United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

August 25, 2026

Lyle W. Cayce
Clerk

No. 25-50986

Securities and Exchange Commission,

Plaintiff,

versus

Roy W. Hill; Et al.,

Defendant,

Albert (Tre) C. Black, III,

Receiver—Appellee,

versus

UniBank,

Movant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:23-CV-321

Before King, Smith, and Ramirez, *Circuit Judges*.

Jerry E. Smith, *Circuit Judge*.

UniBank provided secured loans to certain investors in a Greentech startup called Clean Energy Technology Association, Inc. ("CETA"). The SEC soon brought an enforcement action against the founder and CEO of CETA alleging that he was operating it as a Ponzi scheme and immediately moving for an equitable receivership under Albert Black (the "Receiver"). In a related court action in the State of Washington, the investors sued UniBank for fraud and negligence, but UniBank won summary judgment based on no showing of duty. Meanwhile, in this action, the Receiver recommended that the district court equitably distribute *pro rata* shares of the remaining funds less the losses due to fraud. The district court adopted the Receiver's report and recommendation ("R&R") and issued an order (hereinafter the "Order") denying UniBank's objection seeking to uphold its priority in distributions from the receivership estate.

Finding error, we vacate the Order and remand for further proceedings.

I.

An equitable receivership is the mirror image of bankruptcy: Whereas bankruptcy creates a debtor estate to protect the going-concern value of a business and the *debtor* from collection actions, a receivership establishes a court-appointed trustee as a neutral fiduciary, in the face of fraud or insolvency, to manage a company's assets and operations for the recovery of the *creditors*. Receiverships are sometimes established in the looming shadow of bankruptcy but also come before this court in the context of the SEC's enforcement actions against Ponzi schemes.

This case addresses such a Ponzi scheme. Starting around December 2019, Texas attorney Roy Hill, the founder and CEO of CETA, began to solicit investment on the premise that he owned patented Carbon Capture Units ("CCUs") that would distill coal and capture natural gas from gas well operations. CETA conducted a series of Regulation D private placement debt offerings giving investors the opportunity to purchase one or more CCUs and promising them a stream of payments derived from the revenue from such CCUs. CETA initially underwrote parts of its own loans before turning to the U.S. Small Business Administration ("SBA") loan program designed to encourage lending to new and underserved small businesses.

In 2021 and 2022, CETA, headquartered in Fairfield, Texas (in the Waco Division), began to shift this leverage strategy from providing matching loans to its own investors to taking out loans from the SBA via UniBank, a commercial bank in the State of Washington. During that period, several wealthy individuals and entities (the "Investors") approached UniBank to take out loans of $1 to 3 million to buy interests in CETA. The Investors and UniBank worked together to take out these allegedly fraudulent loans officially purporting to start small businesses, nominally buying interests in CETA's CCUs, but in reality buying nothing but a phantom interest in a Ponzi scheme.

UniBank secured its loans to the Investors against the distributions of purported profits from CETA. UniBank perfected its security interests—secured by the distributions of revenue from the nonexistent CCUs—according to UCC Article 9, nominally rendering it a secured creditor able to pursue liens against the Investors.

The underlying proceeding is the fraud enforcement action brought by the SEC alleging that CETA operated as a classic Ponzi scheme, paying returns to older investors from the funds provided by new investors. On May 3, 2023, the SEC filed an emergency action against the defendants Hill, CETA itself, Eric Shelly, and Eric Shelly's entity Freedom Impact Consulting, LLC, which was the vehicle conducting the private securities placements in cooperation with CETA (collectively, the "Defendants").

The SEC alleged that, beginning in December 2019, Defendants raised at least $155 million from more than 500 individuals nationwide through offerings tied to purported CCUs sold by CETA for use in oil and natural gas wells, as to which Defendants made material misrepresentations about patented technology, high-profile customers such as ExxonMobil, and consistent 10% quarterly returns. An SEC forensic analysis of CETA bank records showed there were no revenues, but only circular flows of investor funds from which the returns to investors were actually paid. The SEC alleged that Defendants used CETA's offerings as a "vehicle to steal investors' money."

At the outset of the grand case, the SEC moved to freeze CETA's assets and appoint a receiver on the same day it filed its complaint. The district court granted the motion and appointed the Receiver, explaining,

> The appointment of a receiver in this action is necessary and appropriate for the purposes of marshaling and preserving all assets of the Defendants ('Receivership Assets') that: (a) are attributable to funds derived from investors of the Defendants; (b) are held in constructive trust for the Defendants; (c) were fraudulently transferred by the Defendants; and/or (d) may otherwise be includable as assets of the estates of the Defendants.

The Receiver then issued quarterly reports, determining by the fourth quarter of 2023 that the receivership estate included approximately $66 million in cash and that CETA's technology was neither in commercial use nor viable. Accordingly, the Receiver recommended distributing the cash. The Receiver compiled claims and, in the first quarter of 2025, reported approved claims showing $252 million invested, with an aggregate net cash loss of $142 million.

The Receiver classified all investor claims into a single group, reasoning that all representations made to investors were substantially similar and that all had contributed funds into a commingled Ponzi scheme. Rather than determine claims by priority under the dubious CETA contracts, the Receiver proposed an equitable distribution by net cash losses. He spelled out his reasoning:

> In regard to the methodology, the Receiver could, on the one hand, determine claims according to the individual contractual rights established between CETA and the Investors and/or project entities in the documents executed by those parties. On the other hand, the Investor Claims could be adjusted equitably based upon net cash losses incurred. Whether to adjust claims based upon the contracts or based upon their underlying equitable nature depends upon whether the claims arise from a fraudulent scheme, and, to a lesser extent, whether the claims arise from a Ponzi scheme. In Ponzi schemes, the Fifth Circuit has approved the use of the net cash loss methodology to evaluate claims.

This was the "Proposed Distribution Report" (citing *United States v. Durham*, 86 F.3d 70, 73 (5th Cir. 1996) (approving a net cash loss or *pro rata* distribution); *SEC v. Forex Asset Mgmt.*, 242 F.3d 325, 331 (5th Cir. 2001) (same)).

