

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

THE HUNTINGTON NATIONAL BANK,)	
AS TRUSTEE)	
)	
Plaintiff,)	
)	
vs.)	Civil Action No. 3:16-cv-00465-DJH
)	
SAINT CATHARINE COLLEGE, INC.)	
)	
)	
Defendant.)	

ORDER APPOINTING RECEIVER

This matter is before the Court on the motion filed by Plaintiff The Huntington National Bank (the “Trustee” or the “Plaintiff”) for an Order appointing a receiver for all property (the “Property”) owned by Defendant Saint Catharine College, Inc. (“Saint Catharine”) pursuant to Federal Rule of Civil Procedure 66. **IT IS HEREBY ORDERED AND FOUND** as follows:

1. This Court has jurisdiction over the Property¹ and the Trustee has satisfactorily established that it is entitled to the appointment of a receiver pursuant to applicable law and pursuant to the terms of the Mortgage and the other documents executed by Saint Catharine in connection therewith. Although this Order has been entered on the date set forth below, the right

¹ The term “Property” includes all legal and equitable interests of St. Catharine in and to property of St. Catharine (whether obtained before or after entry of this Order) wherever located and by whomever held, including without limitation all: all personal property, real property, intangible property, lawsuits and rights of action, rights to payment, intellectual property, books, records, ledgers, financial statements, financial reports, insurance policies and any rights with respect thereto, business records, bank accounts, cash, letters of credit, rents, revenue, security deposits, budgets, contracts, personnel records, permits, approvals, licenses, accounts receivable, certificates of deposit, stocks, bonds, securities, furniture, fixtures, office supplies, equipment, inventory, machinery, and any proceeds of the foregoing, and any claims against third parties related to the foregoing.

of the Receiver (as defined herein) and its counsel to be compensated, as well as the provisions of Paragraphs 12 and 13 below, shall be retroactive to June 29, 2016.

2. The Trustee's Motion for Immediate Appointment of a Receiver is **GRANTED** solely to the extent set forth in this Order Appointing Receiver. LS Associates, LLC is hereby appointed receiver (the "Receiver") of the Property, for the purposes of protecting, preserving, maintaining and repairing the Property, managing and operating the Property, and collecting the rents, receivables, refunds, and revenue related thereto and profits thereof (if any), during the pendency of this action, and prosecuting claims and causes of action related thereto², as more fully set forth hereafter.³ The designated person for the Receiver and the Receiver's contact information is as follows:

Robert W. Leasure, Jr.
LS Associates, LLC
462 S. 4th Street, Suite 1770
Louisville, KY 40202
(502)583-1945

3. Saint Catharine and all those in active participation or concert with it who receive notice of this Order, and all those having claims against the Property or Saint Catharine who receive notice of this Order, are enjoined from, and shall not:

² Receiver and its professionals, on the one hand, and St. Catharine and its professionals, on the other hand, shall be entitled to rely on the "common interest" exception to communications that would otherwise waive attorney-client and/or work product privilege. Accordingly, communications between the Receiver and its professionals, and St. Catharine and its professionals, related to existing or future litigation on behalf of St. Catharine or the receivership estate, or other similar legal matters, shall not constitute a waiver of any attorney-client or work product privilege, and are hereby deemed privileged. *See Broessel v. Triad Guaranty Ins. Co.*, 238 F.R.D. 215, 220 (W.D. Ky. 2015).

³ The terms of this Order place the Property into receivership, but not the comprehensive governance and operations of the Defendant at this time. The parties have informed the Court that, among other reasons, this is because they do not believe that the Receiver is capable of granting degrees to students under applicable law. The parties have further informed the Court that at this time, the authority of the Board of Trustees shall remain, with its authority circumscribed by the provisions of this Order, at least until such time as until such degrees have been granted. The foregoing does not compel any member of the Defendant's Board of Trustees to act or remain on the Defendant's Board of Trustees at any time. The parties reserve their rights to seek to broaden the scope of the Receiver's powers at the appropriate time.

