

## I. INTRODUCTION

Receiverships are judicial remedies, typically initiated in state courts, where a neutral third party (the receiver) is appointed to manage, preserve, or liquidate property or a business. A receiver does not take title to the debtor’s property but instead acts as a custodian under the ongoing supervision of the appointing court.<sup>1</sup> Receivers are officers of the court that appointed them and owe fiduciary duties to all parties in interest, not just the creditor who moved for their appointment.<sup>2</sup>

State receiverships have grown in popularity as a lower-cost alternative to chapter 11 bankruptcy cases.<sup>3</sup> Compared to a federal bankruptcy case, state receiverships generally proceed with fewer procedural requirements, less judicial oversight, reduced professional fees, and greater speed.<sup>4</sup> But when a debtor under a state receivership files for bankruptcy, or when creditors file an involuntary case, the two systems collide. The intersection of these two systems raises a predictable set of issues that have become commonplace in modern bankruptcy courts: whether the federal automatic stay displaces the receivership, whether the receiver must turn over estate property, whether the court should abstain in favor of the receivership, and whether the bankruptcy filing itself should be dismissed for cause.<sup>5</sup>

This article walks through each of those issues while giving Washington practitioners practical guidance on how the analysis works and likely points of contention. The focus here is state court receiverships, and specifically general receiverships under the Washington Receivership Act (“Act”).<sup>6</sup> Federal equity and regulatory receiverships present a distinct set of considerations and are beyond the scope of this discussion.<sup>7</sup> This article also assumes that whoever signed the bankruptcy petition had the authority to do so under state law, although this is sometimes an issue that arises in the context of a motion to dismiss.<sup>8</sup> The primary

---

<sup>1</sup> See *Kelleam v. Maryland Cas. Co.*, 312 U.S. 377, 381 (1941) (“A receivership is only a means to reach some legitimate end sought through the exercise of the power of a court of equity. It is not an end in itself.”).

<sup>2</sup> *Id.*

<sup>3</sup> Mark Iammartino & Jack Donohue, *Why State Court Receiverships Are Becoming the Norm for Smaller Companies*, Am. Bankr. Inst. J., June 2024, at 12.

<sup>4</sup> *Id.* at 12–13, 54.

<sup>5</sup> See *id.*; 11 U.S.C. §§ 305, 362, 543, 1112(b).

<sup>6</sup> Wash. Rev. Code § 7.60 (2024).

<sup>7</sup> See, e.g., *In re Wyly*, 526 B.R. 194 (Bankr. N.D. Tex. 2015) (holding that the SEC does not violate the automatic stay when it attempts to obtain a disgorgement judgment against a debtor for “ill-gotten gains”); *In re Halo Wireless, Inc.*, 684 F.3d 581 (5th Cir. 2012) (holding that proceedings continued by governmental units and in furtherance of states’ police and regulatory powers are exempt from the automatic stay).

<sup>8</sup> See generally *Price v. Gurney*, 324 U.S. 100 (1945) (holding that state law determines who has authority to file a bankruptcy petition on behalf of a corporate debtor); *In re Sino Clean Energy, Inc.*, 901 F.3d 1139 (9th Cir. 2018) (holding that a former CEO whose board had been replaced by a receiver-appointed sole director lacked authority to file a chapter 11 petition).

questions this article considers are when it is appropriate for a bankruptcy court to dismiss a case in favor of a pending state court receivership and what tools are available to Washington practitioners on both sides of the dispute.

## II. TYPES OF RECEIVERSHIPS

### A. Washington State General and Custodial Receiverships

Washington enacted its modern receivership statute in 2004, replacing a fragmented set of pre-existing provisions with a single framework.<sup>9</sup> The legislature’s goal was to create “more comprehensive, streamlined, and cost-effective procedures” for administering property through the courts.<sup>10</sup> The resulting statute was the product of more than 14 years of drafting by the WSBA Creditor-Debtor Law Section, and it was designed from the ground up to give practitioners and judges a receivership framework that would work as a genuine alternative to bankruptcy.<sup>11</sup>