In UniBank's recitation of the facts, it insists that it was not a party to the SEC's enforcement action, but merely a lender to the Investors who bought interests in CETA. On February 27, 2025, UniBank submitted a letter providing "formal notice to the receiver that any distribution payments from the receivership estate to the [Investors] must be directed to UniBank," which the Receiver construed as an objection to his motion for an interim distribution of payments to the Investors.

On March 7, 2025, the district court entered an order authorizing the Receiver to liquidate CETA's assets and effect a distribution thereof by

(i) providing notices to each claimant of the approved amounts, (ii) providing them an opportunity to object, and (iii) referring any disputes to the court for determination. On June 20, 2025, the Receiver filed his Third Claims Report, distributing on a *pro rata* basis, given the lack of sufficient funds to pay each claim in full, and thereby impairing UniBank's secured claim and perfected lien. Whereas UniBank reported a net loss of $13,417,914.77, it was allocated a distribution of $2,531,905.80, or about 19% of its claim.

On July 10, 2025, the Receiver then issued an R&R responding to UniBank's earlier claim objection (the "Receiver Objection Report"). The Receiver offered an extended explanation of the nature of the Ponzi scheme, which we find helpful to understanding CETA's scheme, especially given the Receiver's role as a fiduciary of all the victims and an agent of the district court.

For the highlights, CETA offered investments secured by fictitious CCU units and paying out dividends from revenues associated with those units. Initially, CETA would loan the investors matching funds partly so they could leverage and receive greater tax benefits from taking deductions for the depreciation on the CCUs. Later on, many investors instead used allegedly fraudulent SBA loans procured through UniBank. SBA loans are guaranteed by the federal government, reducing the risk for a commercial bank such as UniBank. UniBank is even a *preferred* lender, such that its SBA loans do not have to receive advance approval. But SBA loans are not permitted for the purpose of investing in the business of another.

The Receiver reported that UniBank's employee Wan Kim ("Kim") and others approved SBA loans used in CETA's Ponzi scheme, as well as at least *two other* Ponzi schemes (a certain "ATM scheme" and another "WaterStation vending machine scheme"), which all would have been regulatory violations of UniBank's status as an SBA-preferred lender. The

Receiver therefore recommended that UniBank's objection be overruled and that its claim be aggregated with all other victim claims.

The Receiver also pointed out that the CETA loan program, which had outside investors fund 40% of a CCU and CETA provide a matching loan for 60%, conspicuously resembles the "UniBank CO2 Pipeline Loan Program," under which an outside investor funded a portion of the purchase price of a CCU and UniBank provided a matching SBA loan for the remainder.

As CETA went down in flames, the Investors launched a parallel set of suits in the U.S. District Court for the Western District of Washington, and then in Washington state court, to reject UniBank's secured or lien rights against them (this latter the "Washington court action"). On June 29, 2023, while the Receiver was aggregating and administering claims against CETA, the Investors initiated the first lawsuit in the Western District of Washington against UniBank, accusing it of fraudulent and negligent misrepresentation, violations of the Washington Securities Act and Washington Consumer Protection Act, and a federal RICO violation. *Bowman v. UniBank*, No. 2:23-cv-971-JCC (W.D. Wash.). That federal court dismissed the RICO charge and dismissed the case for otherwise lacking jurisdiction.

On October 31, 2023, the Investors then refiled their claims in Washington state court (hereinafter the "Washington court"). *Bowman v. UniBank*, No. 23-2-07972-31 (Snohomish Cnty. Sup. Ct.) (pending). UniBank posits that the records of that state court proceeding show that none of the individual Investors first learned of CETA through UniBank and that they all prepared their own SBA loan application materials, despite sworn testimony stating that UniBank provided loan documents and that certain Investors relied upon UniBank to ensure that the CCU transaction qualified for SBA loan status.

Following the Receiver's Proposed Distribution Report, *supra*, UniBank filed an objection purporting to be a limited special appearance solely for the purpose of alerting the Western District of Texas to the existence of its "perfected liens" and the parallel Washington court action. The Receiver issued his R&R in the face of that objection essentially reasoning that *pro rata* plans making distributions in proportion to the net losses of Ponzi scheme victims are plainly within the discretion of a district court to approve.

On August 22, 2025, UniBank filed a lengthy response to the R&R on its objection, *supra*, protesting that the Receiver was asking the district court to void its security interests and distribute collateralized funds back to the Investors (and away from UniBank's secured interest), thereby nullifying its lien rights. UniBank mustered evidence from the Washington court action[1] to attempt to prove its good faith—alleging that the Investors were independent actors and were negligent in their participation in CETA's Ponzi scheme. UniBank contended that it retained its perfected security interests on any distributions from the receivership estate to the Investors and that the Receiver could not void or reorder state law lien priorities, such that UniBank's secured loans entitled it directly to the Investors' distributions, rather than through any second-order downstream action.

UniBank variously added objections to the effect that the district court could not adjudicate the merits of its state law rights when it had only made a special appearance attempting to limit any consent to personal jurisdiction; that it required an adversary proceeding to adjudicate those state law liens; and that the Receiver had failed to meet his evidentiary burden. UniBank also suggested that the district court should hold its ruling in abeyance pending the resolution of the Washington court action, calling upon the judicial

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[1] UniBank mustered about 9,100 pages of such evidence.

doctrines of abstention, full faith and credit, and comity.

On August 29, 2025, the Receiver issued a reply to UniBank's response, theorizing that UniBank was trying to obtain a prejudgment attachment, and arguing that the secured status of UniBank's loans could be disregarded and impaired on the theory that contracts entered into in a Ponzi scheme are void. The Receiver astutely pointed out that, by asking the Western District of Texas to send the money to the Washington court, UniBank would attain the ability to pursue the Investors and get a full recovery rather than being treated *pari passu* with the other victims of the Ponzi scheme. (These are also the ultimate stakes of this appeal—whether UniBank gets only a *pro rata* distribution or, instead, gets to have the Investors' slice of cake.) In arguments prefiguring those briefed before this court, the Receiver also asserted that there were neither abstention nor Full Faith and Credit problems where nothing in the Washington court action had resolved any question before the district court.

On November 18, 2025, the district court entered the Order, overruling UniBank's objections, adopting the R&R as its own opinion and order, and ordering the Receiver to effect distributions to the Investors and UniBank based on pro-rata net cash losses. UniBank filed an emergency motion to stay the Order on December 1, 2025, and the district court issued such a stay on December 10, 2025.