- (a) Commit Waste. Commit or permit any waste on all or any part of the Property, or suffer or commit or permit any act on all or any part of the Property in violation of law, or remove, transfer, encumber, or otherwise dispose of any of the Property.
 - (b) Collect Income. Demand, collect, receive, discount, or in any other way divert or use any of the Income.
 - (c) Interfere with the Receiver. Directly or indirectly interfere in any manner with the discharge of the Receiver's duties under this Order or the Receiver's possession and operation, management, or sale of the Property.
 - (d) Transfer or Encumber the Property. Expend, disburse, transfer, assign, sell, convey, devise, pledge, mortgage, create a security interest in, encumber, conceal, or in any manner whatsoever deal in or dispose of the whole or any part of the Property without prior court order.
 - (e) Impair the Preservation of the Property. Do any act that will, or that will tend to, impair, defeat, divert, prevent, or prejudice the preservation of the Property, or the preservation of the Trustee's interest in the Property.
 - (f) Cancel, terminate or modify any insurance policies relating to the Property.
4. Except as may be expressly authorized by this Court after notice and hearing,

Saint Catharine (without the Receiver's written approval) is enjoined from:

- (a) collecting any proceeds, revenues, accounts, issues, profits or other revenues relating to the Property;
- (b) withdrawing funds from any bank or other depository account belonging, or relating, to the Property;
- (c) terminating or causing to be terminated any license, permit, lease contract, insurance policy or agreement relating to the Property;
- (d) altering, erasing, or destroying any records relating to the Property without the prior written consent of the Receiver and pursuant to Order of the Court; provided however Saint Catharine may maintain control over all academic records of its students and former students;
- (e) holding themselves out as, or acting or attempting to take any and all actions of any kind or nature as officers, employees, representatives, managers, members, or principals of the Property, including communication with vendors, existing contractors if any, and any potential purchasers; provided that Saint Catharine

may undertake actions necessary to fulfill its regulatory obligations until Saint Catharine ceases operations.

- (f) otherwise interfering with the operation of the Property or the Receiver's exercise of any power hereunder or the Receiver's discharge of its duties.
- (g) Except as may be expressly authorized by the Receiver or by this Court, no person may buy, sell, or otherwise transfer any Property.
- (h) Upon receipt of a copy of this Order, or upon actual knowledge of the entry of this Order, any other person or business entity shall also be bound by this Order.

Subject to the other provisions of this Order and the approved Budgets, Saint Catharine has the power and authority to continue to undertake all actions necessary to ensure degree completion for all enrolled students.

5. **Authority.** Upon swearing an oath to perform faithfully the duties of the Receiver in this action, and with the understanding that Farmers National Bank of Lebanon (“FNB”) does not waive any rights that FNB may have under Kentucky law or other applicable law, the Receiver is hereby given the power and authority to:

- (a) Take control of the Property and all related documents, books, records, papers, and accounts of Saint Catharine to preserve, protect, secure, maintain and/or preserve the Property;
- (b) Hire, employ, retain, and terminate consultants, brokers, professionals, independent contractors, and any other personnel or employees, which the Receiver deems necessary to assist him in the discharge of the Receiver’s duties, without Court approval. The Receiver is further authorized to retain legal counsel to represent him and assist him with the performance of the Receiver’s duties. All reasonable expenses incurred in connection with the hiring and retention of such personnel and counsel shall be expenses of, and paid for pursuant to Sections 9(e) and (f) below.
- (c) Obtain and pay any reasonable price for any lawful license, and, to the extent permitted by law, exercise the privileges of any existing license issued in connection with the Property or any business transacted with respect to it, until further order of the Court, and to do all things necessary to protect and maintain said licenses, including, but not limited to, taking such license in the name of the Receiver personally or a nominee of the Receiver personally. Except where forbidden by applicable law, all existing licenses relating to the operation of the

Property issued in the name of Saint Catharine are hereby assigned to the Receiver;

