

## MEMORANDUM

To: Drafting Committee, Advisors, and Observers  
Model Act on Appointment and Powers of Real Estate Receivers

From: Wilson Freyermuth, Reporter  
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Date: March 3, 2014

Re: Background Memorandum on Receiver's Immunity

At the September 2013 Drafting Committee meeting in Minneapolis, MN, members of the Drafting Committee requested additional background material concerning the subject of the scope of a receiver's immunity from liability. This memorandum summarizes the past 20 years of reported judicial decisions from around the country regarding the nature and scope of a receiver's immunity.

### I. General Background

The standard rationale under which a receiver is accorded immunity is that the receiver is exercising judicially-authorized functions and thus should be entitled to the immunity of the same scope and degree typically accorded to judges under the doctrine of judicial immunity. A thorough explanation of this rationale appears in *Capitol Terrace, Inc. v. Shannon & Luchs, Inc.*, 564 A.2d 49 (D.C. Ct. App. 1989), a case in which the D.C. Superior Court appointed a receiver for an apartment building under the "Prohibition of Electric and Gas Utility Service Termination to Master-Metered Apartment Building Act of 1980" based upon the owner's nonpayment of utility bills. After the close of the receivership, the owner of the apartment building filed suit against the receiver alleging that it had negligently performed its responsibilities, by failing to "timely demand or collect rent, or to initiate suits for possession or for rent, or to properly account for receipts or disbursements" in breach of its duty of ordinary care and its fiduciary duty. The trial court ruled that the receiver was protected by judicial immunity and thus dismissed the complaint for failure to state a claim for which relief could be granted.

On appeal, the District of Columbia Court of Appeals affirmed. It noted that judicial immunity is intended to "protect the independence of judicial decision-making and to ensure that important decisions are made without fear of personal liability or harassment by vexatious actions" asserted by disappointed litigants.<sup>1</sup> 564 A.2d at 51. The court noted that such litigation

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<sup>1</sup> The court noted that the concern over vexatious actions was obvious in the context of the case:

A receiver appointed under the Act replaces the landlord/owner as the sole person entitled to receive direct payments of rent. The owner therefore suffers a loss of control until the arrearages have been satisfied.... [T]he purpose of the Act is not to protect the interests of the landlord. Its purpose is to protect conscientious tenants from the loss of utility services and utility companies from nonpayment for services they are required to provide. In these circumstances, the potential for hostility by the landlord toward the receiver is

could “prevent the proper functioning of the judicial system” and that the immunity doctrine thus protects the judge against “the consequences of their erroneous or irregular action, from whatever motives proceeding” unless the judge had acted in the “clear absence of all jurisdiction.” *Id.* The court then noted that for similar reasons, such immunity “extends to other officers of government whose duties are related to the judicial process.” *Id.* The court concluded that this immunity extended to the receiver:

[W]e conclude that a receiver appointed under the Act is similarly clothed with immunity when carrying out the duties of its office. In appointing a receiver after finding that this extraordinary step is necessary, the trial judge assuredly performs “a judicial act”; and in collecting rents under the terms of its appointment, the receiver is “performing ministerial functions at the direction of the judge in furtherance of” that act. [*Id.* at 53, quoting *Stanton v. Chase*, 497 A.2d 1066 (D.C. 1985).]

The court noted that this conclusion was consistent with the principle—well-established since *Barton v. Barbour*, 104 U.S. 126 (1881)—that because the receiver is an officer of the appointing court, that no action could be brought against the receiver without the permission of the appointing court or express statutory authority. *Id.* at 52.

The owner argued that judicial immunity should be extended to the receiver only after a finding that the receiver had acted “carefully” and “faithfully” in carrying out its duties. The court rejected this approach as “neither accurate nor sound”:

[A]lthough the cases cited do sometimes note that the receiver acted carefully or faithfully, they do not consider first whether the receiver acted with due care and only then whether immunity was appropriate; that would be an odd manner of analysis rendering the immunity issue essentially moot.... [W]hen a receiver acts within the scope of its authority, confining itself to the duties of its office, it shares the immunity of the appointing judge even though it is alleged to have acted wrongly in performing those duties. That rule applies equally to the receiver in this case. [*Id.* at 53.]

The court rejected the argument that this left the owner of receivership property powerless to address a receiver’s failure to exercise reasonable diligence. The court noted that the Act permitted the court to “require accountings to be made by the receiver at such times as the Court determines to be just, reasonable and necessary,” and that nothing prevented the owner from petitioning the court for an accounting if there owner had reason to believe the receiver was negligent in performing its duties. *Id.* at 53-54.

