

No. 18-_____

In The
Supreme Court of the United States

MASTROGIOVANNI SCHORSCH &
MERSKY, P.C. and ROSA R. ORENSTEIN,

Petitioners,

v.

EDWARD MANDEL,

Respondent.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Fifth Circuit has ignored long standing rules of comity mandated by Federalism by invading the exclusive subject matter jurisdiction of a Texas state court to instruct and direct its receiver and to implement, interpret, define or enforce its own receiver orders. The Fifth Circuit imposed its own unsupportable interpretation of a non-appealable Texas receivership order, which had been previously affirmed by the Supreme Court of Texas, when it held that the mere filing of a bankruptcy case constitutes “new litigation” which, by operation of law, denied the state court receiver, her counsel, and the receivership estate the authority to pursue their claims against a debtor in bankruptcy. In doing so years after significant bankruptcy deadlines elapsed, the Fifth Circuit deprived these creditors of their state property rights without due process of law in that it left them without a remedy or a forum in which to protect their property rights.

Is a federal court authorized to invade a state court’s exclusive province to appoint, instruct and control its own appointed receivers, by reinterpreting non-appealable state court receivership orders in contravention of *Palmer v. Texas*, 212 U.S. 118 (1909)?

Does the Fifth Circuit’s decision result in a fundamental denial of due process of law to this group of creditors (a state court receiver, her counsel, and the receivership estate) without prior notice or an opportunity to be heard and leaving them with neither a remedy nor a forum in which to pursue one?

QUESTIONS PRESENTED – Continued

As an issue of first impression in the bankruptcy context, does the mere filing of a bankruptcy case create “new litigation” which, by operation of law, nullifies a state court receiver’s duty and authority to hire counsel and to pursue and protect the receivership estate’s claims, as well as their own claims as creditors, against a debtor who files a bankruptcy petition?

LIST OF PARTIES

The parties in the court below were Mastrogiovanni, Schorsch & Mersky, P.C. (“MSM”), Rosa R. Orenstein (“Receiver”) and Edward Mandel (“Debtor”).

RULE 29.6 DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioner Mastrogiovanni, Schorsch & Mersky, P.C. discloses that it is a privately held corporation that has no parent corporation, no publicly traded stock and no publicly held company owns more than 10% of its stock.

Petitioner Rosa R. Orenstein is not a corporate entity.

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PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the Fifth Circuit is not a reported decision and appears at App. 1. The opinion of the District Court is not a reported decision and appears at App. 20. The opinion of the Bankruptcy Court is not a reported decision and appears at App. 42.

JURISDICTION

The judgment of the court of appeals was entered on September 7, 2018. The judgment of the court of appeals denying rehearing was entered on October 10, 2018. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

TEX. CIV. PRAC. & REM. CODE § 64.033 – Suits By Receiver.

A receiver may bring suits in his official capacity without permission of the appointing court.

U.S. Const. art. IV, §§ 1-2

Section 1.

Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Section 2.

The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

U.S. Const. amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of

law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

STATEMENT OF THE CASE

A. Legal Background

When a bankruptcy case is commenced, an estate comprised of all legal and equitable interests of the debtor in property comes into existence. 11 U.S.C. § 541(a). A number of critical rights and deadlines arise immediately upon the commencement of a bankruptcy case. 11 U.S.C. § 362(a) imposes an automatic injunction against the continuation of any action or proceeding against the debtor. A deadline is established by which a creditor must file a proof of claim or risk having its claims become unenforceable against the debtor and not sharing in the distribution from the assets of the bankruptcy estate. 11 U.S.C. § 501; FED. R. BANKR. P. 3002. In individual bankruptcy cases, deadlines for filing (a) objections to property claimed as exempt under 11 U.S.C. § 522 and FED. R. BANKR. P. 4003 and (b) objections to the debtor's dischargeability or discharge under 11 U.S.C. § 523 also arise upon the commencement of the bankruptcy case. This Court has previously held that the filing of a bankruptcy

petition, with very limited exceptions not applicable here, does not create new rights or claims against a debtor as those primarily have their basis in state law. Nowhere in the Bankruptcy Code are creditors' vested rights or claims already in existence prior to the commencement of a bankruptcy case divested by the mere filing of a bankruptcy case.

