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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:)	Chapter 11
)	
CORPORATE AND LEISURE EVENT)	CASE NO. 06-bk-01797-PHX-RJH
PRODUCTIONS, INC.)	
)	AMENDED OPINION DENYING
Debtor.)	RECEIVER'S FIRST MOTION
)	TO DISMISS

The issue here is who, if anyone, may file a Chapter 11 petition for a Debtor after a state court has appointed a Receiver for the debtor, enjoined the Debtor from filing a bankruptcy petition, and removed the Debtor's corporate officers and directors. The Court concludes that federal bankruptcy law preempts state law and remains available to an eligible debtor and its constituents notwithstanding creditors' use of state law remedies in an attempt to bar the bankruptcy courthouse door.

The Court denied the Receiver's first motion to dismiss by minute entry entered on the docket on June 28, 2006 and now issues this opinion to explain the Court's reasoning.

Background Facts

Various creditors¹ filed state court actions asserting that they had been defrauded by the Debtor and twelve other related corporate entities.² The cases were consolidated before

¹ Debtor refers to them as "investors." The Court uses the term "creditor" in a very generic sense and does not here decide whether they should be deemed creditors or investors for purposes of the Bankruptcy Code. Debtor claims there were four initial plaintiff creditors and that approximately four other creditors subsequently intervened as plaintiffs, and that there are over sixty-five additional creditor/investors who have not joined in the state court lawsuits.

² These entities fall into two categories: those owned and controlled by William Galyon, and those owned and controlled Bradley Nozicka. The bankruptcy cases of the seven Galyon entities are

1 Judge Timothy Ryan, Maricopa County Superior Court. On May 8, 2006 Judge Ryan appointed
2 Peter S. Davis as Receiver for thirteen or fourteen entities.³ The receivership order authorized
3 the Receiver to remove “any director, officer, independent contractor, employee or agent of any
4 of the Receivership Defendants, from control of, management of, or participation in, the affairs
5 of the Receivership Defendants.” It enjoined the Receivership Defendants⁴ from doing any act
6 to interfere with the Receiver’s custody and management of the receivership assets, and
7 specifically enjoined them from filing “any petition on behalf of the Receivership Defendants
8 for relief under the United States Bankruptcy Code . . . without prior permission from this
9 Court.”

10 The Receiver has concluded that the Debtors had obtained more than \$44 million
11 from the creditors/investors in a Ponzi scheme, whereby new investors’ funds were used to
12 repay prior investors while no real business was being conducted to generate new funds. The
13 Debtor admits that it “had never fully established the validity of its economic model,” which
14 involved raising investor funds to cover the expenses of concert promotion, and that this failure
15 resulted in the business being “operated like a Ponzi-scheme.”

16 The Receiver’s efforts to marshal the receivership assets resulted in acrimony
17 between the parties. The Receiver asserts that Mr. Nozicka and Mr. Galyon were uncooperative

18 being jointly administered in the case of Global Grounds Greenery, L.L.C., No. 2-06-bk-1701-RJH.
19 There is a motion pending before Judge Baum in *In re BF Consulting, L.L.C.*, No. 2-06-bk-1792-RTB,
20 for joint administration of the five bankruptcy cases of the Nozicka entities (which includes this case),
21 and for transfer of these cases to this Judge. The Galyon and Nozicka entities may not be related to
22 each other in terms of ownership and control, but are apparently related in the sense of doing business
23 with each other, and perhaps exclusively with each other. By using the term “related” the Court does
24 not here decide that these two groups of bankruptcy cases are “related” to each other for purposes of
25 Local Bankruptcy Rule 1073-1(d).

26 ³ The Receiver’s motion to dismiss asserts that the Receiver was appointed for thirteen
27 entities, whereas the Receiver’s declaration attached to that motion recites that he was appointed for
28 fourteen entities. The Order Appointing Receiver states that Peter Davis is appointed Receiver for ten
named entities, and that three additional defendants would be included in the group of Receivership
Defendants upon proof of service being filed with the court and faxed to the Receiver. The record
before this Court does not include that proof of service.

⁴ Although the caption to the receivership order makes clear that Mr. Galyon and Mr. Nozicka
were named as defendants in the receivership action, the receivership order itself makes “Receivership
Defendants” a defined term that includes only the fourteen corporate entities.

1 and lied about the location and/or ownership of various assets, while the Debtors claim the
2 Receiver's efforts were "high-handed" and resulted in the destruction of the value of an
3 operating restaurant and big screen televisions and electronics equipment.