## **II. States Bestowing Broad Judicial Immunity on Receivers**

Consistent with the rationale reflected in the *Capitol Terrace* decision discussed in Part I, the majority of reported decisions in the past two decades extend judicial immunity to receivers in extremely broad terms. A representative set of these decisions is summarized below.

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apparent; unhappy at being ousted from management of its property to begin with, the landlord may easily grow to believe that the receiver is indifferent to its interests and concerned only with collecting enough rents to pay the utility bills and its own fees and expenses. The risk of unjustified litigation is thus substantial. [564 A.2d at 53.]

A. Arizona. *Ryan v. Sell*, 2008 WL 5264989 (Ariz. Ct. App. 2008), involved the division of marital property, including multiple properties and businesses in Arizona, California, and Colorado, arising out of a contentious California divorce. During this dispute, the wife sought and obtained the appointment in Arizona of James Sell as a receiver for the husband's businesses and properties, including East Hopkins, Inc., a Colorado corporation and 316 East Hopkins LP, a Colorado limited partnership. Sell took control of and operated both entities, directing tenants of the limited partnership's Aspen real estate to pay the rents to him. Sell also began negotiations to extend those tenant leases and paid distributions to some of the limited partners. Ryan sued Sell in Colorado, and the Colorado court stayed the action to give the appointing Arizona court the opportunity to resolve whether Sell's actions fell within his authority as receiver. Following a hearing, the Arizona court entered an amended order that specified that it would retain jurisdiction over all litigation pertaining to the receivership and explicitly granted Sell immunity for acts he took as the receiver, including his actions in Colorado. On appeal, the Arizona Court of Appeals affirmed.

The court noted that the Arizona statute does not specifically address whether a litigant must seek judicial permission before suing a receiver, but it concluded that it would follow the approach expressed in the Restatement (Second) of Conflict of Laws § 415(2) that a receiver cannot be sued without permission of the appointing court over a receiver's acts committed within the scope of his authority. The court did state that if "the receiver acts beyond the scope of [his] court-derived authority such that [he] may be sued as an individual," a receiver can be sued without the appointing court's permission. The court held that the receivership order gave Sell the power to manage the Colorado businesses and thus Sell had acted within his authority as receiver. Finally, the court rejected the husband's argument that the trial court erroneously granted Sell immunity for his actions as receiver in Colorado, noting that "[a] receiver who faithfully and carefully carries out the orders of the appointing judge shares the judge's judicial immunity." The court held that because a receiver is a ministerial officer of the court, if the court finds that the receiver's actions fall within the scope of his authority, immunity is extended to those acts; thus, a receiver may not be found personally liable unless his acts were outside the authority granted by the court. Because the trial court found that Sell was acting within his authority as receiver, the Court of Appeals held that it did not err in granting him immunity for his management of the Colorado businesses.

B. California. In *Gruntz v. Wiley*, 2009 WL 4264343 (Cal. Ct. App. 2009), the California Court of Appeals held that a receiver was immune from a negligence claim based upon the protection of derived judicial immunity. James Wiley was a special master assigned to a marital dissolution case involving Robert Gruntz and his wife. In a separate workers' compensation action, Gruntz was being sued by an alleged employee; Gruntz asserted that Wiley had taken control and responsibility over Gruntz's business assets and thus had a duty to purchase worker's compensation insurance for those assets, which Wiley failed to do. For this reason, Gruntz alleged that Wiley was responsible for indemnifying Gruntz in the suit brought by Nelson. Wiley requested that the trial court dismiss Gruntz's complaint based upon judicial immunity. Gruntz argued that Wiley was acting without judicial immunity because Wiley was acting beyond his role as a special master. The trial court rejected Gruntz's argument and dismissed his complaint, and the California Court of Appeals affirmed. The court noted that

prior California court decisions had extended absolute judicial immunity to persons other than judges if those persons act in a judicial or quasi-judicial capacity, and noted that federal court decisions in the Ninth Circuit had uniformly extended such quasi-judicial immunity to receivers appointed by a state court to manage the business assets of a marital estate during a dissolution proceeding. Extending such immunity to receivers was appropriate, the court suggested, because it was “consistent with the relevant policy considerations of attracting to an overburdened judicial system the independent and impartial services and expertise upon which that system necessarily depends.” *Gruntz*, 2009 WL 4264343, at \*3 (quoting *Howard v. Drapkin*, 222 Cal.App.3d 843, 857 (Cal. Ct. App. 1990)). Because Wiley was acting within the role of a receiver, he was immune from Gruntz’s claim for damages. The court noted that while a receiver would not be immune from allegations of theft or slander, the receiver was immune from a claim of negligence.