- (d) Upon receiving prior, written approval from the Trustee or Court approval, negotiate, extend, terminate, modify, ratify or enter into leases, contracts, including, without limitation, franchise agreements, contracts to provide security, janitorial, leasing, utility or other services including the hiring and terminating of staff and full-time and part-time employees related to the Property and to pay for those services as an expense of the Property. The Receiver must insure that the Property is operated in accordance with state, local, and federal laws;
- (e) Operate, lease, manage and control the Property, conduct its business and incur the expenses necessary in such operation, leasing, management, control, and conduct in the ordinary and usual course of business, and shall do all things and incur the risks and obligations ordinarily incurred by owners, managers, and operators of similar properties. No risks or obligations incurred by the Receiver in the operation, leasing, management, control and conduct shall be the personal risk or obligation of the Receiver, but shall be a risk or obligation of the receivership estate;
- (f) Open and maintain checking and savings accounts and the like, in the name of the receivership estate, in a federally insured lending institution, and shall pay those obligations reasonable and necessary for the protection, preservation and maintenance of the Property pursuant to the Budgets, as defined and described in Section 6(d);
- (g) Except as provided in an approved Budget or as otherwise set forth herein, the Receiver shall obtain the Trustee's prior, written approval before making capital expenditures in excess of \$10,000 per expenditure or paying unsecured pre-Receiver'ship debt with funds that are the proceeds of the Trustee's collateral. After reserving sufficient funds as the Receiver deems reasonable in accordance with the approved Budgets, the Receiver may pay at its discretion any remaining amounts to the Trustee to reduce the amounts due, owing and unpaid by Saint Catharine and reduce the accrual of interest on such amounts;
- (h) Issue demands, in the name of the receivership estate, upon public utilities that the Receiver determines provide services to the Property and to transfer such services, together with any deposits held by the utility, to the exclusive control of the Receiver;
- (i) Issue demands in the name of the receivership upon the U.S. Postal Service, or any other public or private entity, to gain exclusive possession and control of such postal boxes as may have been used by Saint Catharine, or any of their respective agents for the receipt of rent, income, and other mail related to the Property. The Receiver is authorized to open all mail addressed to Saint Catharine, its agents, employees or representatives, or all persons or entities acting under or in concert

with Saint Catharine received at the Property. The Receiver is authorized to make copies of such received mail and then forward the mail to Saint Catharine, its agents, employees, or representatives, or all persons or entities acting under or in concert with Saint Catharine;

- (j) Demand deposits, including security deposits, from available leases, rents or other revenue and other records, compute the amount of deposits collected by Saint Catharine or its agents from tenants, if applicable for security, cleaning, hazardous waste or any other purposes, and demand the immediate surrender to the Receiver of such deposits by Saint Catharine or its agents who collected them, and to take appropriate action to enforce the turnover of such deposits;
- (k) Upon receiving the prior, written approval of the Trustee, if required pursuant to the Trustee's loan documents (the "Loan Documents"), the Receiver, as managing agent for the Property, is authorized to negotiate, make, enter into, or modify contracts or agreements affecting any part or all of the Property, and to immediately terminate any existing contract, agreement or instrument which is not, in the Receiver's sole and absolute discretion, deemed commercially reasonable or beneficial to the operation of the Property;
- (l) Demand, collect, and receive all rents, revenues, receivables and profits for the Property or any part of it that are owed, unpaid, and uncollected as of the effective date of this Order, or hereafter to become due and, in connection therewith, may endorse checks payable to Saint Catharine, or to the extent related to the Property;
- (m) Place all or part of the Property for sale on the market, retain any reputable broker or advertiser or obtain a marketing analysis in connection therewith, and undertake any and all other duties associated with selling the Property, including executing documents necessary for consummation of a sale, provided that such marketing, retention and other contracts relating to such sale and the terms thereof shall be subject to the Trustee's prior, written approval, and with such sale being subject to Court approval;
- (n) Institute and prosecute all suits as may be reasonably necessary in the Receiver's judgment to protect the Property and/or creditors of the receivership estate, and to defend all such suits and actions as may be instituted against the Receiver; and
- (o) To the extent there are insufficient funds in the receivership estate to cover receivership expenses, the Receiver may borrow from the Trustee, with or without the necessity of issuing Receiver's Certificates, such funds as may be required by the Receiver to cover operating expenses of the receivership, including but not limited to the Receiver's fees and costs, as determined by the Receiver in its sole discretion, provided that the Trustee consents to making such advances. The Trustee may add the amount of such advances to the amounts due under the Loan Documents, and shall be entitled to earn interest on such advances at the rate then payable on the loan, as determined by the Loan Documents.