The most important feature of the Act is the distinction between general and custodial receivers, and every appointment order must designate the receiver as one or the other.<sup>12</sup> A general receiver takes control of all or substantially all of a person’s property with the authority to liquidate that property and, for a business, wind up its affairs.<sup>13</sup> A custodial receiver, by contrast, takes charge of limited or specific property or is not given the authority to liquidate.<sup>14</sup> If the appointment order does not expressly limit the receiver’s authority to designate property, the receiver is a general receiver with “the authority to take charge over all of the owner’s property, wherever located.”<sup>15</sup>

The distinction between a general or custodial receivership matters because many of the Act’s most powerful tools are available only to general receivers. Only a general receiver, or a custodial receiver “with respect to all of a person’s property,” triggers the statute’s automatic stay.<sup>16</sup> Only general receiverships invoke the comprehensive claims process.<sup>17</sup> Only a general receiver may assume or reject executory contracts and unexpired leases.<sup>18</sup> And only a general receiver must file monthly reports.<sup>19</sup>

---

<sup>9</sup> 2004 Wash. Sess. Laws ch. 165; Wash. Rev. Code § 7.60.005 (2024).

<sup>10</sup> Marc Barreca, *Washington Receivership Act 1*, 18 (K&L Gates LLP, Sep. 2008).

<sup>11</sup> *Id.* at 2.

<sup>12</sup> Wash. Rev. Code § 7.60.015 (2024).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Wash. Rev. Code § 7.60.025(4) (2024).

<sup>16</sup> Wash. Rev. Code § 7.60.110(1) (2024).

<sup>17</sup> Wash. Rev. Code § 7.60.210–.230 (2024).

<sup>18</sup> Wash. Rev. Code § 7.60.130 (2024).

<sup>19</sup> Wash. Rev. Code § 7.60.100 (2024).

The Act provides 38 separate grounds for receivership appointment, ranging from protecting property in danger of loss or material impairment to post-judgment enforcement and dissolution proceedings.<sup>20</sup> Outside of statutorily mandated appointments and certain foreclosure proceedings, a court “shall only” appoint a receiver if the appointment is “reasonably necessary and . . . other available remedies either are not available or are inadequate.”<sup>21</sup>

### **B. Assignment for the Benefit of Creditors**

Washington also recognizes assignments for the benefit of creditors (ABCs) under RCW 7.08.<sup>22</sup> An ABC is a voluntary insolvency proceeding in which the debtor transfers all of its assets to a fiduciary (the assignee) who liquidates the assets and distributes the proceeds to creditors.<sup>23</sup> ABCs are widely used as an alternative to chapter 7 liquidation.<sup>24</sup> In Washington, a properly filed ABC transitions directly into a general receivership under RCW 7.60.<sup>25</sup> Upon filing of a petition by the assignor, assignee, or any creditor, the superior court must appoint the assignee as general receiver, and all further proceedings are governed by the Act.<sup>26</sup> This effectively converts all ABCs after the execution of the assignment into general receivership actions and provides a clear path for debtors to initiate receiverships.<sup>27</sup>

## **III. THE AUTOMATIC STAY**

The filing of a bankruptcy petition generally stays receivership proceedings, including actions to enforce judgments or control property of the estate.<sup>28</sup> The automatic stay is one of the most powerful protections in bankruptcy law, and its application to receiverships is broad.

### **A. The Federal Stay**

---

<sup>20</sup> Wash. Rev. Code § 7.60.025(1) (2024).

<sup>21</sup> *Id.*; see *Mony Life Ins. Co. v. Cissne Fam. L.L.C.*, 135 Wash. App. 948, 953, 148 P.3d 1065, 1067 (2006) (emphasizing that the power to appoint a receiver is discretionary and the trial court abuses its discretion only when its decision is “manifestly unreasonable”).

<sup>22</sup> Wash. Rev. Code § 7.08 (2024).

<sup>23</sup> Lisa M. Kresge, *Knowing Your ABC's: Practical Alternatives to a Business Bankruptcy Filing Checklist*, LexisNexis Practical Guidance, April 2025, at 3.