C. Minnesota. The broad outlines of judicial immunity under Minnesota law are starkly reflected in the decision of *Mike v. Perfetti*, 1996 WL 33102 (Minn. Ct. App. 1996) (unpublished). The court appointed Joseph Perfetti as a receiver of an insurance agency operated by Steven Stremski in a marital dissolution proceeding between Stremski and his spouse Carol Mike. Stremski was a chronic gambler who had depleted marital assets and ignored both personal and business financial responsibilities, so the court (with the consent of the parties) appointed Perfetti to take custody of the agency’s finances during the dissolution proceeding (despite Perfetti’s long association with both spouses as their personal and business accountant and financial adviser). During the dissolution proceeding, it became apparent that Perfetti failed to carry out his responsibilities to the court. He failed take control of certain monetary accounts from which Stremski continued to withdraw funds for which he could no longer account; he made payments to Stremski both directly and through an intermediary; and he admitted that he could not verify the actual amounts he had paid to Stremski. Mike sued Perfetti for breach of fiduciary duty, but the court granted Perfetti’s motion to dismiss based on derivative judicial immunity.

The Minnesota Court of Appeals affirmed. Mike argued that Perfetti was not entitled to immunity because Perfetti’s conduct was outside the scope of his duties as a receiver. The court rejected this argument. While acknowledging that a receiver’s judicial immunity would not extend to theft or slander (which would be outside the scope of the receiver’s duties), the court noted that the facts of Mike’s complain related “only to Perfetti’s mismanagement of Stremski’s assets and to his unwillingness to cooperate with counsel during the dissolution”— facts which the court held “relate to Perfetti’s duties as the receiver.” The court concluded that “[w]hile we do not condone Perfetti’s conduct and violation of his fiduciary duty here, we must conclude that he is entitled to judicial immunity from suit for all conduct within the scope of his appointment as a receiver.”

D. North Dakota. In *Perry v. Heitkamp*, 576 N.W.2d 505 (N.D. 1998), the North Dakota Supreme Court held that because a receiver is a court officer, the receiver is entitled to absolute derivative judicial immunity as long as the receiver is acting under and in accordance with the court’s directions. In *Perry*, the North Dakota Attorney General appointed Drewes as a receiver for Help and Caring Ministries, Inc. (HCM), which provided management services to businesses under management contracts. HCM had an agreement with Perry Center, a nonprofit

Christian maternity home, to provide day-to-day management services for Perry Center. The State alleged financial improprieties by HCM in connection with its management services, including its services for Perry Center. The court order allowed Drewes to take possession of the HCM's assets, facilities, and offices, and to manage and operate their businesses, and to accept or reject any executory contracts. In the process of the receivership, Drewes consulted with representatives of the Attorney General with regard to handling various matters concerning Perry Center, and took possession of an HCM donor mailing list and several checks payable to Perry Center.

In April 1996, Perry Center sued the receiver and the Attorney General, asserting that the receiver had converted property belonging to Perry Center, had conspired with the Attorney General to deprive Perry Center of its property, and had conspired to violate Perry Center's free exercise rights in violation of 42 U.S.C. § 1983. The trial court granted summary judgment dismissing Perry Center's claims against Drewes, and the North Dakota Supreme Court affirmed. The court noted that because absolute judicial immunity is intended to limit harassment of receivers, a plaintiff must allege judicial immunity does not apply because the receiver's ultimate actions were not judicial or were clearly beyond the scope of the receiver's jurisdiction." *Perry*, 576 N.W.2d at 511-512. The court noted that the appointing order gave Drewes specific authority to accept or reject HCM's executory contracts—one of which was its agreement with Perry Center, which on its face was broad enough to allow Drewes to exercise authority over the Perry Center checks, mail, and the donor list. As the court noted:

Contrary to Perry Center's argument, a receiver need not have prior court approval for every single detail of a receivership that may raise a question concerning authority. See 2 Clark, *Law of Receivers* § 396(c) (1959). Drewes' actions were well within the authority of the receivership and, when he learned of a dispute, Drewes sought instructions from the appointing court. Upon receiving those instructions, Drewes turned the disputed property over to Perry Center. Nothing in the record supports Perry Center's claim Drewes acted clearly beyond the authority of his office.

