THE NEGLIGENT RECEIVER IN BANKRUPTCY: ARE TORT CLAIMS "COSTS AND EXPENSES OF ADMINISTRATION"?

Under section 64(a) of the Bankruptcy Act, certain claims against the bankrupt's estate are afforded priority over payments to creditors.[1] The first such priority is given to those items labeled "costs and expenses of administration."[2] This category typically includes compensation for the services of a receiver who is appointed by the court to manage the business in the period between the filing of a petition under the act and the eventual liquidation of the bankrupt's assets for the benefit of creditors.[3] The issue in a recent case, *In the Matter of I.J. Knight Realty Corp.*,[4] was whether damages caused by the negligent tort of such a receiver fall under the rubric of "costs and expenses of administration."

On November 16, 1962, I.J. Knight Realty Corporation filed a petition for arrangement under Chapter XI of the Bankruptcy Act[5] and a receiver was appointed. On January 1, 1963, a fire, allegedly caused by the negligence of the receiver's agent in repairing pipes in a building owned by Knight caused severe damage to the Reading Railroad's neighboring property. The railroad filed a claim for damages under section 64(a)(1) of the Bankruptcy Act, styling this claim as a cost and expense of administration. In May, 1963, Knight Realty was formally adjudicated a bankrupt, and the former receiver was named trustee. He then successfully petitioned the referee in bankruptcy to expunge Reading's claim. On appeal, the district court held that the referee had correctly expunged the claim on the ground that tort damages were not costs and expenses of administration. The court further held that Reading could not be afforded a pro rata share of the assets under section 63(a)(7)[6] since this section allows, as a provable debt, only damages for negligent torts committed by the bankrupt, and then only if an action has been instituted prior to and was pending at the time of the filing of the petition in bankruptcy.[7] The holding of the *Knight* case leaves the negligent tort victim with no practical redress for injuries inflicted by the actions of a receiver in bank-

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[1] 52 Stat. 874 (1938), as amended, 11 U.S.C. § 104(a) (1964).

[2] *Ibid.*

[3] See, *e.g.*, Thomas Corp. v. Nicholas, 221 F.2d 286, 289 (5th Cir. 1955).

[4] 242 F. Supp. 337 (E.D. Pa. 1965).

[5] Unlike a formal bankruptcy proceeding, the Chapter XI arrangement does not ordinarily envision the liquidation of the bankrupt's assets, as occurred here. Instead, it provides a means whereby a corporation in financial difficulty may petition the Bankruptcy Court to work out a rehabilitation program. Of course, in *Knight* the fire which destroyed the insolvent's building effectively forced a termination of this rehabilitation. The arrangement proceedings were officially dismissed on May 14, 1963, when Knight was adjudicated a bankrupt.

[6] 52 Stat. 873 (1938), 11 U.S.C. § 103(a)(7) (1964).

[7] 242 F. Supp. at 342.

ruptcy.[8] Such a harsh result requires a closer scrutiny of section 64(a)(1) than was made in the court's opinion.

The applicable provision of the act reads as follows:

> § 64. Debts Which Have Priority. (a) The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payment shall be (1) the costs and expenses of administration, including the actual and necessary costs and expenses of preserving the estate subsequent to filing the petition . . . .[9]

Starting with the premise that statutes involving priorities are to be strictly construed,[10] the court read the section as requiring that in order for this claim to be a valid cost and expense of administration it must be one that preserved the estate. The court reached the obvious conclusion that a fire which decimated Knight's building certainly did not "preserve" the estate. But, even ignoring the equally obvious argument that the fire which destroyed property would not have occurred but for the acts of a repairman whose job of fixing pipes *was* designed to preserve the estate, the court's holding rests upon a shaky foundation: that Congress in drafting the act intended to limit costs and expenses of administration to those listed items

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[8] Suing the receiver in his personal capacity also seems out of the question, the general rule being that a receiver in bankruptcy faces personal liability for a negligent tort only when he acts ultra vires. *E.g.*, Ziegler v. Pitney, 139 F.2d 595 (2d Cir. 1943). "[R]eceivers and trustees appointed under the Bankruptcy Act . . . are by the weight of authority only liable as receivers or trustees, and not individually except in cases where they act outside their authority." *Id.* at 596; *accord*, Wood v. Comins, 303 Mass. 367, 21 N.E.2d 977 (1939); see McRanie v. Palmer, 2 F.R.D. 479 (D. Mass. 1942); *cf.* McNulta v. Lochridge, 141 U.S. 327 (1891). In the *McNulta* case, in holding a receiver liable in his *official* capacity for the negligent tort of a previous receiver, the Supreme Court said:

> Actions against the receiver are in law actions *against the receivership, or the funds in the hands of the receiver,* and his contracts, misfeasances, *negligences* and liabilities are official and not personal, and judgments against him as receiver are payable only from the funds in his hands.