<sup>24</sup> Geoffrey L. Berman, *General Assignments for the Benefit of Creditors* 1–12 (Am. Bankr. Inst. 2d ed. 2006).

<sup>25</sup> Wash. Rev. Code §§ 7.08.030(4), 7.60 (2024).

<sup>26</sup> Wash. Rev. Code § 7.08.030(4).

<sup>27</sup> *Id.*; Barreca, *supra*, at 7.

<sup>28</sup> 11 U.S.C. § 543; *In re Sundance Corp.*, 83 B.R. at 746–47.

Once a bankruptcy petition is filed, the federal automatic stay halts virtually everything, including a pending receivership.<sup>29</sup> Bankruptcy courts exercise exclusive in rem jurisdiction over all property of the debtor, effectively displacing the receivership.<sup>30</sup> As the Fourth Circuit Court of Appeals articulated in *Gilchrist*, federal law is “unequivocal in its grant of exclusive jurisdiction to the bankruptcy court.”<sup>31</sup> The receiver may not continue to administer or dispose of property, pay creditors, or take any action except to preserve estate property, and willful violations of the stay may result in contempt and damages.<sup>32</sup>

### **B. The Federal Preservation Exception**

Despite the broad power of the federal automatic stay, it does not completely paralyze receivers. Under § 543(a), receivers with knowledge of bankruptcy proceedings “may not make any disbursement from, or take any action in the administration of, property of the debtor” except for actions “necessary to preserve such property.”<sup>33</sup> This preservation exception allows receivers to maintain assets while other stay and turnover issues are resolved. However, this exception is construed narrowly.<sup>34</sup> It permits emergency measures to protect the property, such as maintaining insurance, preventing waste, securing premises, but it does not authorize continued business operations or conversion of assets.<sup>35</sup> When in doubt, the safer course is to seek court approval before doing anything beyond basic safekeeping.

### **C. The Washington Statutory Stay**

Practitioners in Washington should also understand that the Act’s statutory stay differs from the federal automatic stay in several ways.<sup>36</sup> Upon appointment of a general receiver, actions against the debtor and its property are stayed, including commencement or continuation of pre-appointment actions, enforcement of pre-appointment judgments, and acts to obtain possession of or interfere with estate property.<sup>37</sup> Unlike the federal stay, however, the state statutory stay on litigation,

---

<sup>29</sup> 11 U.S.C. § 362(a); see *Underwood v. Hilliard (In re Rimsat, Ltd.)*, 98 F.3d 956, 961 (7th Cir. 1996) (holding that a receiver violates the automatic stay when seeking additional powers from state court after the debtor files a bankruptcy petition).

<sup>30</sup> 28 U.S.C. § 1334(e).

<sup>31</sup> *Gilchrist v. General Electric Capital Corp.*, 262 F.3d 295, 302 (4th Cir. 2001); 28 U.S.C. § 1334(e); 11 U.S.C. § 362(a).

<sup>32</sup> 11 U.S.C. §§ 362(a)(3), 543(a); *In re Rimsat, Ltd.*, 98 F.3d 956, 960 (7th Cir. 1996).

<sup>33</sup> 11 U.S.C. § 543(a).

<sup>34</sup> See *In re 245 Assocs., LLC*, 188 B.R. 743, 748 (Bankr. S.D.N.Y. 1995) (holding that a receiver continuing to administer a debtor’s property beyond preservation violates the automatic stay).

<sup>35</sup> *Id.*

<sup>36</sup> Wash. Rev. Code § 7.08.110 (2024); Barreca, *supra*, at 27–28.