This appeal follows as collateral review of the Order overruling UniBank's objection to the Receiver's motion to approve the distribution plan. UniBank raises jurisdiction issues, challenges the adequacy of the district court's procedure, and questions the district court's authority to impair its security interests and perfected liens.

We vacate the Order solely for failure of the district court to satisfy the requirements of due process, given the Order's one-paragraph adoption of the Receiver's cursory analysis in his R&R on UniBank's objection without sufficient tracing of facts and law. We express no view on the ultimate merits on remand.

II.

This court has jurisdiction over this appeal per the collateral-order doctrine.[2] This court reviews a district court's orders in connection with "supervising an equity receivership" for abuse of discretion, including orders related to a distribution plan.[3]

Under the abuse of discretion standard, we "review[ ] factual findings for clear error and legal conclusions de novo." *Cloud v. Bert Bell/Pete Rozelle NFL Player Ret. Plan*, 162 F.4th 527, 530 (5th Cir. 2025). We will not disturb a district court's decision if it "used its discretion in a logical way to divide the money." *Durham*, 86 F.3d at 73. Indeed, a district court that is fashioning relief in an equity receivership has "broad powers and wide discretion." *SEC v. Basic Energy & Affiliated Res., Inc.*, 273 F.3d 657, 668 (6th Cir. 2001).[4] Finally, as to comity, this court reviews *de novo* "both the preclusive effect of a prior judgment . . . and the application of collateral estoppel," such as the proper application of the Full Faith and Credit Clause. *OneBeacon Am. Ins.*

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[2] *SEC v. Barton*, 135 F.4th 206, 224–25 (5th Cir. 2025) (stating that "a district court's approval of a receiver's distribution plan [i]s within the collateral-order doctrine," and the court has jurisdiction to review orders "related to sales or distributions under the collateral-order doctrine" (emphasis added)), *cert. denied*, 146 S. Ct. 1851 (2026).

[3] *SEC v. Stanford Int'l Bank, Ltd.*, 927 F.3d 830, 839 (5th Cir. 2019); *Forex,* 242 F.3d at 331.

[4] *See generally* Fed. R. Civ. P. 66 (explaining that "the practice in administering an estate by a receiver or a similar court-appointed officer must accord with the historical practice in federal courts or with a local rule"); Fed. R. Civ. P. 66 advisory committee's notes to 1946 amendment ("Rule 66 is applicable to what is commonly known as a federal 'chancery' or 'equity' receiver, or similar type of court officer.").

Co. v. Barnett, 761 F. App'x 396, 399–400 (5th Cir. 2019).

III.

UniBank raises a flurry of issues, which the Receiver recharacterizes. As UniBank would frame them, they are as follows:

(1) Whether the district court's one-paragraph order adopting the Receiver Objection Report frustrates appellate review and requires vacatur and remand.

(2) Whether a federal receivership court may override a non-party creditor's secured interest to effect a pro-rata distribution to the creditor's borrowers, where the creditor lent to those investors directly.

(3) Whether the district court's relief violated due process, whether through a failure by the Receiver to carry his evidentiary burden—including as to UniBank's participation in the Ponzi scheme or the SBA loan requirements—or through the district court's failure to provide sufficient procedure to adjudicate the liens' validity or priority.

(4) Whether the district court's order violated any of (i) personal jurisdiction law; (ii) the abstention doctrine; or (iii) the Full Faith and Credit Clause.

The Receiver breaks down some of the bigger issues, multiplying them to

(1) Whether the district court's decision is clear enough to allow for review.

(2) Whether the district court was required to transfer the money to the Washington court.

(3+4) Whether the district court afforded UniBank due process, including by declining to follow the federal Bankruptcy Rules.

(5+6+7) Whether the district court violated any of (i) personal jurisdiction law; (ii) the abstention doctrine; (iii) Full Faith and Credit as to the Washington court's decision that UniBank owed no duty of care to the Investors.[5]

(8) Whether the district court was required to determine whether UniBank defrauded the Investors in order to decide upon a *pro rata* distribution.

(9) Whether the district court could consider the fact that UniBank was making allegedly fraudulent SBA loans in determining whether it was a victim of the Ponzi scheme.

* * * * *

We start with the preliminary jurisdictional issues and then get to the due process question.

Regarding the frustration of or basis for appellate review, the district court's adoption of the R&R is so obvious as to be disposed of in one sentence: It is standard practice for district courts to adopt the reports of magistrate judges, which also applies to receivers.[6]

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[5] In supplemental letter briefing, UniBank has shown that the Washington court granted the investor-plaintiffs' motion for summary judgment on UniBank's counterclaim for breach of contract because of the district court's order in this case.

[6] *E.g., Janvey v. Dillon Gage, Inc.*, 856 F.3d 377, 387 (5th Cir. 2017) (citing *United States v. Fritz*, No. SA-12-C-550-FB (HJB), 2014 WL 12540471, at *4 (W.D. Tex. Jan. 7, 2014), *report and recommendation adopted*, 2014 WL 12537176 (W.D. Tex. Feb. 24, 2014), *aff'd*, 608 F. App'x 259 (5th Cir. 2015) (further citation omitted); *cf. Russell v. Comm'r*, 345 F.2d 534 (5th Cir. 1965) (adopting the opinion of the Tax Court); *In re Primera Energy, LLC*, No. 15-51396-CAG, 2018 WL 4006327 (Bankr. W.D. Tex. Aug. 17, 2018) (adopting in part a receiver's report and recommendation); *Jackson v. Hidalgo Cnty. Det. Ctr.*, No. 7:22-CV-00097, 2024 WL 3558739 (S.D. Tex. July 26, 2024) (adopting the magistrate judge's report and recommendation).

The authorities adduced by UniBank do not disturb this view: In *SEC v. Barton*, 72 F.4th 573, 579 (5th Cir. 2023), we addressed a situation where the district court had issued two motions in a receivership proceeding, such that this court held that the reasoning of the second and later motion could not buttress the reasoning of the first, earlier, and unconnected motion. Here, the R&R seamlessly feeds into the district court's denial order, so whatever is within scope of the Report is the factual and analytical basis—whether strong or weak—of the order.