6. **Duties.** During the pendency of the receivership, the Receiver is hereby ordered to:

- (a) Within forty-five (45) days of taking control and possession under this Order, file with the Clerk of this Court an inventory itemizing all personal property of which he has taken control or possession and promptly file supplemental inventories of any personal property subsequently coming into the receivership estates as needed;
- (b) Prepare on a monthly basis, beginning forty-five (45) days after its appointment and for so long as the Property shall remain in its possession or care, reports setting forth all receipts and disbursements, cash flow, changes in the assets in its charge, claims against the assets in its charge, and other relevant operational issues that have occurred during the preceding month. The Receiver is directed to file such reports with the Clerk of this Court;
- (c) As soon as is practicable, segregate into separate deposit accounts: (i) the cash collateral of the Trustee, including proceeds of collateral (the “Cash Collateral Account”); and (ii) cash which does not constitute the cash collateral of the Trustee, including proceeds of unencumbered Property (the “Operating Account”).
- (d) Within 30 days of entry of this Order, prepare (i) an operating budget projecting the Receiver’s proposed use of unencumbered cash and the manner, amount and timing in which the Receiver proposes to expend such unencumbered cash (the “Operating Budget”); (ii) a cash collateral budget projecting the Receiver’s proposed use of funds in the Cash Collateral Account, and the manner, amount and timing in which the Receiver proposes to expend funds in the Cash Collateral Account (the “Cash Collateral Budget,” and collectively with the Operating Budget, the “Budgets”). After preparing the Budgets, the Receiver shall submit the Budgets to the Trustee for approval. Upon receipt of the Trustee’s approval, the Receiver shall file the Budgets with the Clerk of the Court for notice purposes. To the extent the Receiver and Trustee are unable to resolve any objection to the Budgets after good faith efforts to resolve same, at the request of either the Trustee or the Receiver, the Court shall resolve such objections.
- (e) Hold and retain all money that may come into the Receiver’s possession, custody, and control by virtue of its appointment and such funds shall be expended only for the purposes herein and pursuant to the Budgets or other Order of this Court;
- (f) Maintain adequate insurance over the Property to the same extent and in the same manner as it has heretofore been insured and in compliance with the Loan Documents, or as in the judgment of the Receiver may seem fit and proper, and to cause all presently existing policies to be amended by adding the Receiver and the

receivership estate as an additional insured within twenty (20) days of the entry of this Order, with any and all insurance refunds or claims proceeds to be paid to Receiver as part of the receivership assets. If there is either inadequate insurance or insufficient funds in the receivership estate to procure adequate insurance, the Receiver is directed to immediately take appropriate action to remedy the deficiency and to provide notice to this Court regarding such deficiency. During the period in which the Property is uninsured or underinsured, the Receiver shall not be personally responsible for any claims arising therefore;