B. Factual Background

Edward Mandel ("Mandel") and Steven Thrasher ("Thrasher") formed White Nile Software, Inc. ("White Nile") to pursue exploitation of a new internet search engine. Within months Thrasher and Mandel were at odds with each other. Lawsuits against each other ensued in State Court and each asserted White Nile's claims against the other ("State Court Litigation"). After more than 2 years of litigation, Mandel and Thrasher entered into an agreed Order Appointing Receiver ("Agreed Receiver Order") to prosecute White Nile's claims against each of Thrasher and Mandel. The Agreed Receiver Order appointed Rosa R. Orenstein, an experienced Dallas bankruptcy and creditors' rights lawyer ("Receiver") as receiver to prosecute all of White Nile's claims. Receiver engaged MSM as independent counsel and the State Court affirmed her authority to do so. White Nile's causes of action against Mandel included injunctive relief, theft of trade secrets, conversion of White Nile's intellectual property, breach of contract, breach of fiduciary duties to White Nile, fraud and civil conspiracy. The ownership dispute between Mandel and Thrasher was not a White Nile

cause of action. Mandel repeatedly violated the Agreed Receiver Order prompting the State Court to schedule a sanctions hearing for January 25, 2010.

Several months after appointment of the Receiver, Mandel filed mandamus proceedings with the Texas appellate State Courts regarding the Receiver's authority, including with the Supreme Court of the State of Texas. Mandel argued that the State Court did not have authority, and the Agreed Receiver Order did not grant authority, for the Receiver to hire counsel to assist her in carrying out her duties under the Agreed Receiver Order. All mandamus relief Mandel requested was denied. The Agreed Receiver Order became non-appealable in all respects.

On January, 25, 2010 (approximately 2 weeks after his appeals were all denied) and just moments before the State Court was to commence the sanctions proceeding against Mandel for repeatedly violating the Agreed Receiver Order, Mandel filed his personal bankruptcy case ("Bankruptcy Case"). The stay provided by Bankruptcy Code § 362(a) immediately applied and the State Court Litigation came to a halt. Approximately 2 weeks after the commencement of the Bankruptcy Case, the Receiver filed the first of 3 timely motions to lift or modify the automatic stay to return to State Court, in part, for the Receiver to obtain further instruction from the State Court. Mandel opposed all 3 motions to lift or modify the automatic stay. Approximately 15 months after the Bankruptcy Case was commenced, the automatic stay was modified.

Three months after the commencement of the Bankruptcy Case, Mandel also removed the State Court Litigation to the Bankruptcy Court (“Removed Action”). The Receiver immediately filed the first of 3 motions to remand the Removed Action, again in part, to obtain further instruction from the State Court.

Mandel opposed all 3 of the Receiver’s motions to remand. The Bankruptcy Court denied the request to remand the Removed Action but immediately abated the Removed Action.

Fifteen months after the Bankruptcy Case was commenced, the Bankruptcy Court remanded a portion of the Removed Action. Until the Bankruptcy Court remanded the Removed Action, it had remained abated. The Bankruptcy Court specifically remanded the Removed Action for Mandel to pursue his motion to vacate the Agreed Receiver Order and, more specifically, for him to urge his claim that the Receiver did not have authority to represent White Nile in the Bankruptcy Case, as a lawyer. Mandel never pursued either matter in the State Court. However, he did appear through counsel in the State Court after the remand. He opposed the State Court granting the Receiver and her counsel all of the fees and expenses they had incurred in the approximately 16 months since the initiation of the Bankruptcy Case.