Meanwhile, *Technical Fabricators*[7] merely sets out the standard that for an equitable subordination within bankruptcy, the bankruptcy court must make specific findings and conclusions for the three prongs of (1) inequitable conduct; (2) injury; and (3) consistency of equitable subordination with the other goals of the Bankruptcy Code. Here, there is not precisely an equitable subordination so much as the distinct equitable remedy of disbursing Ponzi scheme funds on a *pro rata* basis—the remedy is *restitution*, not subordination—and the Order also adopted the Receiver's reasoning on each of the analogous prongs.[8]

IV.

As to the jurisdictional limits, we preliminarily address whether the district court violated any of the doctrines of personal jurisdiction, absten-

[7] *Tech. Fabricators, Inc. v. Fabricators, Inc.* (*In re Fabricators, Inc.*), 926 F.2d 1458, 1465 (5th Cir. 1991) (citing *In re Missionary Baptist Found. of Am., Inc.*, 712 F.2d 206, 212 (5th Cir. 1983)).

[8] *See, e.g.*, *Cent. States, Se. & Sw. Areas Health & Welfare Fund ex rel. Bunte v. Health Special Risk, Inc.*, 756 F.3d 356, 362 (5th Cir. 2014) (distinguishing between legal and equitable restitution remedies, and laying out the elements as (i) conferral onto the defendant (ii) of funds rightfully belonging to the plaintiff and (iii) retention thereof) (citing *Great-W. Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 213 (2002)).

tion, or full faith and credit. It did not.

A. Personal Jurisdiction

Personal jurisdiction does not apply where an equitable receivership adjudicates distributions from an *in rem* proceeding, and especially not where a plaintiff brings himself into court—as distinguished from being dragged in. UniBank purports to be a non-party making a limited appearance to defend its duly-perfected state law security interests. It complains that the district court lacked personal jurisdiction to determine its rights in Washington because all its affairs were there such that a district court in Texas lacked minimum contacts. UniBank demands reversal on that ground.

This argument is meritless. A district court supervising an equity receivership exercises *in rem* jurisdiction: "[T]he receiver collects and distributes only assets of the entity in receivership," and "the district court's *in rem* jurisdiction [implies] that the court may not exercise unbridled authority over assets belonging to third parties *to which the receivership estate has no claim*." *Stanford Int'l Bank*, 927 F.3d at 841 (second emphasis added). An equity receiver lacks the authority "to terminate the third-party claims against a settling party [participating in the bankruptcy estate] that are unconnected to the *res* establishing jurisdiction." *Id.* at 843.

This receivership estate controls the funds it would purport to distribute—the district court grabbed the CETA cash *res* back in May 2023—and UniBank brings what is essentially a priority claim within that estate. Moreover, the Receiver is correct that the alternative remedy of interpleading funds to the Washington court would represent a species of affirmative relief,[9] as distinguished from UniBank's doing nothing and then separately

[9] UniBank demanded, "Any funds that the Receiver seeks to allocate to Borrower-claimants and to UniBank should instead be deposited with the registry of the Snohomish

pursuing state-law liens against the individual Investors. The distribution *ab re* is what is at stake in the district court's order—and had UniBank stood back, it could have, and might still, separately pursue its state-law liens against the individual Investors.

Instead, by appearing before the court to demand affirmative relief, UniBank has implicitly consented to jurisdiction or waived any objection thereto.[10] Moreover, UniBank is essentially bringing arguments on the

County Superior Court." *Cf. Liberty Oil Co. v. Condon Nat'l Bank*, 260 U.S. 235, 240 (1922) ("The case began as an action at law for money had and received. When the defendant bank claimed to be only a stakeholder of the deposit, disclaimed interest therein, and offered to pay it into court, and asked that the other claimants of the fund be made parties, its answer and cross-petition became an equitable defense and *a prayer for affirmative equitable relief* in the nature of a bill for interpleader.") (emphasis added); FED. R. CIV. P. 22(b) (interpleader) ("The remedy this rule provides is in addition to [those provided by Title 28 jurisdiction statutes].").

[10] *See Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 138 (2023) ("Our precedents have recognized, too, that 'express or implied consent' can continue to ground personal jurisdiction—and consent may be manifested in various ways by word or deed.") (collecting cases); *see also Cactus Pipe & Supply Co. v. M/V Montmartre*, 756 F.2d 1103, 1107 (5th Cir. 1985) (explaining that unlike subject matter jurisdiction, jurisdiction over the person can be waived); *Trans World Airlines, Inc. v. Mattox*, 897 F.2d 773, 786 (5th Cir. 1990) ("Although they described themselves as 'specially appearing,' the [objecting parties] sought *an affirmative act* by the court that would benefit their [clients]. The fact that they sought affirmative relief controls, not the form of their appearance . . . .") (emphasis added), *abrogated on other grounds*, *Johnson v. Baylor Univ.*, 214 F.3d 630, 633 (5th Cir. 2000); *see generally Grammenos v. Lemos*, 457 F.2d 1067, 1070 (2d Cir. 1972) ("If a party enters a case, makes no objection to jurisdiction, and asks the court to act on its behalf in some substantive way, it will be held to have waived further objection.").

Demanding a species of affirmative relief may generally amount to implicit consent to personal jurisdiction. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 n.14 (1985) ("[T]here are a variety of legal arrangements by which a litigant may give express or implied consent to the personal jurisdiction of the court.") (cleaned up) (citation omitted); *see also* Scott Dodson, *The Complexities of Consent to Personal Jurisdiction*, 133 CAL. L. REV. 333, 353–54 (2025) ("Consent actually expands the scope of a court's personal jurisdiction . . . . If a defendant who consents to personal jurisdiction nevertheless raises the defense of lack of personal jurisdiction and moves to dismiss the case, a court should deny merits of the 'lien impairment' theory and asserting the priority of its claim, compounding its implied consent. In the alternative, it may have established minimal contacts sufficient for specific jurisdiction through its participation in Roy Hill's fraud routing through Texas.[11] Either way, it cannot credibly limit itself to the tiny salient of a refusal of personal jurisdiction.[12]

B. Abstention

The district court did not need to abstain where the *Colorado River*

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the motion on its merits because the court in fact has personal jurisdiction by virtue of consent.").