- (g) Notwithstanding any other provision of this Order, the Receiver shall undertake and pay out of available cash (a) legal fees for Frost Brown Todd LLC accruing through August 10, 2016 which shall be included in the Budget in the same amount as previously agreed to between Saint Catharine and the Trustee, (b) payroll expenses, which shall be included in the budget in the same amount as previously agreed to between Saint Catharine and the Trustee through July 31, 2016, (c) the cost, up to \$25,767 plus applicable taxes and surcharges, of obtaining “tail” coverage on Saint Catharine’s Directors & Officers, Employment Practices Liability, Fiduciary Liability and Educator Legal Liability policy and (d) the expenses deemed necessary and reasonable by the Receiver to fulfill the Borrower’s closeout obligations set forth in Chapter 8 of the applicable Federal Student Aid Handbook and applicable federal regulations on federal student aid (which include but are not limited to the cost of an audit of Saint Catharine’s financial statements for the fiscal year ending June 30, 2016). The foregoing expenses shall be included in the Budgets, and the Receiver shall not be permitted to exceed the amounts for the foregoing expenses set forth in the Budgets, subject to the variance provisions of Paragraph 8 of this Order, without the prior written approval of the Trustee.

7. **Non-Duties.** Notwithstanding anything in this Order to the contrary, during the pendency of the receivership, the Receiver shall not be obligated to:

- (a) Subject to Paragraph 6(g) above, assume or pay, perform or otherwise discharge any Employment-Related Liability (as defined below) of Saint Catharine; provided further, that should the Receiver nonetheless elect to assume or pay, perform, or otherwise discharge any Employment-Related Liability, he may not transfer, sell, pay, encumber, or otherwise use the Trustee’s collateral or the proceeds of such collateral to do so. Without limiting the generality of the foregoing, “Employment-Related Liabilities” includes all of Saint Catharine’s liabilities to any former or current employee in any way related to the employee’s employment with or separation from Saint Catharine, including, but not limited to, any claims: (i) for salary, wages, commissions, bonuses, benefits, vacation, or any other form of compensation; (ii) arising out of any acts or omissions of Saint Catharine or any of their agents or representatives with respect to any benefit plan, employee practices or employee programs, including employee claims of discrimination, retaliation or other wrongful conduct or discharge decisions; (iii)

severance liabilities; (iv) obligations under employment contracts or any other related agreements with employees; (v) any change of control amounts payable to any employees; (vi) all liabilities under the Worker Adjustment and Retraining Notification Act (WARN) 29 U.S.C. 2101 et seq., or similar state statute or regulation and (vii) any other statutory or common law claim;

- (b) File federal or state income tax returns or federal or state payroll tax returns and/or pay any unpaid federal and state payroll taxes and expenses of Saint Catharine. The responsibility for such filings and payments lies exclusively with Saint Catharine and its agents, employees, and representatives;
- (c) Refund any security or other deposits which any tenants or lessees have paid to Saint Catharine or its agents and which are not paid to the Receiver and over which the Receiver has no control without a prior order of the Court. All such obligations shall be obligations of Saint Catharine. Notwithstanding the foregoing student refunds on account of tuition overpayments and housing deposits may be paid, subject to Budget approvals and availability of funds.

8. Notwithstanding anything to the contrary in this Order other than Paragraph 6(g) of this Order, the Receiver shall not expend or disburse funds which, in the aggregate, would cause a negative variance in excess of 10% from an approved Budget line item expense, *provided however*, that such variance restriction shall not apply to unforeseeable expenses required for emergency or safety repairs to the Property, and in such instance, the Receiver shall notify the Trustee thereof as soon as reasonably practicable and make a good faith effort to reach agreement on any proposed expenditure. Nothing in this Court's Order shall obligate the Trustee to lend or disburse any funds or amounts to the Receiver except as set forth in Paragraph 6(g).

9. **Receiver's Compensation.** The Receiver shall be compensated monthly as follows:

- (a) The Receiver will charge for its services a receivership fee on an hourly basis at the rates set forth in the Declaration filed in support of the Motion.
- (b) Reserved
- (c) The Receiver shall be reimbursed for all expenses incurred on behalf of the Property pursuant to the terms hereof.
- (d) Any disposition fee is waived.