We conclude Drewes' alleged acts of conversion and conspiracy in violation of state and federal law are all protected by a receiver's absolute derivative judicial immunity. [*Perry*, 576 N.W.2d at 512.]

E. South Dakota. In *Wipf v. Hutterville Hutterian Brethren, Inc.*, 834 N.W.2d 324 (S.D. 2013), the South Dakota Supreme Court articulated a similarly broad conception of the receiver's immunity. In *Wipf*, members of one faction of a communal religious colony brought an action seeking involuntary dissolution of the colony, which was organized as a nonprofit corporation. The trial court concluded that the colony would be dissolved and appointed Harvey Jewett as a receiver for the corporation's assets. With court approval, Jewett took over the assets of the Hutterville Cabinet Co. The following year, the South Dakota Supreme Court reversed the trial court's determination to dissolve the colony on the ground that it impermissibly intruded upon religious matters and was beyond the court's jurisdiction. Because the dismissal of the action did not effect a discharge of the receiver, however, the trial court asked Jewett to make an accounting for his actions as receiver. One of the factions objected to the accounting and discharge of Jewett, noting that Jewett was entitled to no fee because he failed to take the required oath, that his acts were not authorized by South Dakota law because he was an

interested person unable to serve as a receiver without written consent of all parties, and that he was not entitled to immunity because he knowingly failed to comply with South Dakota law and was not acting under a lawful order of the trial court. The trial court accepted Jewett's accounting and discharged him as receiver.

The South Dakota Supreme Court affirmed. The court noted that judicial immunity does not cease because a judge's action was erroneous, done maliciously, or in excess of authority, but would be lost only with respect to judicial actions taken in "clear absence of all jurisdiction" where the lack of jurisdiction is "known to the judge." Here, the court ruled that there was no clear absence of all jurisdiction in the circuit court, which had jurisdiction over corporate dissolution actions. The court ruled that as an appointed receiver, Jewett shared immunity with the court. The court also rejected the argument that Jewett had manifested "bad faith" that should deprive Jewett of immunity from liability:

As to good faith, receivers are not personally liable when they exercise ordinary care and prudence in the performance of the receivership. Of course, receivers are not immune to all liability. Judges have no authority to grant immunity for unlawful acts. But in claiming that Jewett acted in bad faith, the Waldner faction only adverts to the same conflict of interest, lack of an oath, and bond issues—all waived. It offers no evidence that the receiver acted outside the scope of his appointment, much less unlawfully or in bad faith. [*Wipf*, 834 N.W.2d at 335.]

F. Texas. In *Rehabworks, LLC v. Flanagan*, 2009 WL 483207 (Tex. Ct. App. 2009), TC10 Grantor Trust ("TC10") filed a judicial action to foreclose its lien on a nursing home owned by Century Care), and also requested the court to appoint a receiver to oversee the transfer of the nursing home so as to avoid an interruption of services provided to the residents. The court appointed Michael F. Flanagan as receiver. Rehabworks, LLC, a company that had provided therapy services to the residents prior to foreclosure and had not been paid, obtained a judgment against Century Care in the amount of \$169,116.15 and sought to recover the judgment from Flanagan. When Flanagan refused to pay, Rehabworks filed an intervention against Flanagan in the original foreclosure action, asserting a various common law and statutory claims. Flanagan moved for summary judgment asserting that the doctrine of derived judicial immunity shielded him from suit. The trial court granted Flanagan's motion, and on appeal, the Texas Court of Appeals affirmed, concluding that Flanagan was entitled to derived judicial immunity.

The court began its analysis by noting that Texas courts have adopted a "functional approach" to determining whether someone is entitled to derived judicial immunity. This approach looks to whether the person is "intimately associated with the judicial process" and "exercises discretionary judgment comparable to that of the judge," focusing upon the nature of the function performed. The court noted that Flanagan acted as an arm of the court in maximizing both the value of the property and the care given to facility residents while the court oversaw a transition of the facility to new ownership. Accordingly, under the functional approach, Flanagan was entitled to derived judicial immunity from liability for Rehabworks's claims as a matter of law.

See also *Conner v. Guemez*, 2010 WL 4812991 (Tex. Ct. App. 2010); *Alpert v. Gerstner*, 232 S.W.3d 117 (Tex. Ct. App. 2006); *Congleton v. Shoemaker*, 2012 WL 1249406 (Tex. Ct.