Fairness also guides our assessment of implied consent to personal jurisdiction. *See generally* Lea Brilmayer, *Rights, Fairness, & Choice of Law*, 98 YALE L.J. 1277, 1306 (1989) (arguing for assessing tacit consent under notions of fairness). Here, in unwinding the receivership estate of a Ponzi scheme, it would be unfair to the victims and unduly clement to UniBank as the reckless—at least—lender to the scheme to convey the funds to the Washington court.

[11] *See Mallory*, 600 U.S. at 137 ("Specific jurisdiction" permits suits that "'arise out of or relate to' a corporate defendant's activities in the forum State.") (quoting *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 359 (2021) (cleaned up) (further citation omitted)). The contacts needed for this kind of jurisdiction often go by the name "purposeful availment." *Burger King*, 471 U.S. at 475. And those contacts "must show that the defendant deliberately 'reached out beyond' its home—by, for example, '*exploiting a market*' in the forum State or *entering a contractual relationship centered there*." *Ford*, 592 U.S. at 359 (quoting *Walden v. Fiore*, 571 U.S. 277 (2014)) (cleaned up) (emphases added).

[12] Citing *Hines v. Stamos*, 111 F.4th 551 (5th Cir. 2024), UniBank contends it was a non-party appearing by special limited appearance to give notice of its secured rights and never consented to personal jurisdiction. In *Hines*, we held that a defendant's motion to compel arbitration was "insufficient to consent to personal jurisdiction when a defendant ha[d] continuously objected to personal jurisdiction." *Id.* at 562–63. Here, although UniBank objected to the district court's jurisdiction, it simultaneously asked the court to transfer funds from the receivership estate to the Washington court. Unlike in *Hines*, however, the district court here had *in rem* jurisdiction over the receivership estate, and UniBank cites no authority extending *Hines* to the receivership context. *See generally Rollins v. Home Depot USA*, 8 F.4th 393, 397 (5th Cir. 2021) ("A party forfeits an argument . . . by failing to adequately brief the argument on appeal.").

factors weighed in its favor. We review for abuse of discretion the district court's decision whether to abstain, and we exercise *de novo* review to the extent that the decision turns on an interpretation of law. *Black Sea Inv., Ltd. v. United Heritage Corp.*, 204 F.3d 647, 649–50 (5th Cir. 2000).[13]

"Under *Colorado River*, a district court may abstain from a case only under 'exceptional circumstances.'"[14] Federal courts defer to parallel state court proceedings "only . . . where the order to the parties to repair to the state court would clearly serve an important countervailing interest." *Colo. River*, 424 U.S. at 813 (quoting *Cnty. of Allegheny v. Frank Mashuda Co.*, 360 U.S. 185, 188–89 (1959)). This court identifies such countervailing interests, "based on considerations of '[w]ise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation.'" *African Methodist Episcopal Church v. Lucien*, 756 F.3d 788, 797 (5th Cir. 2014) (quoting *Colo. River*, 424 U.S. at 817). Yet abstention remains the exception from "the virtually unflagging obligation of the federal courts to exercise the jurisdiction given them." *Colo. River*, 424 U.S. at 817 (citations omitted).

In determining whether to abstain, we identify "wise judicial administration," *id.* at 818, through six factors, which must clearly favor abstention:

> 1) assumption by either court of jurisdiction over a res, 2) relative

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[13] This divides the subsequent *Colorado River* factors, *infra*, into what are clearly questions of fact (the timeline of which court first obtained jurisdiction), versus pure questions of law (whether federal law provides the rule of decision), arguably rebutting the common sense view that there are 'mixed' questions and instead analytically dividing the world into deferential review of fact and plenary review of law. *Cf. Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 228 (2020) ("We have sometimes referred to such a question, which has both factual and legal elements, as a 'mixed question of law and fact,'" and appealed to "practical considerations" to resolve the ambiguity.) (citations omitted).

[14] *Stewart v. W. Heritage Ins. Co.*, 438 F.3d 488, 491 (5th Cir. 2006) (quoting *Colo. River*, 424 U.S. at 813).

> inconvenience of the forums, 3) avoidance of piecemeal litigation, 4) the order in which jurisdiction was obtained by the concurrent forums, 5) to what extent federal law provides the rules of decision on the merits, and 6) the adequacy of the state proceedings in protecting the rights of the party invoking federal jurisdiction.

African Methodist Episcopal, 756 F.3d at 798 (citing *Stewart*, 438 F.3d at 491).

The equity receivership has assumed jurisdiction over the *res* of the receivership estate, while the Washington court lacks control over the *res*. That may suffice to trigger our "virtually unflagging obligation" to provide relief within our jurisdiction. *Colo. River*, 424 U.S. at 817. Assuming we need look any further, we can point out that federal equity receivership law provides the rule of decision, authorizing the district court's discretion to adopt a *pro rata* distribution plan from the receivership estate of a Ponzi scheme reflecting the common victim status of the claimants. *Durham*, 86 F.3d at 73, discussed *infra*. Additionally, the *pro rata* distribution plan avoids piecemeal litigation over priorities, as administration of the *res* is centralized before the district court—and the district court got it first, before the Washington court action was initiated[15]—but beyond this, it is unclear that the district court's order snuffs out residual state law lien claims by UniBank against the individual Investors, discussed momentarily.

C. Full Faith and Credit

Nothing in the Order decision overrode the Washington court's summary judgment on the lack of relevant duty from UniBank to the Investors within the Investors' negligence claim against UniBank. UniBank posits that the Order— adopting the Receiver's view that UniBank should be treated as a victim *pari passu* with the individual Investors— disregards the preclusive

[15] In supplemental letter briefing, the parties have alerted us that the Washington court is already following the preclusive effect of these proceedings.

effect of the Washington court's partial summary judgment to UniBank dismissing the individual Investors' negligence claim with prejudice for a lack of duty running from UniBank to the Investors. But that issue is orthogonal to the question whether UniBank was a victim of the Ponzi scheme, which informs the equitable relief of the *pro rata* distribution plan.

This full faith and credit objection fails.

V.