- (e) The Receiver's consultants, agents, employees, legal counsel, and professionals may be paid on a monthly basis. To be paid on a monthly basis, the Receiver and its professionals must file a statement of account with the Court and serve a copy on all parties each month for the time and expense incurred in the preceding calendar month. At the Receiver's discretion, these statements of account may accompany the monthly reports filed by the Receiver pursuant to this Order. Once the Receiver's statements of account have been filed and served, the Receiver may pay the statements. The receipt by consultants, agents, employees, legal counsel, and professionals of interim fees is subject to final review and approval by this Court. This Court retains jurisdiction to award a greater or lesser amount as the full, fair, and final value of the Receiver's services.
- (f) The Receiver's compensation and receivership expenses and professional fees including expenses incurred under paragraph 6(e) above shall be paid first from available cash and/or revenue and, if not sufficient, then by the Trustee and/or chargeable to the Property itself and paid upon the sale or disposition thereof as a carve-out from the Trustee's collateral, to the extent such expenses are consistent with a previously-approved Budget.

10. The Receiver and its personnel and professionals shall be permitted to stay at the Property and use its facilities without charge while conducting business at the Property.

11. The Receiver and the parties to this action may, from time to time, on an *ex parte* basis or noticed motion on shortened time, petition this Court for instructions with respect to this Order and further orders this Court may hereafter make.

12. The Receiver and its employees, agents, and attorneys and other professionals shall have no liability in connection with any liabilities, obligations, liens, or amounts owed to any of the creditors of Defendants because of its duties as Receiver or for any obligations incurred prior to or during the receivership. Nothing in this Order shall grant any rights to trade creditors or general unsecured creditors, whose rights shall be solely determined in accordance with Kentucky law. Except for any acts, errors or omissions which are clearly in direct violation of this Order, or result from the gross negligence or willful misconduct of the Receiver, the Receiver, while lawfully acting as such, shall be deemed an agent and officer of this Court, and shall be entitled to, and shall have, immunity to the fullest extent of the law from and against any

and all causes of action, proceedings, claims, demands, suits, losses, damages, costs, expenses and liability of every kind, nature, or description, which in any manner arise from, are in connection with, or are relating to all or any part of the Property, and/or arise in the course of the Receiver's acting in such court appointed capacity.

13. No individual or entity may sue the Receiver or Saint Catharine without first obtaining the permission of this Court; provided however, that FNB shall be permitted to proceed with claims against Saint Catharine after August 31, 2016, provided further that FNB must provide the Receiver and the Trustee seven (7) days' notice before proceeding with any such claims. The Court retains jurisdiction over matters regarding the interpretation and enforcement of this Order by any party hereto.

14. The Receiver may resign upon 30 days written notice to the parties and to the Court and be relieved of its duties. The Receiver and its professionals shall be compensated pursuant to the provisions of this Order through the effective date of any such resignation.

15. **Termination.** The receivership may be terminated by the Receiver or by the Trustee, upon further Order of the Court, for cause, including but not limited to the following:

- (a) Immediately upon (i) the reinstatement or full payoff of the loan secured by the Mortgage, (ii) the completion of a valid foreclosure sale of the Property, (iii) the completion of a sale by the Receiver of the Property, (iv) the acquisition of the Property by the Trustee or any assignee by deed in lieu of foreclosure, or (v) upon agreement of the Trustee and the Receiver, and without further Order of this Court, the Receiver shall relinquish possession and control of the Property to the appropriate party. Upon relinquishing possession and control of all of the Property, the Receiver shall be relieved from all further duties, liabilities and responsibilities relating to the Property and shall thereafter submit the Receiver's final accounting and report for Court approval and discharge.
- (b) Upon receipt of a copy of a recorded deed upon foreclosure or written notice from the Trustee that Saint Catharine has cured the defaults existing under the Loan Documents or that the Trustee has accepted a deed in lieu of foreclosure, the Receiver shall, without further order of the Court, turn over possession of the Property to the successful purchaser, Saint Catharine, or the Trustee, respectively. The Receiver and the successful purchaser, Saint Catharine, or the Trustee, as the

case may be, may agree to extend the time in which Receiver is to continue to operate the Property in accordance with this Order for up to an additional thirty (30) days.