Id. at 332. (Emphasis added.) See also Rothschild, *Liability Incurred by a Receiver or Trustee in Bankruptcy Conducting a Business,* 39 REF. J. 59, 62 (1965).

[9] 52 Stat. 874 (1938), as amended, 11 U.S.C. § 104(a)(1) (1964).

[10] In the Matter of I. J. Knight Realty Corp., 242 F. Supp. 337, 339 (E.D. Pa. 1965) (citing In the Matter of American Anthracite & Bituminous Coal Corp., 171 F. Supp. 377 (S.D.N.Y. 1959), *aff'd sub nom.* American Anthracite & Bituminous Coal Corp. v. Leonardo Arrivabene, S.A., 280 F.2d 119 (2d Cir. 1960)).

American Anthracite is distinguishable from *Knight* on the ground that "the contracts which form the bases of the claim [in *American Anthracite*] were all entered into long before the Chapter XI petition was filed." In the Matter of American Anthracite & Bituminous Coal Corp., *supra* at 382. Unlike *Knight*, petitioners in *American Anthracite* were pressing a § 64(a)(1) claim based upon a prebankruptcy transaction. The dogma that priority statutes are to be strictly construed, while clearly applicable to cases such as *American Anthracite*, has considerably less impact when the claim is admittedly based upon the postbankruptcy actions of the receiver as in *Knight*. *American Anthracite* really stands for the proposition that § 64(a)(1) contemplates only those claims based upon costs and expenses incurred while the estate is bankrupt or operating under a Chapter XI arrangement. See note 20 *infra* and accompanying text.

following the word "including." [11] Legislative history demonstrates that the term "costs and expenses of administration" is not so limited.

Under the Bankruptcy Act of 1898 costs and expenses of administration were afforded a lower priority than the costs of "preserving the estate." [12] In the 1938 version of the act these two items were given identical priorities; but they remained separate claims, as the language of that section clearly indicated.[13] In 1962 section 64(a)(1) was amended to its present form.[14] However, the raising of "costs and expenses of administration" to its position as the opening language of subsection 1, and the insertion of "actual and necessary costs and expenses of preserving the estate" after "including," would not seem to change the long established meanings of the two phrases—meanings far different from the absolute merger envisioned by the court in *Knight*. In 1952 a proviso was added to section 64(a)(1), stating that costs and expenses of administration incurred in an ensuing bankruptcy proceeding were to enjoy a super priority over any costs and expenses of administration incurred as part of the superseded proceeding. That is, the costs of winding up the business were to have a priority over those incurred before liquidation.[15] Unfortunately, the wording of Section 64(a)(1) left it unclear whether this super priority was to apply to all items in subsection one, or just to the one specifically labeled "costs and expenses of administration." As the Senate committee report on the 1962 amendment points out,

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[11] "Since this claim is not 'an actual and necessary cost and expense of preserving the estate,' there is no specific authority for paying this claim." 242 F. Supp. at 339.

[12] Bankruptcy Act of 1898, ch. 541, § 64, 30 Stat. 563:

> DEBTS WHICH HAVE PRIORITY.—a. The court shall order the trustee to pay all taxes legally due and owing by the bankrupt. . . .
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> b. The debts to have priority . . . and the order of payment shall be (1) *the actual and necessary cost of preserving the estate* . . . ; (2) the filing fees paid by creditors in involuntary cases; (3) *the cost of administration* . . . ; (4) wages due to workmen . . . ; (5) debts owing to any person who by the laws of the States or the United States is entitled to priority.

(Emphasis added.)

[13] Bankruptcy Act of 1938 (Chandler Act) ch. 575, § 64(a)(1), 52 Stat. 874:

> DEBTS WHICH HAVE PRIORITY.—a. The debts to have priority . . . and the order of payment shall be (1) *the actual and necessary costs and expenses of preserving the estate* . . . ; filing fees paid by creditors in involuntary cases; where property of the bankrupt transferred or concealed by him . . . shall have been recovered for the benefit of the estate . . . at the cost and expense of . . . creditors, the reasonable costs and expenses of such recovery; *the costs and expenses of administration* . . . ; (2) wages . . . ; (4) taxes . . . .