<sup>37</sup> Wash. Rev. Code § 7.08.110(1) (2024).

judgment enforcement, and collection actions expires 60 days after appointment unless extended by court order.<sup>38</sup>

#### IV. TURNOVER UNDER 11 U.S.C. § 543

##### A. Receivers as Custodians

State-appointed receivers qualify as “custodians” under the Bankruptcy Code, which defines the term to include a receiver or trustee of any of the property of the debtor, appointed in a case or proceeding not under the Bankruptcy Code.<sup>39</sup> As a custodian, receivers are obligated under § 543 to turn over property to the trustee or debtor in possession (DIP) and file an accounting of the property and the receiver’s administration of it, unless excused under § 543(d).<sup>40</sup> In exchange, the receiver gets reasonable compensation and administrative expense priority.<sup>41</sup>

##### B. Discretionary Exception: § 543(d)(1)

Turnover is the default, but it is not inevitable. Section 543(d)(1) provides that courts “may excuse compliance with subsection (a), (b), or (c)” if “the interests of creditors and, if the debtor is not insolvent, of equity security holders would be better served by permitting a custodian to continue in possession.”<sup>42</sup>

Courts evaluate excusal under a variety of considerations. In *Sundance*, the bankruptcy court excused a state court receiver from turning over a 2,000-acre fruit orchard in Grant County, Washington, finding that the receiver had “ably performed” its duties and that creditors’ interests were better served by allowing receivership to continue.<sup>43</sup> Although *Sundance* did not articulate a formal multifactor test, the considerations it weighed are consistent with the factors that courts across the country have adopted: whether there will be sufficient income to fund a successful reorganization, whether the debtor will use the property for the benefit of its creditors, and whether there has been mismanagement by the debtor.<sup>44</sup> Additional factors include the length of the receivership, what the receiver has accomplished,

---

<sup>38</sup> Wash. Rev. Code § 7.08.110(2) (2024).

<sup>39</sup> 11 U.S.C. § 101(11)(A); see *In re 318 Retail, LLC*, 642 B.R. 884 (Bankr. N.D. Ill. 2022); *In re 29 Brooklyn Ave., LLC*, 535 B.R. 36 (Bankr. E.D.N.Y. 2015).

<sup>40</sup> 11 U.S.C. § 543(b), 543(d); see *In re Rimsat, Ltd.*, 98 F.3d at 958.

<sup>41</sup> 11 U.S.C. §§ 503(b)(3)(E), 543(c)(2).

<sup>42</sup> 11 U.S.C. § 543(d)(1).

<sup>43</sup> *In re Sundance Corp.*, 83 B.R. 746, 748–49 (Bankr. D. Mont. 1988).

<sup>44</sup> See 5 *Collier on Bankruptcy* ¶ 543.05 (16th 2026); see, e.g., *In re Franklin*, 476 B.R. 545, 551 (Bankr. N.D. Ill. 2012).

whether bankruptcy administration would duplicate work already done, the competence of the receiver, and the motivation behind filing.<sup>45</sup>

In sum, *Sundance* provides practitioners with a general picture of what drives the § 543(d)(1) analysis, although these cases are all very fact-intensive and specific. A receiver who can document concrete progress, including completed or pending sales, effective claims administration, and creditor support, is better positioned to argue for excusal.

### **C. Mandatory Exception: § 543(d)(2)**

For ABC assignees, Congress provided an even stronger exception to turnover. The mandatory exception under § 543(d)(2) requires courts to excuse compliance with turnover obligations if “the custodian is an assignee for the benefit of the debtor’s creditors that was appointed or took possession more than 120 days before the date of the filing of the petition, unless compliance with such subsections is necessary to prevent fraud or injustice.”<sup>46</sup> This 120-day exception applies specifically to ABCs, not general receiverships.<sup>47</sup> In establishing this provision, Congress specifically opted to place an ABC in a position different from a state court receiver, recognizing that the trust relationship of the assignee warranted continuous possession of the debtors property.<sup>48</sup> For Washington ABCs administered as general receiverships, the 120-day safe harbor creates an incentive for creditors to delay bankruptcy filing until that window has closed.<sup>49</sup>

### **D. Takeaway from Turnover Provisions**

The turnover provisions of § 543 create a useful middle ground, and court orders can be tailored to the facts and needs of the particular case. Even if a bankruptcy case survives dismissal, the court can allow the receiver to continue in possession under § 543(d). This can be a fallback for creditors and receivers when dismissal or abstention is not readily available. It also means that the bankruptcy case proceeds, but the receiver keeps operating in accordance with the terms of the Code. That outcome can make sense when the estate needs the tools of the Bankruptcy Code, but the receiver

---

<sup>45</sup> 5 *Collier on Bankruptcy* ¶ 543.05 (16th 2026); *In re Sundance Corp.*, 83 B.R. at 746–49; see *In re Straightline Contr. & Dev., LLC*, No 25-42296-MJH (Bankr. W.D. Wash. Feb. 11, 2026) (oral decision) *appeal docketed*, No. 3:25-cv-06152-DGE (W.D. Wash. Mar. 17, 2026) (emphasizing the importance of what the receiver has accomplished when excusing turnover).