App. 2012); *Ramirez v. Burnside & Rishbarger, L.L.C.*, 2005 WL 1812595 (Tex. Ct. App. 2005).

G. Utah. In *Chen v. Stewart*, 100 P.3d 1177 (Utah 2004), the Utah Supreme Court likewise embraced a functional approach similar to that articulated in the Texas decisions discussed above. The *Chen* case involved a nasty fight between family members of a family corporation in which a former president and director brought a derivative action against the corporation and the current president for waste and breach of fiduciary duty. The parties stipulated to removal of the defendant president and appointment of Larry Holman as interim CEO. At a later point in the litigation, the plaintiff and defendant sought to vacate the orders appointing Holman as interim CEO, including the order vesting Holman with judicial immunity for his actions as interim CEO. The trial court denied these motions, and the Supreme Court of Utah affirmed:

We hold that it was not an abuse of the trial court's discretion to provide Mr. Holman judicial immunity for his actions as interim CEO. The nature of Mr. Holman's responsibilities and the integral role he played in the trial court's ability to properly adjudicate the present case created sufficient grounds for extending Mr. Holman judicial immunity without fully constituting him as a special master. See *Sanders v. Leavitt*, 2001 UT 78, ¶ 19, 37 P.3d 1052; see also *Parker v. Dodgion*, 971 P.2d 496, 498 (Utah 1998) ("Whether a person or entity should be afforded judicial immunity depends upon the specific work or function performed. If the acts were committed 'in the performance of an integral part of the judicial process,' the policies underlying judicial immunity apply and immunity should be granted.") (quoting *Bailey v. Utah State Bar*, 846 P.2d 1278, 1280 (Utah 1993) (citations omitted)). Furthermore, "[t]he courts that have considered the matter have held that a receiver is a court officer who shares the judge's immunity, at least if he is carrying out the orders of his appointing Judge." *T & W Inv. Co. v. Kurtz*, 588 F.2d 801, 802 (10th Cir.1978). Given both the close similarity between Mr. Holman's powers as an interim CEO and those of a receiver, and the integral role he played in the court's ability to adjudicate the case, Mr. Holman should clearly be afforded the same judicial immunity as a receiver, master, or other judicial officer. [*Chen*, 100 P.3d at 1192.]

### III. States Providing Narrower Judicial Immunity

Recent court decisions in Nevada and Ohio have articulated a somewhat narrower view of a receiver's immunity, suggesting that the receiver may have liability even for conduct taken in the context of carrying out its authorized duties if the receiver own misconduct or negligence causes loss.

In *Anes v. Crown Partnership*, 932 P.2d 1067 (Nev. 1997), Crown Partnership was appointed as receiver for the Magna Executive Center at the request of the mortgage lender. The appointing court's order directed Crown to increase occupancy rates, and to "take such steps as Crown believes necessary or desirable to cause the Property to be occupied by tenants; ... and to modify or cancel leases as Crown may deem appropriate in its sole and absolute discretion." Anes was a tenant who occupied a suite in the property, and she eventually sued Crown for breach of contract, breach of the duty of quiet enjoyment, and breach of duty of good faith, alleging that Crown was withholding services and harrassing her in an attempt to force her to relocate to another suite in the property. The trial court granted summary judgment for Crown.

While the Nevada Supreme Court did reinforce the notion that a receiver who faithfully and carefully carries out the orders of the appointing judge shares the judge's judicial immunity, *Anes*, 932 P.2d at 1071, the Court nevertheless reversed the trial court and remanded the case for further proceedings as to whether the receiver had harassed or intimidated Anes. The Court noted that the receiver must not exceed the limits of the authority granted by the court and must act for the benefit of "all persons interested in the property." *Id.* at 1071. The Court stated that a receiver may be personally liable if the receiver acts outside the authority granted by the court, and noted that while the appointing order gave Crown broad powers, "it was not intended to give Crown the right to harass or intimidate tenants as Anes alleges." The Court thus remanded for resolution of whether Crown exceeded its authority, noting that until such a determination was made, "Crown's quasi-judicial immunity status remains unresolved." *Id.* at 1071.