(Emphasis added.)

[14] See text accompanying note 9 *supra*.

[15] Bankruptcy Act of 1938 (Chandler Act) § 64(a)(1), as amended, ch. 579, § 19, 66 Stat. 426 (1952), as amended. The proviso stated:

> Provided, however, That where an order is entered in a proceeding under any chapter of this Act directing that bankruptcy be proceeded with, the costs and expenses of administration incurred in the ensuing bankruptcy proceeding shall have priority in advance of payment of the unpaid costs and expenses of administration . . . incurred in the superseded proceeding and in the suspended bankruptcy proceeding, if any . . . .

> all of the items set forth in section 64a(1) are properly regarded as "costs and expenses of administration." Even as clause (1) read in the Chandler Act amendment of section 64, however, the quoted expression did not appear in the language of the clause until three separate items were mentioned.[16]

The new language, as the report goes on to say, was designed to make it clear that the 1952 super priority was to apply to all items in subdivision 1 of the 1938 act—hence the new form, using the word "including." To say that all the items in section 64(a)(1) are costs and expenses of administration is clearly *not* to say that a valid cost and expense must be one that preserves the estate.

Nor does the case law cited by the *Knight* court strengthen its reading. The court placed strong emphasis upon some language of *In the Matter of Connecticut Motor Lines, Inc.*[17] There the issue was the status, in the order of priorities, to be given a government claim for unpaid taxes owed on wages that were earned prior to bankruptcy, but which were paid to the employees during bankruptcy. The relevant language quoted in *Knight* was:

> [I]t is preferable to isolate from Section 64, sub. a(1), as falling without a meaningful view of costs and expenses of administration, *those expenses which, though they can be considered post-bankruptcy items, are unrelated to development, preservation or distribution of the bankrupt's assets.*[18]

Standing by itself, this language appears to support the *Knight* result; but viewed in context with the rest of the *Connecticut Motor Lines* opinion, it can hardly be read to mean that all valid section 64(a)(1) costs and expenses of administration must be ones that preserve the estate. In *Connecticut Motor Lines* the question was not whether the taxes were to be given *any* section 64(a) priority, but merely whether they should be given first priority as a cost of administration, instead of being relegated to section 64(a)(4), which specifically provides for "taxes legally due and owing by the bankrupt to the United States or any State or any subdivision thereof."[19] The *Connecticut Motor Lines* court pointed out that in fact the taxes given section 64(a)(1) priority were traditionally those which further maintained the bankrupt's assets. That is, they were incurred by reason of the receiver's postbankruptcy activities, not the mere postbankruptcy payment of prebankruptcy obligations.[20] All that the

[16] S. REP. No. 1954, 87th Cong., 2d Sess. 5 (1962), in 2 U.S. CODE CONG. & AD. NEWS 2607 (1962).

[17] 336 F.2d 96 (3d Cir. 1964).

[18] In the Matter of I. J. Knight Realty Corp., 242 F.Supp. 337, 340-41 (E.D. Pa. 1965), quoting In the Matter of Connecticut Motor Lines, Inc., 336 F.2d 96, 102 (3d Cir. 1964). (Emphasis supplied by the *Knight* court.)

[19] 52 Stat. 874 (1938), 11 U.S.C. § 104(a)(4) (1964).

[20] In all the cases cited, the trustee or bankrupt was taxed on activities involved in further developing the bankrupt's assets or in seeking to maintain

Connecticut Motor Lines court really meant by the passage quoted in *Knight* was that while an expense might be "postbankruptcy" in the sense that it was *paid* by the receiver, it would have had to stem from an *activity* arising during bankruptcy in order to be a section 64(a)(1) item.

Another qualification placed by *Knight* upon the meaning of "costs and expenses of administration," and one which also tends to exclude tort claims, is that "Congress made clear that administrative expenses to be given priorities were those that would prevent a 'breakdown of administration.'"[21] The "breakdown" argument also rests upon words taken out of context: The quoted words are part of the House report on the 1952 super priority amendment. When read along with the rest of the report, these words mean nothing more than that a breakdown of administration would occur if a super priority were not given to the claims of the ensuing bankruptcy over those of superseded proceedings.[22] The report says nothing about the general scope of the claims themselves.[23]

Even after the term "costs and expenses of administration" has been stripped of those qualifications placed upon it by *Knight,* there remains one problem. Assuming that Congress intended to allow, as valid section 64(a)(1) items, certain costs and expenses of administration that did not fall within the specific enumerations following "including," is the *Knight* tort claim one of these allowable items?