<sup>46</sup> 11 U.S.C. § 543.

<sup>47</sup> *Id.*; see *In re U.S.A. Parts Supply*, 619 B.R. 619, 625 (Bankr. N.D. W. Va 2020) (holding that a state court receiver is not an assignee for the benefit of the debtor’s creditors because a receivership does not involve a voluntary transfer of assets, and Congress deliberately placed assignees in a different position than receivers based on the trust relationship voluntarily created by the debtor).

<sup>48</sup> 5 *Collier on Bankruptcy* ¶ 543.06 (16th 2026).

<sup>49</sup> Wash. Rev. Code § 7.08.030(4) (2024).

is doing a better job managing the property than a chapter 11 debtor in possession would.

## V. ABSTENTION UNDER 11 U.S.C. § 305

### A. The Standard

Section 305(a)(1) provides that “[t]he court, after notice and a hearing, may dismiss a case under this title, or may suspend all proceedings in a case under this title, at any time if the interests of the creditors and the debtor would be better served by such dismissal or suspension.”<sup>50</sup> Courts have consistently held that abstention is an extraordinary remedy, and that dismissal is appropriate only in the situation where the court finds that “both creditors *and the debtor* would be better served by dismissal.”<sup>51</sup> That latter factor is difficult to satisfy because retention of the case is presumed, placing the burden squarely on the party seeking abstention.<sup>52</sup>

A distinctive feature of abstention is that abstention decisions are not subject to appellate review by a circuit court or the Supreme Court, and review is limited to the district court or bankruptcy appellate panel.<sup>53</sup> For practitioners, the insulation from appellate review makes the bankruptcy court’s decision effectively final and demonstrates the importance of a full factual development of the record.

### B. The *Marciano* Factors

Though § 305 lacks specific factors to consider in determining to abstain, courts in the Ninth Circuit have adopted a totality-of-the-circumstances analysis using the “*Marciano* factors”:

- (1) the economy and efficiency of administration;
- (2) whether another forum is available to protect the interests of both parties or there is already a pending proceeding in state court;
- (3) whether federal proceedings are necessary to reach a just and equitable solution;

---

<sup>50</sup> 11 U.S.C. § 305(a)(1).

<sup>51</sup> *Id.* (emphasis added); see *In re AMC Investor, LLC*, 406 B.R. 478, 487–88 (Bankr. D. Del. 2009) (holding that filing a bankruptcy petition with the purpose of appointing a chapter 7 trustee to investigate and pursue fraud claims is sufficient to overcome abstention); *In re NRG Energy, Inc.*, 294 B.R. 71, 79–80 (Bankr. D. Minn. 2003) (holding that abstention is appropriate for an involuntary petition when the debtor company was already in the process of negotiating restructuring agreements).

<sup>52</sup> See *In re Straightline Contr. & Dev., LLC*, No 25-42296-MJH.

<sup>53</sup> 11 U.S.C. § 305(c); see *In re Axona Int’l Credit & Com. Ltd. (Formerly Bancom Int’l Ltd.)*, 924 F.2d 31, 33–34 (2d Cir. 1991) (holding that the statute limits reviewability of § 305(a) dismissal or suspension orders to district review only).