4 Mr. Galyon signed and filed a Chapter 11 petition for the first Galyon entity on
5 June 8, 2006⁵ and filed petitions for the other Galyon entities between then and June 14, 2006.
6 Also on June 14, the Receiver removed Mr. Galyon and Mr. Nozicka from their positions as
7 officers, directors and managers of all of the Receivership Defendants. Mr. Nozicka filed
8 bankruptcy petitions for the Nozicka entities on June 16. The Debtors also promptly removed
9 the receivership actions to bankruptcy court.

10 On June 19, 2006 the Receiver filed his first motion to dismiss these cases, based
11 solely on the argument that Messrs. Galyon and Nozicka were not authorized to file these
12 petitions.⁶

13 Legal Analysis

14 There is no dispute that these entities are eligible to be Debtors under Bankruptcy
15 Code §§ 109 and 301.⁷ There is no dispute that all filings required by the Bankruptcy Code to
16 commence these bankruptcy cases have been filed.

17 The only dispute, at least on the present motion, is who is authorized to take this
18 action on behalf of the Debtors. Ordinarily, this would be an intracorporate dispute with some
19 officers, directors or shareholders objecting to bankruptcy relief and asserting that some other
20 shareholder, officer or director lacked sufficient corporate authority to make the filing. There is

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22 ⁵ The first Galyon entity to file was Global Grounds Greenery, which is apparently not a
Receivership Defendant.

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24 ⁶ The Court refers to the Receiver's Emergency Motion to Dismiss Unauthorized Chapter 11
25 Petition as his first motion to dismiss because he filed a second motion to dismiss on July 5, 2006
26 primarily on grounds of "bad faith." That second motion to dismiss has not yet been responded to nor
27 set for hearing, and is not addressed here. Parallel motions to dismiss the cases of the other Nozicka
28 entities for lack of authority to file have been set for trial on July 20, 2006 by Judge Curley in *In re Old
Pueblo Sounds, L.L.C.*, No. 2-06-bk-1793-SSC, and for hearing on July 25, 2006 by Judge Baum in *BF
Consulting*. Also pending in the jointly administered cases before this Court, and set for trial on July
13, 2006 are cross motions for turnover and to excuse turnover pursuant to Bankruptcy Code § 543.

⁷ All references to the Bankruptcy Code, or the Code, are to 11 U.S.C. §§ 101 - 1532.

1 apparently no such intracorporate dispute here. Rather, the dispute as to existence of corporate
2 authority is raised by creditors, who prefer the remedy they have in state court over a
3 bankruptcy remedy.

4 This dispute is not governed by the Bankruptcy Code. Indeed, the complaining
5 creditors and their Receiver cannot point to any provision of the Bankruptcy Code that has even
6 allegedly been violated by these filings. But while intracorporate disputes would ordinarily be
7 governed by the law of the state of incorporation, this particular kind of creditor-driven
8 intracorporate dispute is governed instead by federal common law, as will be seen.

9 Much of the history of bankruptcy law deals with efforts by creditors to escape
10 bankruptcy court jurisdiction or to enforce remedies provided by state law that are unavailable
11 under bankruptcy law. Before this country had a federal bankruptcy law, a debtor who had been
12 discharged by one state's insolvency law remained at risk that creditors could send him to
13 debtor's prison in another state, if he ventured there. It was to put an end to this practice that the
14 Constitution conferred on Congress the unique uniform bankruptcy power.⁸ Once Congress
15 exercises that power it preempts and supersedes all state bankruptcy and insolvency laws⁹ and
16 other state law remedies that might interfere with the uniform federal bankruptcy system.¹⁰

17 The paramount and exclusive federal jurisdiction in this regard was noted early
18 on by the great equity jurist, Justice Story. Construing a bankruptcy statute that contained no
19 automatic stay, Justice Story concluded that Congress intended to vest bankruptcy courts with

21 ⁸ U.S. CONST. art. I, § 8, cl. 4; *Cent. Va. Cmty. Coll. v. Katz*, 126 S. Ct. 990, 997-1000 (2006).
22 The power is unique (except perhaps for the Naturalization Power contained in the same clause) because
23 it is apparently the only Article I power that may override the States' reserved sovereign immunity, as
24 *Katz* held.

25 ⁹ *Sturges v. Crowninshield*, 17 U.S. (4 Wheat.) 122 (1819).