While the Bankruptcy Case was ongoing and before the stay was modified and the Removed Action remanded, the deadline to object to Mandel’s claimed

exemptions continued to run. The deadline expired 2 months after the commencement of the Bankruptcy Case. The deadline to file proofs of claims expired 4 months after the commencement of the Bankruptcy Case. The deadline to file objections to Mandel's discharge and/or dischargeability was to expire 3 months after the commencement of the Bankruptcy Case. In each instance, the Receiver and her counsel on White Nile's behalf, timely filed (a) an objection to Mandel's claimed exemptions, (b) proofs of claims for each of White Nile and Petitioners' fees and expenses inclusive of those Mandel had not paid to the date of the commencement of the Bankruptcy Case, and (c) a request for an extension of the deadlines to file a discharge or dischargeability complaint. The Receiver subsequently filed a discharge complaint on White Nile's behalf against Mandel. The Receiver and her counsel continued to participate in the Bankruptcy Case to assert and protect their own and White Nile's claims and its interests in the Bankruptcy Case.

Once the Removed Action was remanded to the State Court, the Receiver filed a motion with the State Court seeking to (i) clarify her appointment as it related to new claims assertable against third parties who had never been involved in the State Court Litigation, (ii) obtain approval of a proposed settlement of White Nile's claims against Thrasher and (iii) for approval of Petitioners' fees and expenses incurred to that date. The request sought approval of all of Petitioners' fees and expenses incurred in the Bankruptcy Case. Mandel appeared generally in the State

Court proceedings and opposed the Receiver's motion. He objected to the approval of the Receiver's proposed settlement with Thrasher and to Petitioners' requested fees and expenses incurred by Receiver and her counsel in the approximately 16 months since the commencement of the Bankruptcy Case. Despite Mandel's objections, the State Court approved both the proposed settlement with Thrasher and more importantly for this Petition, it approved all the fees and expenses incurred by Petitioners since the Bankruptcy Case was commenced ("Settlement Order"). The State Court did not grant the Receiver additional authority to file suit to assert new claims against new third parties who had not previously been involved in the State Court Litigation. Of most importance however, the State Court specifically found that all of the fees and expenses incurred by the Receiver and her counsel, both before and after the filing of the Bankruptcy Case were reasonable, necessary, and *incurred on behalf of the receivership in furtherance of the duties the State Court had imposed upon the Receiver and her counsel.* (emphasis added). Mandel never appealed the Settlement Order and it too became non-appealable in July 2011.

C. The Proceedings Below

On March 21, 2011, prior to the Bankruptcy Court remanding the Removed Action, Mandel filed his objections to Petitioners' claims ("Objections"), which claims had been separated from White Nile's claims in

the Bankruptcy Case. The trial of the Objections was held on December 1 and 2, 2011. App. 42.

The Bankruptcy Court specifically found as a matter of fact that “the orders appointing Orenstein as receiver authorize her to direct and control White Nile’s participation in this case in order to protect White Nile’s claims against this estate. Orenstein, in fact, participated in this case to protect White Nile’s claims against this estate.” App. 46–47. The court recognized Receiver’s authority to engage her counsel and their respective rights to perfect the claims for their fees.

Mandel appealed to the District Court. The District Court found that “Orenstein was charged with directing and controlling White Nile’s participation in litigation of claims against Mandel in order to protect, defend, and preserve the property of White Nile. After Mandel voluntarily filed for bankruptcy and removed the White Nile litigation to the Bankruptcy Court, Orenstein’s position as Receiver remained important as she worked to preserve White Nile’s claims against Mandel’s estate, as Mandel was one of the founders and shareholders of White Nile.” App. 31. The District Court found no error in the Bankruptcy Court’s conclusion that the Receiver was authorized by the State Court to represent White Nile’s claims and interests in the Bankruptcy Case or that she or her counsel were entitled as creditors to pursue and perfect their claims for fees. Neither the Receiver’s nor her counsel’s claim award were disrupted by the District Court.

Mandel appealed to the Fifth Circuit. The Fifth Circuit reversed this part of the District Court's opinion. While recognizing that a receiver's authority always emanates from the State Court's orders appointing the receiver, it nonetheless reinterpreted that non-appealable Agreed Receiver Order. It imposed its own narrow interpretation upon the non-appealable Agreed Receiver Order so as to eliminate much of the authority the State Court had expressly recognized and, in doing so the possibility the Receiver could ever perform the duties imposed on her by the State Court under the Agreed Receiver Order.