- (4) whether there is an alternative means of achieving an equitable distribution of assets;
- (5) whether the debtor and the creditors are able to work out a less expensive out-of-court arrangement which better serves all interests in the case;
- (6) whether a non-federal insolvency has proceeded so far in those proceedings that it would be costly and time consuming to start afresh with the federal bankruptcy process; and
- (7) the purpose for which bankruptcy jurisdiction has been sought.<sup>54</sup>

While circuit courts rarely address abstention directly, bankruptcy courts nationwide apply a framework similar to *Marciano*, with varying emphasis.<sup>55</sup> Third Circuit courts also consider the progress of the receivership and whether it adequately protects creditors.<sup>56</sup> And other courts raise substantial creditor support for abstention as a significant factor in their decision.<sup>57</sup>

### **C. Abstention in the Receivership Context**

In receivership cases, the sixth and seventh *Marciano* factors carry particular weight.<sup>58</sup> When a receivership has been operating for months or years, has managed and sold assets, and has taken steps toward distribution, the cost of starting over in bankruptcy often makes abstention more favorable for everyone.<sup>59</sup> Conversely, the seventh factor, the purpose for which bankruptcy jurisdiction has been sought, invites the court to examine whether the filing is a genuine effort at reorganization or just a move to displace the receiver.

However, abstention is not guaranteed when a receivership is in place. Abstention is an extraordinary remedy, and if it is not clear from the circumstances that the creditors and the debtor would be better served by dismissal, or if creditors have lost faith in the receivership, then abstention is likely to be denied.<sup>60</sup>

---

<sup>54</sup> *In re Marciano*, 459 B.R. 27, 46–47 (9th Cir. BAP 2011), *aff'd*, 708 F.3d 1123 (9th Cir. 2013).

<sup>55</sup> See *In re Fax Station, Inc.*, 118 B.R. 176, 176–77 (Bankr. D.R.I. 1990) (holding that a bankruptcy petition needs a more significant purpose than a two-party dispute between a debtor and a receiver); *In re Paper I Partners, L.P.*, 283 B.R. 661, 678–80 (Bankr. S.D.N.Y. 2002) (emphasizing the importance of a forum to protect the interests of all parties).

<sup>56</sup> *In re AMC Investor, LLC*, 406 B.R. at 487–88.

<sup>57</sup> *In re NRG Energy, Inc.*, 294 B.R. at 79–80.

<sup>58</sup> *In re Marciano*, 459 B.R. at 46–47.

<sup>59</sup> See *In re AMC Investor, LLC*, 406 B.R. at 488.

<sup>60</sup> See *id.*; *In re Straightline Contr. & Dev., LLC*, No 25-42296-MJH (emphasizing the importance of maintaining the trust of creditors); *but see In re Point Ruston, LLC*, No. 25-13339 (Bankr. W.D. Wash. Jan 20, 2026) (oral decision) (noting that although abstention should be used sparingly, its

For Washington practitioners, these factors offer practical guidance for both the receiver and the debtor. Abstention is most likely to succeed when the receivership has been in place for an extended period, has made real progress, retains creditor confidence, and bankruptcy offers no unique advantage. In contrast, it is most likely to fail when the receiver has been ineffective, creditor confidence has eroded, or the debtor can point to tools in the Bankruptcy Code that receivership cannot replicate. The decision to abstain is heavily fact-based, and practitioners should be prepared to document the receiver’s progress with specific references to the benchmarks in the Act.<sup>61</sup>

## VI. DISMISSAL FOR CAUSE UNDER 11 U.S.C. § 1112(B)

### A. The Standard

Section 1112(b)(1) authorizes the court, after notice and a hearing, to convert or dismiss a chapter 11 case “for cause.”<sup>62</sup> The statute provides a non-exhaustive list of what constitutes cause, and once cause is established, dismissal or conversion is mandatory unless the court finds unusual circumstances that establish that the requested relief is not in the best interests of creditors and the estate.<sup>63</sup> In the receivership context, the most frequently litigated basis for cause is bad faith filing—where a debtor files for bankruptcy primarily to halt a state court receivership rather than to achieve a legitimate bankruptcy purpose.<sup>64</sup> Although bad faith failing is not expressly enumerated in § 1112(b), it is universally recognized as constituting cause for dismissal and courts evaluate it under a totality-of-the-circumstances analysis.<sup>65</sup>

### B. Factors Considered for Dismissal

The Ninth Circuit’s test for § 1112(b) dismissal, articulated in *In re Marsch*, is whether the debtor is “attempting to unreasonably deter and harass creditors,” as opposed to “attempting to effect a speedy, efficient reorganization on a feasible basis.”<sup>66</sup> In this test, the court considers the totality of the circumstances and courts weigh a variety of circumstantial factors, such as whether:

- (1) the debtor has only one asset;

---

most common application is in involuntary cases and cases involving ABCs or state court receiverships).