26 ¹⁰ *Sherwood Partners, Inc. v. Lycos, Inc.*, 394 F.3d 1198 (9th Cir. 2005)(Bankruptcy Code
27 preempts state statute giving preference avoidance powers to an assignee for benefit of creditors); *In re*
28 *Miles*, 430 F.3d 1083, 1089 (9th Cir. 2005)(bankruptcy law preempts state remedies for bad faith filing
because the "complex, detailed, and comprehensive provisions of the lengthy Bankruptcy Code" "create
a whole system under federal control which is designed to bring together and adjust all of the rights and
duties of creditors and embarrassed debtors alike," and which needs to be "jealously guard[ed] . . . from
even slight incursions and disruptions" from state law remedies), quoting *MSR Exploration, Ltd., v.*
Meridian Oil, Inc., 74 F.3d 910, 915 (9th Cir. 2005).

1 jurisdiction to “suspend or control all proceedings in the state courts”:

2 It is farther objected that, if the jurisdiction of the District Court is
3 as broad and comprehensive as the terms of the [Bankruptcy Act
4 of 1841] justify according to the interpretation here insisted on, it
5 operates or may operate to suspend or control all proceedings in
6 the state courts either then pending or thereafter to be brought by
7 any creditor or person having any adverse interest to enforce his
8 rights or obtain remedial redress against the bankrupt or his assets
9 after the bankruptcy. We entertain no doubt that, under the
10 provisions of the 6th section of the act, the District Court does
11 possess full jurisdiction to suspend or control such proceedings in
12 the state courts, not by acting on the courts, over which it
13 possesses no authority; but by acting on the parties through the
14 instrumentality of an injunction or other remedial proceedings in
15 equity upon due application made by the assignee and a proper
16 case being laid before the court requiring such interference. . . .
17 Similar proceedings have been instituted in England in cases of
18 bankruptcy; and they were without doubt in the contemplation of
19 Congress as indispensable to the practical working of the bankrupt
20 system.

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22 . . . Congress did not intend to trust the working of the bankrupt
23 system solely to the state courts of twenty-six states, which were
24 independent of any control by the general government, and were
25 under no obligations to carry the system into effect. The judicial
26 power of the United States is, by the Constitution, competent to all
27 such purposes; and Congress, by the act, intended to secure the
28 complete administration of the whole system in its own courts, as
it constitutionally might do.¹¹

As Justice Story there noted, the Bankruptcy Act of 1841 did not specifically
authorize bankruptcy courts to enjoin state courts, and in fact the Judiciary Act of 1793
expressly prohibited federal courts from enjoining state courts. Consequently if a state court
first acquired jurisdiction over a debtor’s assets such as through a receivership, a subsequent
bankruptcy court arguably could not reach them.¹² That is virtually identical to the kind of race
to the courthouse that the creditors here claim to have won. But Congress closed this loophole
in the Bankruptcy Act of 1867, in which Congress for the first time amended the Judiciary Act
of 1793 to expressly permit federal district courts sitting in bankruptcy to stay proceedings in

¹¹ *Ex parte Christy*, 44 U.S. (3 How.) 292, 318-20 (1845).

¹² *Peck v. Jenness*, 48 U.S. (7 How.) 612, 625-26 (1849).

1 state courts.¹³

2 Of course the current Bankruptcy Code goes even further, not only by making the
3 stay automatic, statutory and specifically applicable to government entities,¹⁴ but also by
4 specifically requiring receivers to turn over receivership property to bankruptcy trustees and
5 debtors in possession.¹⁵

6 Given this background, it is not surprising that all courts to have addressed the
7 precise issue after 1867 – a creditor’s argument that a receivership order removes authority for a
8 debtor or its corporate constituents to file a bankruptcy case – have concluded that state court
9 receivership orders cannot bar debtors from resorting to the exclusive bankruptcy court
10 jurisdiction. Even prior to the Chandler Act (which contained the first corporate reorganization
11 provisions), the Sixth Circuit so concluded even though the corporate debtor had consented to
12 the receivership that had been pending for over two years and even though the state court “has
13 issued the usual injunction against inference.” “[T]he pendency of a receivership does not
14 ordinarily prevent the filing of a voluntary petition.”¹⁶ That concise conclusion appears to be
15 good law today and, in the absence of any statutory language or controlling case law to the
16 contrary, is dispositive here.¹⁷

17 Ten years later, the Sixth Circuit reached the same conclusion when the
18 receivership order specifically enjoined the debtor’s directors, officers and stockholders “from
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20 ¹³ Act of 1867, 14 Stat. 526, § 21; *see Toucey v. N.Y. Life Ins. Co.*, 314 U.S. 118, 131-32
21 (1941).