The Fifth Circuit determined that as a matter of operation of law, the language, "this litigation," within the Agreed Receiver Order, meant that when Mandel filed his Bankruptcy Case, (automatically staying the State Court activity in the receivership court) the Receiver was no longer authorized to carry out her duties as imposed on her by the State Court on behalf of White Nile. It reasoned that the term "this litigation" could only refer to the then-pending State Court Litigation. It further reasoned that by not expressly mentioning the possibility of a yet to be filed bankruptcy within the Agreed Receiver Order, the State Court intended to exclude perfection and prosecution of those same pre-bankruptcy claims, in the Bankruptcy Case after it was subsequently filed. Appendix p. 13–14.

In order to reinterpret the State Court Judge's stated findings of the extent of the Agreed Receiver Order (rendered in the non-appealable Settlement Order) and impose this contrived and narrow reading of the

Agreed Receiver Order, the Fifth Circuit opined that the filing of a bankruptcy case constitutes “a new lawsuit,” which does not encompass the same claims already being asserted against Mandel by White Nile, Receiver and her counsel in the State Court Litigation. Appendix p. 13–15. The Fifth Circuit claimed to have relied on the State Court’s July 2011 determination not to authorize the Receiver to sue additional, new third parties **who had not been participants in the State Court Litigation** for new claims not previously asserted in the prior State Court Litigation, as evidence that “this litigation” was meant to exclude Receiver from prosecuting White Nile’s already existing claims against Mandel in the Bankruptcy Case. Appendix p. 13–14. The Fifth Circuit seemingly ignored the State Court’s prior, specific findings in which it awarded Petitioners’ all their requested fees and expenses incurred pursuing their claims and those of White Nile after the filing of the debtor’s bankruptcy. It also omitted any reference to the State Court’s July 2011 findings that the Receiver and her counsel, in perfecting and prosecuting their own and White Nile’s claims had at all times carried out the duties the State Court had imposed upon Petitioners.

This petition for certiorari followed.

REASONS FOR GRANTING THE PETITION

This Court should grant certiorari for the following reasons.

First, the decision improperly invades the exclusive jurisdiction of State Courts to instruct, control and direct their appointed receivers in direct opposition to this Court’s long standing holding in *Palmer v. Texas*, 212 U.S. 118 (1909).

Second, this is an important decision which denies these types of creditors—(State Court receivers, their counsel and State receivership estates who are creditors)—of fundamental due process of law by depriving them, without any prior notice or hearing, the opportunity to pursue their state law claims against a debtor, equal to all other creditors. U.S. Const. art. IV, §§ 1-2; U.S. Const. amend. V. The Fifth Circuit’s decision is in disaccord with this Court’s prior holdings that creditor’s rights and claims against a debtor arise under state law and that the mere filing of a bankruptcy case does not, in and of itself, change those rights. *Butner v. United States*, 440 U.S. 48 (1979).

Third, the Fifth Circuit’s decision also raises an issue of first impression in a bankruptcy context. There is no other reported or unreported decision which finds that the mere filing of a bankruptcy case *ipso facto* constitutes a “new litigation” which vitiates a State court receiver’s authority to engage counsel or their pursuit of their own creditor claims or those of her state receivership estate against the debtor in a Bankruptcy Court.

The Fifth Circuit’s decision also creates a new scheme for dishonest debtors to escape liability to their creditors by the mere filing of a bankruptcy case. A dishonest debtor, especially one involved with a closely

held entity, will agree to allow a State Court receiver to be appointed on behalf of a company he may have defrauded ostensibly to pursue all of that entity's causes of action including those against the debtor. Under the Fifth Circuit's ruling, should the debtor then file a bankruptcy case, he would, by operation of law, immediately vitiate the State Court receiver's statutory authority and obligation to preserve and prosecute her own creditor claims or those of the receivership estate against the debtor in the bankruptcy case. This would leave no one to protect and prosecute the creditor claims of the receivership estate because no party would then be authorized to represent the creditor and the creditor will have no recourse to pursue or protect its claims against the debtor. The mere filing of the bankruptcy case, by operation of law, would deprive the receiver, her counsel and the State Court receivership estate of due process of law as they would have no process to equally advance their creditor claims nor any place in which to prosecute them. U.S. Const. amend. V.