<sup>61</sup> Wash. Rev. Code § 7.60.

<sup>62</sup> 11 U.S.C. § 1112(b)(1) .

<sup>63</sup> 11 U.S.C. § 1112(b)(2), 1112(b)(4).

<sup>64</sup> See *In re Marsch*, 36 F.3d 825, 827–28 (9th Cir. 1994); *In re Sunshine Grp., LLC*, No. 2:19-BK-12760-ER, 2020 WL 1846940, at \*4 (9th Cir. BAP Apr. 10, 2020).

<sup>65</sup> 11 U.S.C. § 1112(b)(4); see generally *In re SGL Carbon Corp.*, 200 F.3d 154 (3d Cir. 1999); *Matter of Little Creek Dev. Co.*, 779 F.2d 1068 (5th Cir. 1986); *In re Cedar Shore Resort, Inc.*, 235 F.3d 375 (8th Cir. 2000).

<sup>66</sup> *In re Marsch*, 36 F.3d at 828.

- (2) the debtor has an ongoing business to reorganize;
- (3) there are any unsecured creditors;
- (4) the debtor has any cash flow or sources of income to sustain a plan or reorganization or to make adequate protection payments; and
- (5) the case is essentially a two-party dispute capable of prompt adjudication in state court.<sup>67</sup>

These factors, articulated in *St. Paul Self Storage*, are not a checklist.<sup>68</sup> No single factor is dispositive, and the Ninth Circuit has emphasized that the inquiry is necessarily fact-specific and resists mechanical application.<sup>69</sup> The true question is whether, looking at the totality of circumstances, the filing represents a genuine effort to reorganize or merely a strategy for the filer to outmaneuver other parties.<sup>70</sup>

### **C. Section 1112(b) Dismissal in the Receivership Context**

Filing bankruptcy for the purpose of frustrating a successful receivership may result in a dismissal under § 1112(b).<sup>71</sup> In *Sunshine Group*, the Bankruptcy Appellate Panel (BAP) affirmed dismissal of a chapter 11 case filed to avoid a state court receiver's court-approved remediation plan.<sup>72</sup> Applying the *St. Paul Self Storage* factors, the panel found that all five factors favored dismissal because the property was the debtor's only asset, was not operating, had no revenues, and all unsecured creditors arose from the two-party dispute with the city.<sup>73</sup> The BAP was careful to note, however, that "filing a bankruptcy petition during a pending receivership is not, per se, a litigation tactic or forum shopping."<sup>74</sup> What made the filing improper was that the debtor sought only to preclude further encumbrances rather than genuinely reorganize.<sup>75</sup>

*Sunshine Group* illustrates a fine line in bankruptcy. A filing supported by a real operating business, multiple creditors beyond the receivership's focus, or a genuine need for bankruptcy protections is more likely to survive a motion to dismiss under § 1112(b).<sup>76</sup> A filing that does nothing but invoke the stay to block a receiver from

---

<sup>67</sup> *In re St. Paul Self Storage Ltd. P'ship*, 185 B.R. 580, 583 (9th Cir. BAP 1995); see *In re Stolrow's Inc.*, 84 B.R. 167, 171 (9th Cir. BAP 1988) (setting forth the factors indicating bad faith filing).

<sup>68</sup> *In re St. Paul Self Storage Ltd. P'ship*, 185 B.R. at 582–83.

<sup>69</sup> *In re Marsch*, 36 F.3d at 828; *In re St. Paul Self Storage Ltd. P'ship*, 185 B.R. at 582–83.

