



Date). A hearing was held on May 12, 2025, at which the Court took evidence and argument. The Court deferred ruling on the issue of the claims process and bar date.

The parties have indicated that no one is seeking dissolution of Spirit Hospitality at this time.

The parties conferred on a claims process. The Court has reviewed the submissions and issues this Order explaining its reasoning, along with a separately filed order setting forth the specifics of the claims process and bar date.

“The Receiver is charged with the duty of managing the estate and property entrusted to his care. It must collect and preserve corporate property from imminent danger of loss, waste or dissipation and administer the receivership free from outside interference with estate property.” *Eller Industries, Inc. v. Indian Motorcycle Mfg., Inc.*, 929 F. Supp. 369, 372 (D. Colo. 1995) (citing *Savageau v. J & R.A. Savageau, Inc.*, 285 P.2d 810, 813 (Colo. 1955)). The Receiver holds funds it accumulates for distribution to the party whom the court ultimately finds is entitled to them. *Application of Northwestern Mut. Life Ins. Co.*, 703 P.2d 1314, 1317 (Colo. App. 1985).

The setting of a claims process, and the contours of such a process, have been recognized by the pre-eminent treatise on receiverships. 1 Ralph E. Clark, *A Treatise on the Law and Practice of Receivers* §§ 755–768 (1st ed. 1918). *Clark on Receivers* has been cited with approval by Colorado courts. See, e.g., *George N. Sparling Coal Co. v. Colorado Pulp & Paper Co.*, 299 P. 41, 42 (Colo. 1931); *K-Partners III, Ltd. v. WLM Hospitality Corp.*, 883 P.2d 604 (Colo. App. 1994).

The Order for Appointment of a Receiver authorizes the Receiver to conduct the affairs of the Receivership Estate, including to investigate and settle claims against the Receivership Entity. Order ¶ 7.

At hearing, Mr. Butterfield raised a concern that the appointed Receiver has a conflict of interest and cannot administer a claims process because Mr. Butterfield had previously raised claims (now asserted counterclaims) against the Receiver for his work as a receiver.

The Receiver here is not conflicted as to the pre-receivership claims. There is no allegation that he has a claim against Spirit Hospitality or that he is likely to receive assets from the Receivership Estate based on the claims process (other than the administrative fees generated by court order). No conflict of interest exists as to the pre-receivership claims. The Receiver will not be adjudicating the counterclaims against him through the claims process.

Further, the cost and delay associated with utilizing another claims administrator is not in the best interests of the claimants as it will further deplete the Receivership Estate without any added benefit.

The parties were ordered to confer and did confer regarding a potential stipulated claims process. The major disagreements regarding the claims process were in regard to: (1) whether to include an explicit “opt out” provision in the order and (2) whether to include a payout (“Waterfall”) procedure.

As to the first issue, the Court has not included language which explicitly allows for a claimant to “opt out.” The reason is because the claims process itself functions as an “opt in” scheme in which an individual with claims against Spirit will not have their claims adjudicated (and paid out) if they do not file a claim. The benefit for the claimants of filing a claim through this process is to get their claims resolved (and hopefully paid) quickly while limiting the administrative costs. If a claimant elects not to file a claim, he need not notify anyone; he will, by virtue of the process, be opted out of the claims process (and not entitled to collect through the process). The risk for the claimant that does not “opt in” is that if he later brings a claim against Spirit or files a suit after the claims process is concluded, he may be unable to collect because Spirit’s funds have all been distributed to others. 1 Ralph E. Clark, *A Treatise on the Law and Practice of Receivers* § 759 (1st ed. 1918) (“Without a statute a court of equity has no power to make an order absolutely barring creditors from participating in the fund. When once distributed, however, after reasonable notice being given to the creditors to present their claims, of course those who did not present their claims were cut off because the money was already distributed.”).

The need to provide notice of the right to “opt out” is therefore unnecessary because the claims process is an opt in scheme. Requiring an “opt out” notice may cause unnecessary confusion for potential claimants.

Instead, the Court has included some additional language clarifying that if a claimant does not file a claim, his claim will not be adjudicated through the process, and

he may not receive compensation. Whether he chooses to do so, then, is entirely up to him.

As to the second issue, the Court has established a middle ground between the two positions. The Court agrees that it is somewhat premature to set the payout schedule because the Court does not yet know (1) what the income from the sale of the properties will yield (or any other liquid assets of the Receivership Estate that may be distributed to claimants) and (2) how many valid claims there are and the total value of the claims.

Nonetheless, the Court agrees that some process is necessary to provide guidance to the Receiver regarding the resolution of the payment of the claims. Accordingly, the Court has set a process for establishing a payout structure once the actual claims are known.

Based on the above, the Court has determined that a claims process and bar date is authorized and necessary to resolve outstanding claims against the Receivership Estate.

The “Order to Present and File Claims, And Setting Bar Date” is filed concurrently with this Order.

DATED: July 9, 2025

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Laurie K Dean", written in dark ink.

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Laurie K Dean  
District Court Judge