Last, the decision is wrong. The Fifth Circuit's ruling was only possible by ignoring well settled and controlling case authority from this Court, the Supreme Court of Texas and the prior, contrary and specific findings of a State Court that entered the Agreed Receiver Order.

A. The Decision Impermissibly Invades the Exclusive Jurisdiction of a State Court in Conflict with This Court’s Previous Holdings

Certiorari should be granted because the question presented is an important federal question which a United States Court of Appeals “has decided . . . in a way that conflicts with relevant decisions of this Court,” SUP. CT. R. 10(c). Certiorari should also be granted because the Fifth Circuit has decided an important federal question in a way that conflicts with a decision of a State Court of last resort. SUP. CT. R. 10(a). The Fifth Circuit decision, that alters a non-appealable State Court receivership order which authorizes a receiver to bring causes of action against an individual in a State Court case, does not extend to those same causes of action against the same individual because the same individual files for bankruptcy is in conflict with this Court’s own opinions that the State Court has the exclusive jurisdiction over such decisions. *Palmer*, 212 U.S. at 125. It also seemingly ignores established Supreme Court of Texas decisions holding that other courts are excluded from invading the appointing courts’ exclusive control and direction of the receiver in its management of the property entrusted to such receiver. *Harrison v. Waterberry*, 27 S.W. 109 (Tex. 1894); *Dillingham v. Anthony*, 11 S.W. 139 (Tex. 1889); *Mudge v. Hughes*, 212 S.W. 819 (Tex. Civ. App.—San Antonio 1919, no writ).

B. The Decision is Fundamentally Incorrect Because It Arbitrarily Denies a Set of Creditors Due Process by the Mere Filing of a Bankruptcy Case

Certiorari should also be granted because the question presented is an important federal question which a United States Court of Appeals “has decided . . . in a way that conflicts with relevant decisions of this Court.” SUP. CT. R. 10(c).

The Fifth Circuit’s decision—that State Court receiver could not perfect and prosecute the causes of action of the receivership estate (including her and her counsel’s own causes of action) against a debtor because she was stripped of that authority upon the filing of the debtor’s bankruptcy case—is riddled with intellectual contradictions and conflicts with previous decisions of this Court.

Specifically, this Court has held that the filing of a bankruptcy petition, with very limited exceptions not applicable here, does not create new rights or claims against a debtor as those primarily have their basis in state law. *Butner*, 440 U.S. at 54–55. Property interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason to analyze the interests of the creditor in a state receivership differently simply because an interested party is involved in a bankruptcy proceeding. Uniform treatment of property interests by both state and

federal courts within a State serves to reduce uncertainty, to discourage forum shopping, and to prevent a party from receiving “a windfall merely by reason of the happenstance of bankruptcy.” *Id.* at 55.

The Fifth Circuit’s decision denies creditors in a State Court receivership the equal ability to pursue their claims in a bankruptcy case solely because the bankruptcy case was filed. This improperly and unjustifiably impinges on this group of creditors’ rights in a debtor’s assets in a manner fundamentally different than any other class of creditors. Consequently, this group of creditors will have no recourse to pursue or protect its claims against the debtor. The mere filing of the bankruptcy case, by operation of law, denies the class of creditors in a state receivership due process of law; equal access to and treatment by the courts. U.S. Const. amend. V; U.S. Const. amend. X.

C. A Matter of First Impression

Certiorari should be granted because this is an “important question of federal law that has not been, but should be, settled by this Court.” SUP. CT. R. 10(c). The question presented is an issue of first impression in the bankruptcy context involving a State Court receivership of a creditor. And, though unreported, this decision will have repercussions throughout the lower courts. There is no other reported or unreported decision which holds that the mere filing of a bankruptcy case constitutes new litigation which denies a State Court receiver and her counsel the authority to pursue

their own or the State Court receivership estate's claims against the debtor in a bankruptcy case. The Fifth Circuit cites that the term, "this litigation" is such a limiting term in the Agreed Receiver Order that the litigation does not encompass the same claims by the same creditor, against the same defendant once that defendant files for bankruptcy. Appendix p. 13–15.