22 ¹⁴ The automatic stay of Bankruptcy Code § 362(a) is “applicable to all entities,” and
23 Bankruptcy Code § 101(15) defines entity to include “governmental unit.”

24 ¹⁵ Bankruptcy Code § 543.

25 ¹⁶ *Struthers Furnace Co. v. Grant*, 30 F.2d 576, 577 (6th Cir. 1929).

26 ¹⁷ *Pa. Dept. of Pub. Welfare v. Davenport*, 495 U.S. 552, 564 (1990)(“We will not read the
27 Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended
28 such a departure); *Midlantic Nat’l Bank v. N.J. Dept. of Env’tl. Prot.*, 474 U.S. 494, 501 (1986)(“The
normal rule of statutory construction is that if Congress intends for legislation to change the
interpretation of a judicially created concept, it makes that intent specific. The Court has followed this
rule with particular care in construing the scope of bankruptcy codifications.”(citation omitted)).

1 preparing or in any way aiding the institution of reorganization proceedings on behalf of the
2 debtor corporation in the District Court without the consent of such state court.”¹⁸ That court
3 concluded that such a state court restraining order erroneously “denied to the appellee, its
4 directors, stockholders and attorneys, access to the federal courts, thus depriving them of their
5 constitutional right to relief under Sec. 77B of the Bankruptcy Act,” citing the Uniform
6 Bankruptcy Power of the Constitution.¹⁹ Shortly thereafter, the District Court for the Southern
7 District of New York reached the same conclusion: “The appointment by a state court of a
8 permanent receiver with full power to act for the corporation does not affect the right of
9 directors to act on behalf of a corporation in federal bankruptcy proceedings.”²⁰ Other courts
10 have reached the same conclusion under the current Bankruptcy Code.²¹ The only cases to the
11 contrary appear to arise when there is a purely intracorporate dispute (rather than a dispute with
12 creditors) as to who has the authority to file,²² or where the debtor is “ineligible for debtor

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14 ¹⁸ *Merritt v. Mt. Forest Fur Farms of Am., Inc.*, 103 F.2d 69, 71 (6th Cir. 1939).

15 ¹⁹ *Id.* Although the Supreme Court subsequently made clear that there is no constitutional right
16 to bankruptcy relief, *United States v. Kras*, 409 U.S. 434 (1973), the privileges provided by the
17 Bankruptcy Code may be among the “privileges and immunities” that the Fourteenth Amendment
forbids states to abridge. See Randolph J. Haines, *Getting to Abrogation*, 75 Am. Bankr. L.J. 447
(2001).

18 ²⁰ *In re Klein’s Outlet, Inc.*, 50 F. Supp. 557, 559 (S.D.N.Y. 1942).

19 ²¹ *Cash Currency Exchange, Inc. v. Shine (In re Cash Currency Exchange, Inc.)*, 762 F.2d 542,
20 552 (7th Cir. 1985) (“[T]he exclusivity of an administrative receiver’s title to all assets under state law is
21 irrelevant to the determination whether a particular entity may file for bankruptcy relief.”); *Larson v.*
22 *Kreisers, Inc.*, 112 B.R. 996, 998 & 1000 (Bankr. D. S.D. 1990) (“The court . . . has not unearthed any
23 statutory or decisional law to support the contention that a state court receivership generally bars
24 bankruptcy filing. Perhaps this is so because the argument runs so blatantly against the statutory right
25 of a debtor to the privileges of the national statute on bankruptcies and the inherent prohibition against
26 any bar by any other authority to the exercise of that right. . . . [The debtor’s] officers and directors
27 could pass a resolution to file bankruptcy despite state court orders not to do so.” (citations omitted)); *In*
28 *re S & S Liquor Mart, Inc.*, 52 B.R. 226, 227 (Bankr. D. R.I. 1985) (“[I]t is fundamental that a state
court receivership proceeding may not operate to deny a corporate debtor access to the federal
bankruptcy courts [citations omitted] and it has been held that an order in a state court receivership
specifically restraining the debtor corporation, its stockholders, officers, and directors from instituting
federal reorganization proceedings is an unconstitutional deprivation of the right to bankruptcy relief.”);
In re Donaldson Ford, Inc., 19 B.R. 425 (Bankr. N.D. Ohio 1982).