We turn to whether the district court denied UniBank due process either through failing to require the Receiver to meet his evidentiary burden or through adjudicating property rights in a summary proceeding. On the second basis, there was such a due process violation. The district court's terse, one-paragraph order adopting the Receiver's R&R—which itself offered only a cursory analysis rebutting UniBank's objections—was insufficient to comport with the minimum standards of due process. And UniBank has plausibly suggested that it could better have defended itself in a more plenary proceeding—even just an evidentiary hearing—addressing the 9,100 pages of Washington court record that UniBank had introduced.

A. The Burden

Starting with the evidentiary burden: UniBank posits that the district court committed error by flipping the burden of proof. UniBank complains that the Receiver submitted the R&R with minimal citations to evidence. The difficulty is that the Receiver was familiar with the course of events following the SEC's enforcement action and had submitted a series of quarterly reports compiling claims and calculating losses[16] such that the assertions in

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[16] *E.g.,* the Receiver's Quarterly Report for the Fourth Quarter of 2024 (documenting in detail the series of payments in-and-out of the Ponzi scheme).

the final report can be traced to that large body of evidence. The same problem exists where UniBank introduces 9,100 pages of evidence from the Washington court while providing minimal record citation to support its position that Wan Kim and UniBank were innocent and were misled by the individual Investors.

UniBank is right that the movant—ultimately the Receiver, in moving for an interim distribution from the estate—bears the burden of proof, rather than the objector. *SEC v. Torchia*, 922 F.3d 1307, 1318 (11th Cir. 2019). The case is close, given that the Receiver has submitted a series of quarterly reports that are incorporated into, and provide support for, his recitation of events in the R&R. The Receiver fails to provide line-by-line citations, which we revisit below. But this may not be fatal where the district court was familiar with his ongoing quarterly reports and where we review the Order denying the objection only for abuse of discretion.

UniBank's theory that the Receiver introduced new evidence in his reply to UniBank's response to the R&R on the claim objection is, however, meritless. First, the emails were already within the record. Second, it was UniBank itself that introduced those numerous emails and purported to rely on them in its objection motion response—UniBank is upset that it trips over its own rake.

In sum, while this issue is close, and tighter record citations would be desirable from both sides, the district court did not invert the evidentiary burden in this equitable proceeding on a sprawling record. The necessary facts were in evidence, and through the several quarterly reports it appears that the district court was familiar with the complex fact pattern. Additionally, the Receiver acts as a fiduciary of the public interest, such that the usual suspicion of two adversarial accounts portraying night-and-day versions of the facts may not properly inform this proceeding. On the Receiver's telling, the effect of UniBank's objection would be to give it a "prejudgment attachment" or to elevate its claim in the victim hierarchy over that of the individual Investors, while the Receiver works to maximize the recovery of all the victims and to execute the will of the SEC in protecting financial markets.

B. The Proceedings

UniBank advances the idea that the district court's use of streamlined procedures in denying UniBank's objection to the R&R solely on the basis of the submitted briefing materials, and without conducting an evidentiary hearing or even its own formal fact-finding, violated the Due Process Clause's requirement of "notice and a meaningful opportunity to be heard."[17] UniBank contends that an adversary proceeding was required, analogizing to bankruptcy.

"[T]he district court has broad powers and wide discretion to determine relief in an equity receivership," which "derives from the inherent powers of an equity court to fashion relief."[18] Yet this flexibility must still meet the minimum standards of due process.[19]

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[17] *In re Reynaud*, No. 23-30671, 2024 WL 1255455, *2 (5th Cir. Mar. 25, 2024) (holding that a court issuing attorney sanctions without an evidentiary hearing violated due process) (citing *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)).

[18] *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) (citing *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982) (other citations omitted); *see also SEC v. Cap. Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005) ("[A] district court's power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad.") (quoting *SEC v. Hardy*, 803 F.2d 1034, 1037 (9th Cir. 1986)).

[19] *See Basic Energy & Affiliated Res.*, 273 F.3d at 668 ("In exercising its equitable discretion . . . the district court must still provide the claimants with due process."); *see generally Cleveland Bd. of Educ. v. Loudermill,* 470 U.S. 532, 541 (1985) ("the Due Process Clause provides that certain substantive rights—life, liberty, and property—cannot be deprived except pursuant to constitutionally adequate procedures . . . . 'Property' cannot be

We find the analogy to bankruptcy persuasive:

> Courts often look to the related context of bankruptcy when deciding cases involving receivership estates. The district court here acknowledged that the purpose of bankruptcy receiverships and equity receiverships is essentially the same—to marshal assets, preserve value, equally distribute to creditors, and, either reorganize, if possible, or orderly liquidate.

Stanford Int'l Bank, 927 F.3d at 840–41 (cleaned up) (citation omitted). In particular, Federal Rule of Bankruptcy Procedure 7001(b)[20] applies as a persuasive but nonbinding example.

Equity receiverships historically preceded Chapter 7-style liquidations.[21] Given the "shared legal heritage" between equitable receiverships and bankruptcy and the fact that "federal equity receiverships were the predecessor to Chapter 7 liquidations and Chapter 11 reorganizations,"[22] the bankruptcy rules suggest a presumption of legitimacy for the procedures of equity receiverships. Indeed, there is plausibly some preemptive scope where Congress authorizes a body of bankruptcy procedure on top of the equitable receivership foundation.[23] But given that the standards of due pro-

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defined by the procedures provided for its deprivation . . .").

[20] "The following are adversary proceedings . . . . a proceeding to determine the validity, *priority*, or extent of a lien or other interest in property[.]" *Id.* (emphasis added).

[21] *See, e.g., Unisys Fin. Corp. v. Resol. Trust Corp.*, 979 F.2d 609, 611 (7th Cir. 1992) (stating that bankruptcy law is "parallel" and "instructive" in the receivership context); *see generally* Warner Fuller, *The Background & Techniques of Equity & Bankruptcy Railroad Reorganizations—A Survey*, 7 LAW AND CONTEMP. PROBLEMS, 377, 384 (1940) (tracing the rise of modern bankruptcy out of the limits of the equity receivership system).

[22] *Stanford Int'l Bank*, 927 F.3d at 841 (quoting *Janvey v. Alguire*, No. 3:09-CV-0724-N, 2014 WL 12654910, *17 (N.D. Tex. July 30, 2014) (citing *Duparquet Huot & Moneuse Co. v. Evans*, 297 U.S. 216, 221 (1936)), *aff'd*, 847 F.3d 231 (5th Cir. 2017).

