Guest Commentary

Missouri Commercial Receivership Act Becomes Law

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The statute enabling the appointment of commercial receivers in Missouri consisted of only 155 words for years. Those 155 words, of course, left significant gaps and insufficient guidance for legal practitioners, parties to receivership cases and courts tasked with the duty of establishing and administering a commercial receivership estate. Nowhere were the uncertainties in the law more pronounced than in those situations where the receivership estate held an operating company. The panoply of parties, claims, and legal and regulatory issues affecting an operating company were thus left to what sometimes proved to be inconsistent legal results and an uncertain, and potentially, infirm legal process for all stakeholders.

On July 13, 2016, the Missouri Commercial Receivership Act, Senate Bill 578, was signed into law by Gov. Jay Nixon. The act provides a complete statutory structure for the appointment of receivers and the administration of receiverships within the state. The Missouri Commercial Receivership Act clarifies the manner in which receivers are appointed to take control of the assets and operations of commercial entities. In particular, the act:

- specifies the situations in which receivers may be appointed
- sets forth the requirements for a party to serve as a receiver
- specifies the powers that may be granted to receivers
- provides reporting requirements for receivers
- establishes judicial immunity for receivers

The act also distinguishes between general receiverships, in which a receiver is appointed to take control of all or substantially all of a debtor's assets, and limited receiverships, in which a receiver is only appointed to take control of specific property.

One of the most common situations in which courts appoint receivers is at the request of a secured lender seeking to enforce obligations against a defaulting borrower. In such situations, the act's provisions addressing the appointment of receivers may be particularly relevant for banks.

In contrast to the existing statute, the act identifies several specific scenarios in which the appointment of a receiver is appropriate, in addition to providing courts with fairly broad discretion in the appointment of receivers. In addition, the act specifies that the appointment of a receiver may be sought as an independent remedy and is not required to be ancillary to another claim. This is a direct change from existing law, which requires a request for the appointment of a receiver to be tied to another cause of action. As a result of the change, banks may have more flexibility in seeking the appointment of receivers, even in situations in which they do not wish to pursue other claims.

The act provides procedures for parties in interest to receive notice of receivership proceedings and would establish a claims administration process. The claims administration process is of particular importance for banks. In many ways, the claims administration process is similar to a bankruptcy claims process. Consequently, even in situations where a bank's borrower has been placed in a receivership at the request of a party other than the bank, the bank will likely want to participate in the claims process.

This updated and more detailed receivership law should assist all parties to protect and to maximize the value of a business operation or the value of business assets when there is a legal dispute or a credit default. In some cases, the mere filing of a petition to appoint a receiver can prompt another party to resolve a default. Some commentators speculate that the act will lead to an increase in the number of receiverships. As a result, banks may be required to understand and participate in the receivership process to a much greater degree.

The act is the culmination of an intensive drafting process overseen by the Subcommittee on Commercial Receivership, a subcommittee of the Missouri Bar Bankruptcy—Creditors & Debtors Rights Committee. The subcommittee was led throughout its four years of drafting and legislative activity by Eric Peterson with Spencer Fane LLP in St. Louis. The drafting committee consisted of a host of Missouri's top insolvency law professionals, including Mark Stingley of Bryan Cave, John Reed of Pletz and Reed P.C., Thomas O'Neil (retired) of Polsinelli, Norman Lampton, Tamara Kopp of the Missouri Department of Insurance, Cheryl Kelly and Brian Hockett of Thompson Coburn LLP, Eric Johnson of Spencer Fane LLP, Robert Hammeke of Dentons LLP, Robert Eggmann of Desai Eggmann Mason LLC, Bryan Bacon, and Dave Angle of Angle Wilson Law LLC.

The bill is effective Aug. 28, 2016. ■

Editor's Note: This article was submitted by Spencer Fane, an MBA associate member.

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