- (c) No later than sixty (60) days after the receivership terminates, the Receiver shall file and serve a motion for approval of the Receiver's final report and account and exoneration of the Receiver's bond. The Receiver shall give notice of such motion to all persons of whom the Receiver is aware who have potential claims against receivership property. The motion to approve the final report and account and for discharge of the Receiver shall contain a declaration or declarations (i) stating what was done during the receivership; (ii) certifying the accuracy of the final accounting; (iii) stating the basis for the termination of the receivership (such as foreclosure or reinstatement); and (iv) stating the basis for an order for the distribution of any surplus or payment of any deficit. In addition, the motion shall contain a summary of the receivership accounting, which shall include (i) the total revenues received; (ii) the total expenditures identified and enumerated by major categories; (iii) the net amount of any surplus or deficit; and (iv) evidence of necessary supporting facts.

16. In the event the Property is redeemed from foreclosure within the period allowed by law, the redemptive price shall include costs of this receivership, including without limitation, all of the Receiver's fees, reasonable expenses of preserving and protecting the Property, all funds advanced by the Trustee to the Receiver for the purposes permitted herein, plus all other reasonable expenses incurred by the Receiver in the care and maintenance of the Property, including the payment of taxes, insurance, utility costs and such other reasonable expenses as are necessary.

17. All parties, their affiliates, subsidiaries, entities, agents, owners, officers, directors, partners and employees are ordered to take no action detrimental to the preservation and/or value of the Property, including its rents and profits, or that would interfere with the Receiver's performance of its duties.

18. **Bankruptcy.**

- (a) Defendant's Duty to Give Notice of Bankruptcy. In the event that a bankruptcy case is filed by or against the Defendant during the pendency of this receivership,

Defendant must give notice to this Court, to all parties, and to the Receiver, within 24 hours of the bankruptcy filing.

- (b) Receiver's Duties if Bankruptcy is Filed. Upon receipt of notice that a bankruptcy has been filed which includes as part of the bankruptcy estate any Property which is the subject of this Order, the Receiver shall immediately contact the Trustee, and determine whether that party intends to move in the Bankruptcy Court for an order for both: (i) relief from the automatic stay or motion to dismiss and (ii) relief from the Receiver's obligation to turn over the property (11 U.S.C. § 543). Upon receipt of the Trustee's determination, the Receiver shall do the following:

i) *Immediately Turn Over the Property if No Relief From Stay or Motion to Dismiss the Bankruptcy will be Sought:* If the Trustee indicates no intention to file such a motion within 10 days, then the Receiver shall immediately turn over the property (to the trustee in bankruptcy, or if one has not been appointed, then to the Defendant), and otherwise comply with 11 U.S.C. § 543.

ii) *Remain in Possession and Preserve the Property, Pending Resolution of Motion for Relief From Stay and Turnover, or Motion to Dismiss:* If the Trustee notifies the Receiver of its intention to immediately seek relief from the automatic stay or file a motion to dismiss, then the Receiver is authorized to remain in possession and preserve the property pending the outcome of those motions pursuant 11 U.S.C. § 543(a). The Receiver's authority to preserve the property is limited as follows: The Receiver may continue to collect rents, issues, and profits. The Receiver may make disbursements, but only those which are necessary to preserve and protect the Property. The Receiver shall not execute any new leases or other long-term contracts. The Receiver shall do nothing that would affect a material change in circumstances of the Property.

- (c) The Receiver is authorized to retain legal counsel to assist the Receiver with the bankruptcy proceedings.

19. This Order is not intended to be a determination of the validity or priority of the liens of any party.

July 26, 2016

A handwritten signature in black ink, appearing to read "D.J. Hale", is written over a circular official seal of the United States District Court.

**David J. Hale, Judge
United States District Court**