The Bankruptcy Act, according to Professor Collier, views tort claims as administrative expenditures.[24] The act

> empowers the court to authorize the business of bankrupts to be conducted for a limited period by a marshal, receiver or trustee.[25]
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> . . . .
>
> Among other expenses incident to conducting a business and therefore allowable as administrative expenditure may be . . .

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such assets for the maximum benefit of creditors. *Post-bankruptcy* taxation such as this has long been viewed by the courts as part of classic administration expenses.

336 F.2d at 99. (Emphasis added.)

[21] 242 F. Supp. at 340.

[22] See text accompanying note 15 *supra.*

[23] H.R. REP. No. 2320, 82d Cong., 2d Sess. 10 (1952), in 2 U.S. CODE CONG. & AD. NEWS 1969 (1952):

> Unless provision is made for payment, *ahead of all prior incurred and unpaid administration costs and expenses* of the costs and expenses necessary to liquidate, administer and close the estate in the ensuing bankruptcy proceeding, there is always danger of a breakdown of administration.

(Emphasis added.)

[24] Judge Learned Hand's dictum in Vass v. Conron Bros., 59 F.2d 969 (2d Cir. 1932), gives a similar reading to the Bankruptcy Act. In this action against a trustee in bankruptcy in his personal capacity, plaintiff alleged that the defendant failed to perform covenants in a lease between the bankrupt and the plaintiff although the trustee had assumed these covenants. As a result plaintiff's goods were spoiled by lack of refrigeration. In holding that the trustee could be sued only in his official capacity, and thereby dismissing the action, Judge Hand remarked that the "liquidation of the lessee's resulting damages was as much a part of the usual administration in bankruptcy, as that of the pay of accountants, custodians or other assistants, employed by the trustee." *Id.* at 971.

[25] 3 COLLIER, BANKRUPTCY 1537 (14th ed. 1941).

> payments on claims for personal injuries inflicted in the operation of a business . . . .[26]

Moreover, there is strong authority for the proposition that torts committed by receivers in nonbankruptcy situations are properly costs of administration.[27] *Clark on Receivers* states:

> When a receiver is appointed to operate a business he may as receiver [*i.e.*, in his official capacity] be guilty of tort. . . .[28]
>
> Damages resulting from the operation of the plant or business being incidental to the management generally become part of the expense of administration by the court.[29]

The policy behind such a rule seems sound. A receiver is appointed for the benefit of creditors, it being generally felt that the owner of a bankrupt business or of mortgaged property in a foreclosure action might lack the incentive necessary to manage his business properly. Since the creditors reap the benefits of the receiver's actions, their claims should be subordinated to the damages flowing from that receiver's mismanagement.[30]

Although there are no cases directly on point a revealing analogy may be drawn from those suits involving patent infringements by bankruptcy receivers and trustees. In both *Goldsmith v. Overseas Scientific Corp.*[31] and *In re Paramount Publix Corp.*,[32] it was held that a patent infringement committed by the bankrupt himself was not a provable expense under section 63(a)(4) of the Bankruptcy Act.[33] Since this subsection involves contracts, and since the court considered patent infringement to be a tort, the claim would, if provable, have had to fall within section 63(a)(7) of the act. However, the tort claims in that section are limited to negligence

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[26] *Id.* at 1540.

[27] See, *e.g.*, Atlantic Trust Co. v. Chapman, 208 U.S. 360 (1908) (dealing with receivers in mortgage foreclosure proceedings); McNulta v. Lochridge, 141 U.S. 327, 332 (1891) (same); Betts v. Bisher, 213 Fed. 581 (9th Cir. 1914) (same).

[28] 2 CLARK, RECEIVERS § 396(h), at 682 (3d ed. 1959).

[29] *Id.* at 683.

