuation of the facility, even though no such order existed. Although the EOEA ordered Wood Haven to halt its relocation efforts until it notified residents that no evacuation order was issued, Wood Haven declined to do so and proceeded to remove residents.

District Court Complaint

One such resident filed a complaint in the District of Massachusetts and asserted sixteen counts against KCP, BI 40, EF, and Eisenstein, including alleged violation of the Massachusetts Consumer Protection Act, civil conspiracy, fraud, breach of fiduciary duty, and intentional infliction of emotional distress. KCP moved to dismiss the claims against it and asserted that the doctrine of absolute quasi-judicial immunity protected KCP from such claims. The district court found that absolute quasi-judicial immunity barred claims "based on imperfect or negligent performance of receivership responsibilities," but not those alleging "that KCP lacked jurisdiction to evict [residents], did so contrary to law and contract, and in bad faith."

Appellate Decision

On appeal, the First Circuit reversed the district court's denial of KCP's motion to dismiss on the basis that the claims against KCP were barred by quasi-judicial immunity. Quasi-judicial immunity is grounded in the doctrine of judicial immunity, which bars all claims against judges for acts done in their judicial capacity. Quasi-judicial immunity, in turn, addresses judicial functions performed by non-judicial actors, such as court-appointed receivers "who act in a judicial capacity, meaning they exercise discretionary judgment in helping resolve disputes between the parties."

To determine if KCP's actions fell within the scope of this type of quasi-judicial immunity, the Court considered whether (1) KCP's acts related to a function normally performed by a judge, and (2) KCP acted in the absence of all jurisdiction. The Court likened KCP's actions to those of a court taking control of a distressed asset and ordering the removal of residents from unsafe conditions and found that KCP acted in a judicial capacity. The Court also concluded that the Receivership Order granted KCP the power to manage the assets as a prudent person would, and thus KCP did not act in the absence of all jurisdiction. On these bases, the First Circuit held that quasi-judicial immunity barred all counts arising from KCP's alleged removal actions.

Takeaways

Given the First Circuit's broad application of quasi-judicial immunity to bar certain claims against court-appointed receivers, receivership can provide — under the appropriate circumstances — an attractive alternative to secured lenders looking to maximize recovery. While receivership laws can vary by jurisdiction, secured lenders generally can seek a court order to place a defaulted borrower into receivership and, at least as compared to certain Chapter 11 proceedings, reduce legal exposure and minimize costs. The secured lender often can guide the process by proposing a specific receiver to take control of the distressed borrower, instead of a court-selected trustee in bankruptcy proceedings. Although the receiver must be a neutral third party, secured lenders can propose specific receivers with greater confidence in the ability of the individual to manage the distressed company and predictability in how the assets will be handled during receivership. Although receiverships can be implemented through a court's equitable powers, secured lenders should also consider including receivership as a specific remedy in loan documents in the event of default to ensure a clear path forward.

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