[23] *See generally* Amy Coney Barrett, *Procedural Common Law*, 94 VA. L. REV. 813 (2008) (observing that the federal courts retain inherent powers over procedure); FED. R.

cess can be satisfied in multiple ways, and in light of the inherent flexibility of equitable proceedings,[24] we decline to say that these two regimes are coextensive. Let's put it this way: The Bankruptcy Rules of Procedure are one way to skin this cat.

The Eleventh Circuit faced similar fact patterns in *SEC v. Elliott* and *SEC v. Torchia*, which we find instructive as regards the summary nature of these proceedings.

In *Elliott*, a receiver appointed to manage distributions from the estate of a Ponzi scheme employed summary proceedings to resolve disputes over claims of the estate. 953 F.2d at 1566. The Eleventh Circuit held that summary proceedings are within the discretion of an equitable court, stating, "a district court does not generally abuse its discretion if its summary procedures permit parties to present evidence when the facts are in dispute and to make arguments regarding those facts." *Id.* at 1567. The court added that, to establish abuse, "appellants must show how they were prejudiced by the summary proceedings and how they would have been better able to defend their interests in a plenary proceeding." *Id.* The court concluded that the district court had abused its discretion with respect to a claim of fraudulent transfer where one party had requested a hearing, intervention, and limited discovery, but the district court had refused to grant any hearing on the disputed facts. *Id.* at 1568.

CIV. P. 2 ("There is one form of action — the civil action."); *compare* Note, *Equity & the Power of Procedural Supervision*, 137 HARV. L. REV. 1443–46 (2024) (discussing the Rules Enabling Act of 1934), *with* Pub. L. 88-623, § 1 (Oct. 3, 1964, 78 Stat. 1001) (codified at 28 U.S.C. § 2075) ("Bankruptcy rules," providing for the Supreme Court to prescribe uniform rules of procedure, and stating "All laws in conflict with such rules shall be of no further force or effect . . . .").

[24] *See generally* Henry E. Smith, *Equity as Meta-Law*, 130 YALE L.J. 1050 (2021).

In *Torchia*, the court faced a due process claim against a receiver's summary proceedings which was quite similar to UniBank's current claim. There, certain participants in a life insurance Ponzi scheme had purchased direct interests in the underlying life insurance policies, and so sought priority over a receiver's proposed *pro rata* distribution plan. *Torchia*, 922 F.3d at 1312. The court laid out its standard that "[s]ummary proceedings generally afford due process, and the district court does not abuse its discretion, so long as the investors are permitted 'to present evidence when the facts are in dispute and to make arguments regarding those facts,'" but that "such proceedings are inadequate 'when [the objecting investors are] deprived of a full and fair opportunity to present their claims and defenses.'" *Id.* at 1316 (quoting *Elliott*, 953 F.2d at 1567). The court summarized the district court's proceedings as follows:

> These determinations by the receiver and the orders entered by the district court were made without giving the [investors] sufficient notice and/or a meaningful opportunity to be heard. Even after the investors were given notice of the receiver's determinations and the district court's orders, the district court continued to use summary proceedings in adjudicating their claims and defenses. For example, as far as we can tell, the district court never expressly addressed the argument of [the appellants] that their interests were superior to those of the receiver. Instead, it merely pointed to the receiver's conclusion that [the Ponzi scheme vehicle] serviced the policies using comingled funds.

Id. at 1317.

While appealing to the totality of the circumstances, the court in *Torchia* specifically faulted (i) the receiver for not connecting his methodology of calculating the life insurance losses to specific evidence and (ii) the district court for citing a previous order and failing to adjudicate the appellants' claims and defenses while merely adopting the receiver's order. *Id.* at 1318.

It concluded, "We hold only that due process required the district court to more fully adjudicate the [investors'] claims and defenses."[25]

Distilling the *Elliott* and *Torchia* analyses, we can say that a district court supervising an equity receivership does not abuse its discretion where it affords a minimum of due process by (1) permitting the objector to present evidence when the facts are in dispute and to make arguments on those facts, (2) expressly adjudicating the objector's claims and defenses or adopting the receiver's determination thereof, and (3) minimally tracing conclusions of fact to evidence or requiring the receiver to do so. The problem here is that the district court rested entirely on the Receiver's laurels, and the Receiver doubly failed to overcome the objector's claims or adequately trace conclusions of fact to record evidence.

As to the claims, the Receiver offered minimal analysis in his R&R, stating, "UniBank was not making an SBA loan, and the adapted SBA loan documents cannot credibly be separated from the integrated set of revised CETA offering documents prepared by Kim, Zook, and Hill, which the UniBank Investors executed in order to invest in the CETA Ponzi scheme." Then after UniBank's fulsome response asserting its state law property rights of contract and perfected lien, the Receiver reiterated this cursory analysis in his reply, stating,

> As for UniBank's attempt to distance the loans from the overall CETA offering, it is simply impossible to say the UniBank loans

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[25] *Torchia*, 922 F.3d at 1318 (citing *Republic Nat'l Bank v. Crippen*, 224 F.2d 565, 566 (5th Cir. 1955)) (other citation omitted); *see also Crippen*, 224 F.2d at 566 (holding that the district court erred in refusing to hear the claims of certain creditors in a bankruptcy proceeding, and explaining that "the denial of due process . . . is never harmless error") (citation omitted); *Liberte Cap. Grp., LLC v. Capwill*, 421 F.3d 377, 384–85 (6th Cir. 2005) (holding that, under the due process clause, an investor was entitled to a hearing before the court authorized a receiver to seize proceeds from the investor's life settlement policy).

> are anything other than a part of the bundle of contracts that UniBank Investors entered into in order to invest in the Ponzi scheme. Obviously, they cannot be characterized as small business loans.

Perhaps recognizing the complexity, the Receiver even suggested in the reply that an evidentiary hearing could be conducted on those disputed facts, recommending,

> [I]f the Court believes it is relevant just how deeply UniBank's employees were involved in shaping the CETA contracts into supposed SBA loans, there is ample evidence that they were was [sic] deeply involved. If the Court determines there are factual disputes that require resolution, then the Court, under the above-cited procedural authorities, may decide to conduct an evidentiary hearing.