[30] Some relief is afforded creditors, although not to the receiver's tort victim, by reason of the receiver's bond, required under § 50 of the Bankruptcy Act. 52 Stat. 683 (1938), 11 U.S.C. § 78 (1964). The purpose of this bond is to insure faithful management of the bankrupt's assets for the benefit of creditors. Since mere negligence on the part of the receiver is enough to sustain recovery on the bond, United States v. Perkins, 280 Fed. 546, 549 (8th Cir. 1922), there can be little doubt that the negligence of the receiver in *Knight* (which could result in total depletion of the bankrupt's assets to pay tort damages) is sufficient to allow a creditors' suit upon the bond. Albeit the relief to Knight's creditors would probably be insignificant—the Knight fire was recognized as the largest in Philadelphia's history—in cases of less severe torts the bond could provide a fairly adequate cushion.

[31] 188 F. Supp. 530 (S.D.N.Y. 1960).

[32] 8 F. Supp. 644 (S.D.N.Y. 1934).

[33] 52 Stat. 873 (1938), as amended, 11 U.S.C. § 103(a)(4) (1964): "Debts of the bankrupt may be proved and allowed against his estate which are founded upon . . . (4) an open account, or a contract express or implied . . . ."

actions only.[34] But, when a patent infringement was committed by the trustee in bankruptcy, *In re Progress Lektro Shave Corp.*[35] allowed the tort claim as a cost of administration. In distinguishing *Paramount Publix*, the *Progress* court focused directly on the fact that its case involved a trustee's tort, not that of a bankrupt.[36]

Comparing the patent cases with the *Knight* holding reveals a substantial inconsistency. Had the *Knight* tort been committed by the bankrupt it would, being a negligent tort, clearly have been provable under section 63(a)(7) so long as the action was instituted prior to the bankrupt's petition. Yet when committed by the receiver it was disallowed. On the other hand, the patent cases show that a tort committed by the bankrupt, which is not provable under section 63(a)(7), suddenly becomes a valid claim simply *because* it was the fault of the trustee.

Knight attempts to distinguish the patent cases on the ground that while infringements are torts, recovery is based on a theory of unjust enrichment.[37] The court reasoned that by infringing the patent the trustee in *Progress Lektro Shave* was attempting to increase the assets of the business, and that therefore the damages flowing from his failure to do so successfully constituted a cost of administration within the "preservation" subsection. This distinction, however, is subject to serious attack.

In deciding that patent infringement torts are designed to preserve the estate, the *Knight* court looked to the reason behind their commission, not to the results. Of course a receiver is attempting to preserve assets when he sells patented articles without a license. But the result of his

[34] As to why § 63(a)(7) is limited to negligence actions, the fact situation in Goldsmith v. Overseas Scientific Corp., 188 F. Supp. 530 (S.D.N.Y. 1960), indirectly supplies one answer. In that case the patentee did not file a claim against the bankrupt estate under § 63(a), but instead commenced suit after the defendant's discharge in bankruptcy. The defendant was the party who argued that the patent claim was a valid § 63(a) item. By proving this he hoped to show that by *not* putting in a claim for damages under § 63(a) plaintiff had forfeited his right to proceed against the bankrupt after the discharge. As authority for this proposition defendant cited § 17 of the Bankruptcy Act, 74 Stat. 409 (1960), 11 U.S.C. § 35 (1964), which states that a discharge shall release the bankrupt from all provable debts except those contained in the subsections. Plaintiff, of course, argued that the claim was not a § 63(a) item and, in the alternative, that even if it were it fell within § 17(a)(2) of the Bankruptcy Act which states, *inter alia*, that claims for "willful and malicious injuries to the person or property" are not dischargeable.

It thus appears that § 63(a)(7) is limited to negligence actions so that the victim of a willful injury, his claim not discharged by bankruptcy, may proceed directly against the infringer without resort to the Bankruptcy Court. The *Goldsmith* court, since it held that a patent claim was not provable under § 63(a) and, on that ground alone, not discharged, never faced the issue of whether a patent infringement was a valid § 17(a)(2) item as well. Of course, the exclusion from § 63(a) of patent claims, while it does afford the patentee extrabankruptcy relief, in reality works a substantial hardship on him since he cannot secure compensation from the estate, a fund which very likely, except in cases like *Goldsmith* itself, will be his only practical source of reimbursement. One other possible reason for such a result is the fear of spurious "willful torts" by the bankrupt against a cooperative "victim," designed to defraud legitimate creditors.

[35] 35 F. Supp. 915 (D. Conn. 1940).