²² *Price v. Gurney*, 324 U.S. 100 (1945) (owner of 7% of stock may not file petition for
corporation when directors oppose it); *In re Gen-Air Plumbing & Remodeling, Inc.*, 208 B.R. 426

1 status” under the Bankruptcy Code.²³

2 It is of course true that bankruptcy courts generally look to state law to determine
3 who is authorized to file a voluntary petition for a corporation, partnership or other kind of
4 organizational entity. This rule, however, derives not from the language of the Bankruptcy
5 Code (or its predecessor Bankruptcy Act), but rather from federal common law²⁴ in the absence
6 of statutory directive. The Bankruptcy Code neither specifies who has authority to file a
7 corporate petition nor requires that state law be the exclusive source of any such authority.²⁵

8 Just as obviously, however, there is a federal common law exception to this
9 reliance on state law when the state law is in the form of a receivership order that attempts to
10 preclude any of the original constituents of the organizational entity from filing a petition on its
11 behalf, in order to maintain the state court remedy that has been obtained by creditors. It makes
12 no difference whether the corporate officers and directors were actually removed by the receiver
13 or the receivership order merely enjoins their interference or filing of a petition.²⁶ In either case,

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15 (Bankr. N.D. Ill. 1997). And even if there is such an intracorporate dispute over management authority,
16 creditors may not be able to rely on it to obtain dismissal of a bankruptcy petition. *Royal Indem. Co. v.*
17 *Am. Bond & Mort. Co.*, 289 U.S. 165, 171 (1933)(“The question is purely one of the internal
18 management of the corporation. Creditors have no standing to plead statutory requirements not
19 intended for their protection.”); *In re Guanacevi Tunnel Co.*, 201 F. 316, 318 (2d Cir. 1912)(creditor’s
20 argument that Arizona law requires a majority of shareholders to authorize a voluntary petition “is one
21 which a creditor has no standing to make in the case of a voluntary petition”).

22 ²³ *Oil & Gas Co. v. Duryee*, 9 F.3d 771, 773 (9th Cir. 1993).

23 ²⁴Federal common law is appropriate in two categories of cases, “those in which a federal rule
24 of decision is ‘necessary to protect uniquely federal interests,’ and those in which Congress has given
25 the courts the power to develop substantive law.” *Texas Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S.
26 630, 640-41 (1981)(citations omitted). See Adam J. Levitin, *Toward A Federal Common Law of*
27 *Bankruptcy: Judicial Lawmaking in a Statutory Regime*, 80 Am. Bankr. L.J. (2006)(forthcoming).
28 Although not directly on point, the Supreme Court’s recent decision in *Katz*, *supra* note 8, underscores
the uniquely federal interests that underlie bankruptcy law.

²⁵ “Other than the requirement that the petition be a ‘voluntary’ act, 11 U.S.C. § 301, the
Bankruptcy Code does not establish what the internal requisites are for the initiation of a voluntary
corporate bankruptcy proceeding.” *In re Quarter Moon Livestock Co., Inc.*, 116 B.R. 775, 778 (Bankr.
D. Idaho 1990), quoting *In re Autumn Press, Inc.*, 20 B.R. 60, 61 (Bankr. D. Mass. 1982).

²⁶ It should go without saying that if removal of corporate officers and directors by a
receivership order were sufficient to prevent a bankruptcy filing, creditors who seek their state court
remedies to the exclusion of all others would routinely obtain receivership orders with such boilerplate

1 state law withdraws their authority to file for bankruptcy relief and yet in both cases the
2 unanimous federal common law holds that they are nevertheless entitled to do so. Much of this
3 common law predates the drafting and adoption of the Bankruptcy Code, so Congress must be
4 assumed to have incorporated it when it drafted the Code.