Yet instead of conducting any such hearing after UniBank had introduced 9,100 pages of evidence pertaining to its alleged property rights, the district court merely adopted the Receiver's concise analyses. Indeed, where the Receiver now argues that UniBank fails to show how it was "prejudiced by the summary proceedings" or "how [it] would have been better able to defend [its] interests in a plenary proceeding," *SEC v. Sharp Cap., Inc.*, 315 F.3d 541, 547 (5th Cir. 2003) (quoting *Elliott*, 953 F.2d at 1567), this point lacks merit where it was the Receiver himself who suggested that an evidentiary hearing could be appropriate. His analyses provide minimal factual tracing and depend only on his version of the record—regardless of whether it was a great version or a poor version.

In response, UniBank plausibly shows that it may have been prejudiced under *Elliott* and *Sharp Capital* by its inability to challenge any formal factual findings on 9,100 pages of record through, *e.g.*, an adversarial evidentiary hearing. And this is not merely a silent procedural violation, as there would be significant monetary harm in "erroneous deprivation" of UniBank's interests. *Mathews*, 424 U.S. at 335. UniBank also asserts that it "would have been better able to defend [its] interests in a plenary proceeding," *Elliott*, 953 F.2d at 1567, by specifically claiming that it would defend the legitimacy of its loans, such as they are, and by pointing to its alleged successes in the parallel proceedings in the Washington court (where UniBank is content with its process).

Taken together, the district court failed expressly to adjudicate the objector's claims, and the Receiver's adopted analysis failed adequately to determine them.

* * * * *

One might object that this recommended holding is inconsistent with our view of the burden of evidence, *supra*. But meeting the burden of persuasion is a question of fact for the district court, reviewed for plain error.[26] Questions of due process, by contrast, are legal questions reviewed *de novo*.[27] While the Receiver's impressionistic gloss of the facts adopted by the district court does not leave us with the "definite and firm conviction that a mistake has been committed,"[28] the distinct question of whether the district court's adoption of that characterization without any evidentiary hearing comports

[26] *Waste Mgmt., Inc. v. Kattler*, 776 F.3d 336, 339 (5th Cir. 2015) (regarding a contempt proceeding, "We review contempt findings for abuse of discretion, but 'review is not perfunctory.' Facts will be accepted as true unless clearly erroneous, but questions of law concerning the contempt order are reviewed de novo. A factual finding is 'clearly erroneous only if, viewing the evidence in light of the record as a whole, we are left with the 'definite and firm conviction that a mistake has been committed.'") (citations omitted).

[27] *Id.* ("Whether an alleged contemnor was afforded due process is a question of law we review de novo.") (citation omitted); *see also Santos-Alvarado v. Barr*, 967 F.3d 428, 439 (5th Cir. 2020) ("When considering a petition for review [from an administrative tribunal], we review constitutional issues—such as due process claims—de novo.").

[28] *Waste Mgmt.*, 776 F.3d at 339 n.3 (quoting *In re Grand Jury Proceedings*, 55 F.3d 1012, 1013 (5th Cir. 1995) (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948))).

with due process offers us greater latitude for review. This is a case in which the standard of review has bite.

Finally, we do not reach the issue of whether the district court could—as UniBank insists it could not—impair the state law security interests in approving the distribution plan. UniBank submits that "[A] receiver appointed by a federal court takes property subject to all liens, priorities, or privileges existing or accruing under the laws of the state.'"[29] UniBank naturally prefers that the Receiver convey the funds to Washington.

We observe that the district court purported to render the security interests and related contracts *void* and that that posture is distinct from taking property into the receivership estate subject, *e.g.*, to a tax lien or with two tiers of loans, one secured by receivables and the other general unsecured credit.[30] If the Receiver was correct that UniBank's secured interest emerged from the fraudulent SBA loans—as through Wan's and Sunny Kim's (two of UniBank's key employees directing SBA loans) (1) actively working to make the CETA loans SBA compliant, (2) working closely with the central conspirators Hill and Zook as well as other CETA employees to facilitate that nominal compliance, (3) walking through the advantageous tax assets of accelerated depreciation on the nonexistent real assets, (4) conducting diligence on the project, and (5) even knowingly participating in *two*

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[29] *SEC v. Stanford Int'l Bank, Ltd.*, 551 F. App'x 766, 770 (5th Cir. 2014) (quoting *Marshall v. People of State of N.Y.*, 254 U.S. 380, 385 (1920)).

[30] *See SEC v. Credit Bancorp, Ltd.*, 386 F.3d 438, 446 (2d Cir. 2004) ("[A] federal court receiver takes property subject to a perfected lien or other established priority right."); *see generally SEC v. Wells Fargo Bank, N.A.*, 848 F.3d 1339, 1344 (11th Cir. 2017) (where the receiver purported to entirely extinguish two loans secured by specific properties that were part of the receivership estate, stating "a federal district court has wide-ranging authority to supervise a receivership . . . [but] it does not have the authority to extinguish a creditor's pre-existing state law security interest").

other Ponzi schemes—then the district court would plainly be within its equitable powers to recognize those basic facts of life.[31] The loans would be entirely *unsecured* by fictious CCUs. And we doubt that the Receiver even purports to extinguish them, as distinguished from merely disregarding any priority they might enjoy in treating all the victims' claims *pari passu*.

VI.

In sum, at this stage of the case, we credit UniBank's argument on due process and hold that the summary proceedings provided insufficient process to UniBank. The Order is VACATED, and this matter is REMANDED for reconsideration or other proceedings consistent with the minimal requirements of due process in a flexible—but not infinitely malleable—equitable proceeding. But we emphasize that we place no limitation on what proceedings the district court may employ on remand or on what matters or issues it may consider. And we surely make no suggestion as to what rulings the district court may or should issue, either regarding UniBank's culpability or any other matter.[32]

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[31] *Cf. Armstrong v. Toler*, 24 U.S. 258, 271–72 (1826) ("Questions upon illegal contracts have arisen very often, both in England and in this country; and no principle is better settled, than that no action can be maintained on a contract, the consideration of which is either wicked in itself, or prohibited by law.") (MARSHALL, C.J.).

[32] We recognize that because of the announced resignation of the district judge who issued the Order, this matter will be assigned to a different judge.