[36] *Id.* at 916. A similar claim was allowed earlier, even when § 63(a) permitted *no* tort claims against the bankrupt to be proved. *In re* Michigan Motor Specialties Co., 288 Fed. 377 (E.D. Mich. 1923).

[37] 242 F. Supp. at 343.

failure to escape liability is a depletion of the bankrupt's assets in the form of damages. Money flowing from the estate to pay damages for patent infringement certainly does no more to preserve the assets than money flowing from it to pay damages caused by a fire. Of course the analogy between patent infringements and negligent torts would be weakened if patent damages were limited to the money unjustly retained by the infringer; but such is not the case. In fact, unpaid royalties are the minimum damages.[38] The infringer may also be liable for the patentee's lost profits.[39] As the court in *Progress Lektro Shave* pointed out, the patentee was "entitled to recover both damages and loss of profits."[40] Clearly, the court considered plaintiff's recovery as measuring more than defendant's unjust enrichment. The patentee's loss, not the infringer's gain, was determinative.[41] In fact, the patent statute even allows treble damages in the court's discretion.[42]

Reduced to its essence, the theory in the patent cases is nothing more than a variation of the unsuccessful argument advanced by the railroad in *Knight* that the repairing of the pipes, an act done to preserve the estate, was a sine qua non of the fire.[43] This similarity becomes all the more obvious in the hypothetical case where a fire caused by the negligence of the receiver stems from his desire to save money for the estate by taking inadequate safety precautions. This hardly differs from an unsuccessful patent infringement designed to cut costs. To be consistent therefore, the *Knight* court should have rejected the unjust enrichment distinction between patent torts and negligence torts. Of course to do this would be to admit of no distinction between infringement torts and negligence torts for purposes of section 64(a)(1). This admission in turn would have placed the court in the curious position of recognizing the validity of a claim for patent infringement by a trustee when the same claim could not have been allowed under section 63(a) had it been the result of the bankrupt's act, while denying Reading's tort claim which clearly would have been valid under section 63(a)(7) had the bankrupt caused the fire.

General policy also calls for a reversal of the *Knight* decision. It is of course true that one of the purposes of the Bankruptcy Act is to ensure

[38] 35 U.S.C. § 284 (1964):

> Upon finding for the claimant the court shall award the claimant damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the court.
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> When the damages are not found by a jury, the court shall assess them. In either event the court may increase the damages up to three times the amount found or assessed.

[39] *E.g.*, Livesay Window Co. v. Livesay Indus., Inc., 251 F.2d 469, 471-72 (5th Cir. 1958).

[40] *In re* Progress Lektro Shave Corp., 35 F. Supp. 915, 916 (D. Conn. 1940).

[41] "Holding, as I do, that upon the facts as found by the referee the sale by the trustee was *in violation of the claimant's rights*, it follows that the claim must be allowed as an expense of administration." *Ibid.* (Emphasis added.)

[42] See note 38 *supra*.

[43] In the Matter of I. J. Knight Realty Corp., 242 F. Supp. 337, 341 (1965).

an equitable distribution of assets among the bankrupt's creditors.[44] But, at the same time, any rule of law which results in virtual immunity from tort liability for businesses in receivership may lead to a result the harshness of which can far outstrip the equities in favor of creditors. Receivers are appointed to compensate for the probable lack of diligence that would befall the management of a business if left in the hands of the bankrupt. Certainly the court should not then permit an unremediable lack of due care on the part of the receiver himself; as between creditors and tort victims the former have considerable control over the receiver's actions, the latter absolutely none.

When it is considered that a receivership often continues for years solely in the hope that creditors may be able to recoup a larger percentage of their outstanding debts when liquidation is finally begun, it hardly seems fair to allow the man who is acting for the benefit of creditors to ignore all standards of reasonable care in an attempt to squeeze more money from the bankrupt estate. Personal injuries suffered by the receiver's own employees have been held compensable as costs of administration.[45] It seems even more imperative that innocent tort victims should have a similar remedy. To deny this remedy as the *Knight* court has done is to allow bankrupt businesses in receivership to become public nuisances without fear of liability.

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[44] See, *e.g.*, United States v. Embassy Restaurant, Inc., 359 U.S. 29 (1959); Standard Oil Co. v. Kurtz, 330 F.2d 178 (8th Cir. 1964).

[45] Matter of Bloom, 28 Am. Bankr. R. (n.s.) 570 (Referee, E.D. Ark. 1935).