<sup>70</sup> *In re Marsch*, 36 F.3d at 828.

<sup>71</sup> 11 U.S.C. § 1112(b).

<sup>72</sup> *In re Sunshine Grp., LLC*, No. 2:19-BK-12760-ER at \*4.

<sup>73</sup> *Id.* at \*7–\*9.

<sup>74</sup> *Id.*; see *In re St. Paul Self Storage Ltd. P'ship*, 185 B.R. at 582–83.

<sup>75</sup> *Id.* at \*4–\*5.

<sup>76</sup> See *In re PerfectWerks Solutions, Inc.*, No. 24-41380-MJH (Bankr. W.D. Wash. Aug. 16, 2024) (oral decision) (noting that, even in two-party disputes, there are reasons that a debtor would file bankruptcy that do not constitute bad faith); see, e.g., 11 U.S.C. §§ 362(a), 364(d), 365(f), 1141(d).

carrying out a state court's orders will not.<sup>77</sup> For practitioners representing debtors, the best defense against a motion to dismiss is to demonstrate a genuine bankruptcy purpose early on: file your schedules promptly, seek DIP financing, engage professionals, and show the court that you have a plan. For practitioners representing creditors or receivers, the strongest arguments parallel the abstention analysis: document the receivership's progress, show that the filing was reactive rather than purposeful, and point to the absence of any need for bankruptcy.

#### **D. Distinguishing Dismissal Under §§ 1112(b) and 305**

Sections 1112(b) and 305(a)(1) are complimentary but distinct provisions.<sup>78</sup> Section 1112(b) focuses on debtor misconduct by asking whether the filing was in bad faith or whether there is cause for dismissal.<sup>79</sup> Section 305, on the other hand, focuses on forum selection and whether all parties would be better served by a non-bankruptcy resolution.<sup>80</sup> The practical difference is twofold. First, § 305 requires showing that both creditors and the debtor are better served by dismissal, and that conjunctive standard is a higher bar than “for cause” under § 1112(b).<sup>81</sup> Second, a § 305 dismissal is effectively unreviewable at the circuit level, whereas a § 1112(b) dismissal is subject to ordinary appellate review.<sup>82</sup> In practice, the strongest motions plead both and let the court pick the theory that best fits the facts of the particular case.

### **VII. CONCLUSION**

Receiverships and bankruptcy serve overlapping but distinct purposes, and the Bankruptcy Code provides three complimentary tools for resolving the tension between them: abstention under § 305, excusal from turnover under § 543(d), and dismissal for cause under § 1112(b).<sup>83</sup> Each serves a different function, and practitioners evaluating a receivership-to-bankruptcy dispute should consider them together rather than in isolation.

What ties these tools together is that each one ultimately asks the bankruptcy court to exercise its equitable judgment. Section 305 turns on whether the interests of the creditors and debtor would be better served outside bankruptcy.<sup>84</sup> Section 543(d) turns on whether creditors' interests are better served by leaving the receiver in possession.<sup>85</sup> And the § 1112(b) dismissal analysis turns on the totality of the

---

<sup>77</sup> See *In re Marsch*, 36 F.3d at 828.

<sup>78</sup> 11 U.S.C. § 1112(b); 11 U.S.C. § 305(a)(1).

<sup>79</sup> *In re Marsch*, 36 F.3d at 828.

<sup>80</sup> *In re Spade*, 269 B.R. at 228.

<sup>81</sup> *Id.*

<sup>82</sup> 11 U.S.C. § 305(c); 28 U.S.C. § 158(a).

<sup>83</sup> 11 U.S.C. §§ 305, 543(d), 1112(b).

<sup>84</sup> 11 U.S.C. § 305(a)(1).

<sup>85</sup> 11 U.S.C. § 543(d)(1); *In re Franklin*, 476 B.R. at 551.

circumstances surrounding the filing.<sup>86</sup> That means that the substantive work is in the development of the facts relevant to the key factors courts use in evaluating motions under §§ 305, 543, and 1112(b), as discussed above.

---

<sup>86</sup> *In re Marsch*, 36 F.3d at 828.