5 Indeed, Congress did expressly incorporate this common law when the Chandler
6 Act of 1938 made explicit that a bankruptcy case would ordinarily supersede a state receivership
7 and that a state receiver would ordinarily be required to turn over the estate assets to a debtor in
8 possession or trustee. Bankruptcy Act § 2a(21) is the predecessor to the Code’s § 543. As
9 explained by the then-leading authority, “its provisions enact what was already established by
10 prior case law,” and this “codification of the bankruptcy court’s powers as to superseded
11 receiverships, general assignments and similar proceedings is a desirable change, removing
12 possible controversies and conflicts as to jurisdiction.”²⁷ The legislative history expressly
13 recognized that there was nothing in the Bankruptcy Act of 1898 that required receivers to be
14 divested of property when the debtor is thrown into bankruptcy, but “the courts have supplied
15 the gap and the bill codifies that result.”²⁸ The fact that Congress granted such express relief
16 notwithstanding that receivership orders generally included the “usual injunction against
17 inference”²⁹ necessarily implies that Congress intended such state law not to control who may
18 petition for bankruptcy relief.

19 Nor is it any answer to say that that analysis should not apply here because this
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23 language. This is a tactic that bankruptcy law has prevented at least since 1867.

24 ²⁷ 1 JAMES WM. MOORE, ET AL., COLLIER ON BANKRUPTCY ¶ 2.77, at 390.8 & (1) (14th ed.
25 1974).

26 ²⁸ H.R. 6439, 75th Cong., 1st Sess 12 (1937), quoted in COLLIER, *supra*, at 390.8(2), n. 4; *Emil*
27 *v. Hanley (In re Russell)*, 318 U.S. 515, 517-18 (1943)(“These provisions [§ 2a(21) and 69d] of the
28 Bankruptcy Act are new. There were added in 1938 by the Chandler Act. . . . These sections are in part
declaratory of the law as it existed prior to the Chandler Act.”).

²⁹ *Struthers Furnace Co. v. Grant*, 30 F.2d 576, 577 (6th Cir. 1929).

1 Receiver did have authority to file for the receivership entities.³⁰ Congress obviously intended
2 bankruptcy relief to be available for the benefit of many of the constituents of a business entity,
3 including not only the creditor interests but also the equity interests and perhaps those of
4 employees and customers as well.³¹ While bankruptcy case law generally refers to state law to
5 determine who has eligibility to file the petition, it unanimously refuses to do so (in the absence
6 of an intracorporate dispute) when state law has provided a creditor’s remedy to vest that
7 authority in a receiver.

8 Finally, it is clear that Congress did not intend a bright-line rule to govern these
9 issues either way. Even though the ordinary rule is that receivers must turn over estate property
10 to a debtor in possession or trustee, Code § 543(b), the bankruptcy courts have discretion to
11 waive that requirement if the interests of creditors would be better served by continuing the
12 receiver in possession. Code § 543(d)(1). And although the existence of bankruptcy
13 jurisdiction may be undeniable, bankruptcy courts nevertheless have discretion to abstain or
14 suspend proceedings if “the interests of creditors and the debtor would be better served.” Code
15 § 305(a)(1). As the Supreme Court held in resolving a somewhat similar conflict between two
16 federal statutes, “[t]he bankruptcy court is a court of equity and, in making this determination it
17 is in a very real sense balancing the equities.”³² The express powers to excuse turnover or
18 abstain provide ample authority to balance the equities based on the facts of each individual
19 case, and provide a more sensible and fact-based resolution than any bright-line test of corporate
20 authority or race to the courthouse could provide. That is obviously the remedy Congress
21 preferred and dictated, rather than the simple race to the courthouse on which the Receiver and

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23 ³⁰ Query, though, whether a filing by a receiver for a partnership entity (or entity that is
24 undefined in the Bankruptcy Code that may be analogized to a partnership) would have to be treated as
25 an involuntary filing, because Code § 303(b)(3) does to some extent prescribe who must consent to the
26 filing of a voluntary partnership petition. *In re Monterey Equities-Hillside*, 73 B.R. 749, 752 (Bankr.
27 N.D. Cal. 1987).

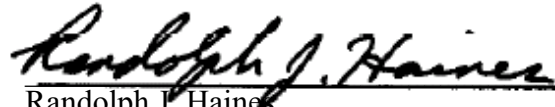
28 ³¹ “Determining what would constitute a successful reorganization involves balancing the
interests of the affected entities – the debtor, creditors, and employees.” *NLRB v. Bildisco and Bildisco*,
465 U.S. 525, 527 (1984).

³² *Id.*

1 creditors rely.

2 For these reasons, the Receiver's first motion to dismiss should be denied,
3 without prejudice to its second motion to dismiss, its motion to excuse turnover (or the Debtor's
4 motion for turnover) and its motion to abstain or suspend.

5 DATED this 5th day of September, 2006.

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7 Randolph J. Haines
8 United States Bankruptcy Judge

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