Likewise, in *INF Enterprise, Inc. v. Donnellon*, 729 N.E.2d 1221 (Ohio Ct. App. 1999), the Ohio Court of Appeals concluded that quasi-judicial immunity would not protect a receiver who "exceeds the authority granted by the court or fails to use ordinary care in administering the assets" of the receivership. The Hamilton County Court of Common Pleas had appointed Terrence Donnellon as the receiver for INF, a corporation that operated a health club, nutrition center, and sunbathing center, and whose sole shareholder and officer was Joseph B. Mansour. INF and Mansour filed suit against Donnellon alleging that Donnellon had negligently performed his duties as receiver, negligently and maliciously wasting the assets of INF. Donnellon moved for summary judgment based upon judicial immunity, and the trial court granted Donnellon's motion. The Ohio Court of Appeals reversed, noting:

As court-appointed officers, receivers enjoy protections when following courts' orders. Some courts have classified receivers' functions as being quasi-judicial in nature and have granted receivers immunity for performing acts in obedience to courts' orders. Court appointed receivers act as arms of the court and are entitled to share the appointing judge's absolute immunity provided that the challenged actions are taken in good faith and within the scope of the authority granted to the receiver....

But a receiver also has a personal duty to faithfully discharge his or her duties and to obey the orders of the court. The receiver acts in a fiduciary capacity and must use ordinary care in administering the assets of the corporation. If the receiver exceeds the authority granted by the court *or fails to use ordinary care*, the general rule is that he or she may be sued in a personal capacity.

*INF*, 729 N.E.2d at 1222 (emphasis added). The court thus remanded the case for a determination by the trial court as to whether Donnellon had failed to use ordinary care in his handling of INF's assets.

#### **IV. Statutory Provisions**

The only state that has adopted a statute explicitly addressing the scope of a receiver's immunity is Washington. Wash. Rev. Code Ann. § 7.60.170, entitled "Personal liability of receiver," provides in pertinent part:

(1)(a) The receiver is personally liable to the person over whose property the receiver is appointed or its record or beneficial owners, or to the estate, for loss or diminution in value of or



damage to estate property, only if (i) the loss or damage is caused by a failure on the part of the receiver to comply with an order of the court, or (ii) the loss or damage is caused by an act or omission for which members of a board of directors of a business corporation organized and existing under the laws of this state who vote to approve the act or omission are liable to the corporation in cases in which the liability of directors is limited to the maximum extent permitted by RCW 23B.08.320....

(2) The receiver has no personal liability to a person other than the person over whose property the receiver is appointed or its record or beneficial owners for any loss or damage occasioned by the receiver's performance of the duties imposed by the appointment, or out of the receiver's authorized operation of any business of a person, except loss or damage occasioned by fraud on the part of the receiver, by acts intended by the receiver to cause loss or damage to the specific claimant, or by acts or omissions for which an officer of a business corporation organized and existing under the laws of this state are liable to the claimant under the same circumstances.

(3) Notwithstanding subsections (1)(a) and (2) of this section, a receiver has no personal liability to any person for acts or omissions of the receiver specifically contemplated by any order of the court....

The Washington statute thus distinguishes between the receiver's potential liability to the owner or to the receivership estate) (which is addressed in subsection (1)(a)) and its potential liability to other parties (which is addressed in subsection (2)):

- The receiver has no liability to the owner or the estate under subsection (1) unless the loss was caused by the receiver's failure to comply with an order of the appointing court, or by an act or omission of the receiver that involved the receiver's intentional misconduct, a knowing violation of law, or the receipt by the receiver of a benefit to which the receiver is not legally entitled.
- The receiver would have no liability to other persons under subsection (2) unless the loss was caused by the receiver's fraud, by acts intended by the receiver to cause loss to the specific claimant, or by acts for which a corporate officer would be liable under the same circumstances.

Even if the receiver's conduct caused a loss in these limited circumstances, the receiver would still be immune if the act or omission was specifically contemplated or directed by an order of the appointing court.

By contrast, in enacting its comprehensive receivership statute, the Minnesota legislature merely stated that the receiver would be "entitled to all defenses and immunities provided at common law for acts or omissions within the scope of the receiver's appointment." Minn. Stat. Ann. § 576.28(a). This appears to have been a conscious determination by the committee that prepared that statute to leave the scope of the receiver's immunity to judicial resolution on a case-by-case basis. See Report of Receivership Statute Committee to Minnesota State Bar Association Section of Business Law and Section of Real Property Law, at 6 available at [http://html.documation.com/cds/NCBJ2011/assets/PDFs/XIII\\_F.pdf](http://html.documation.com/cds/NCBJ2011/assets/PDFs/XIII_F.pdf) ("The new statute references the judicial or quasi judicial immunity enjoyed by the receiver as an officer of the court, but does not attempt to delineate the extent of that immunity.").