Certiorari should also be granted because the Fifth Circuit's decision creates a new method by which dishonest debtors may escape liability to their creditors simply by the filing of a bankruptcy case. A dishonest debtor, especially in closely held entities, will agree to appointment of a State Court receiver on behalf of a company he may have defrauded ostensibly to pursue that entity's causes of action against the debtor. Under the Fifth Circuit's new ruling, the debtor's subsequent bankruptcy filing instantly vitiates the authority granted to the State Court receiver to pursue and protect the receivership estate's claims against a debtor. By operation of law, the creditor's receiver is stripped of her authority and obligation to protect, perfect and prosecute the state receivership estate's creditor's claims against the debtor in the bankruptcy case. The result of such a scheme is to forever bar these creditor's claims, to render them unenforceable against the debtor and to leave this class of creditors with neither a remedy nor a forum within which to seek a remedy.

D. The Decision Below is Wrong

This Court should also grant certiorari because the decision below is fundamentally wrong for at least 2 reasons:

(1) The Fifth Circuit ignored applicable statutory and Texas case law that **does not** require a Texas receiver to obtain additional authority from the state court appointing her to pursue any and all new actions necessary to protect the property placed in the receiver's care. TEX. CIV. PRAC. & REM. CODE § 64.033; *Autry v. Dearman*, 933 S.W.2d 182 (Tex. Civ. App.—Houston 1996); *Kirk v. Murray*, 67 S.W.2d 385 (Tex. App.—Dallas 1933). She had the affirmative duty to protect the receivership's assets, including claims. *Burnett v. Chase Oil & Gas, Inc.*, 700 S.W.2d 737, 741 (Tex. App.—Tyler 1985, no writ).

The Fifth Circuit decision, that the Agreed Receiver Order—which empowered the Receiver to bring claims against an individual already before the State Court—prohibited the Receiver from advancing those very same causes of action against the same individual because the individual files for bankruptcy, is also in conflict with prior decisions of the Texas Supreme Court that grant Texas receivers broad, general authority to institute and maintain **any** action necessary for the proper administration of the estate in the receiver's hands. *Weems v. Lathrop*, 42 Tex. 207 (Tex. 1875). The Texas Supreme Court has also held that a receiver's right to institute an action may not be questioned unless the receiver's appointment is shown to

be void. *Ellis v. Vernon Ice, Light and Water Co.*, 23 S.W. 856 (Tex. 1893); *Pruett v. Fortenberry*, 254 S.W. 592 (Tex. Civ. App.–Galveston 1923, no writ); *New Britain Mach. Co. v. Watt*, 180 S.W. 624 (Tex. Civ. App.–San Antonio 1915, no writ). The receivership appointment at bar was affirmed by the Texas appellate courts, is not appealable and may not be collaterally attacked through a federal court in violation of the *Rooker-Feldman* doctrine. *Exxon Mobil Corp. v. Saudi Basic Industries Corporation*, 544 U.S. 280 (2005).

(2) The Fifth Circuit ignored the rules of comity as mandated by the United States Constitution (art. IV, § 2, cl. 2) and as adopted by this Court in *Younger v. Harris*, 401 U.S. 37 (1971). Further, the Fifth Circuit ignored the State Court’s own July, 2011, controlling findings that specifically approved all the Receiver’s post-bankruptcy actions, affirming her authority and duty to preserve and protect the claims she prosecuted in the Bankruptcy Case and confirming the fair, reasonable and necessary incurrence of her and her counsel’s fees in doing so. Instead it contorted to impose its own interpretation of and limitations on the Agreed Receiver Order.

CONCLUSION

For all of the foregoing reasons, the petition for certiorari should be granted and the decision below reversed.

Dated: January 8, 2019

Respectfully submitted,

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