

IN THE CHANCERY COURT OF LEWIS COUNTY, TENNESSEE
AT HOHENWALD

IN RE: SENTINEL TRUST COMPANY)
)
) DOCKET NO. 4781
)

**OBJECTION TO MOTION SEEKING APPROVAL OF THE SCHEDULE OF
CLAIM DETERMINATIONS AND APPROVAL OF THE METHODOLOGY
PROPOSED TO CALCULATE DISTRIBUTIONS ON ACCEPTED CLAIMS**

Comes now Sentinel Trust Company, by and through Danny N. Bates, its principal stockholder and director, and the other members of the Board of Directors of Sentinel Trust Company, objecting to the referenced Motion, a copy of which was received on or about January 30, 2006.

1. The basic methodology for establishing claims, their prioritization and proposed payment, appears to hinge on the presumption that trust funds are collectively the property of the estate of Sentinel Trust Company. In fact, trust funds should not be included as Sentinel's property. Only those assets owned by Sentinel Trust Company corporately may lawfully be seized and disposed of in the receivership action. Pursuant to the "Tennessee Uniform Trust Code," Public Acts, 2004, Chapter 537, Section 46, *Trust property is not subject to the personal obligations of the trustee even if the trustee becomes insolvent or bankrupt.* When a fiduciary corporation is placed under government control, its fiduciary accounts are not corporate property but still remain the property of the individual trusts. Consequently distribution of trust property to successor trustees or beneficiaries should not be made as if each account were on equal parity as depositors in and creditors of an insolvent bank.

2. According to various motions filed and entered with the Court since May 18, 2004, the Commissioner-in-Possession and his appointed Receiver have collected approximately \$20 million in cash from the disposal of trust property, paying therefrom about \$16.7 million to the holders of bonds of the affected bond issues, which were principally the several defaulted bond issues which Sentinel had nearly completed in collection prior to its seizure by the Commissioner of Financial Institutions. Furthermore, based on other motions filed and entered with the Court since May 18, 2004, the Commissioner-in-Possession and his appointed Receiver have retained about \$4 million from trust funds for their fees and expenses. With the exception of the proceeds from the sale of the Bellevue property, it appears that virtually all monies collected were trust assets and should not have been used to pay receivership fees and expenses. If those monies had been properly retained in the fiduciary cash account, there would appear to be a surplus of funds remaining after remittance of the approximately \$6.5 million due to successor trustees.
3. The approvals sought by the Commissioner-in-Possession and his appointed Receiver cite provisions of T.C.A. §45-2-1504 as their authority in filing the referenced motion. That statute deals specifically with the liquidation of state banks, the disposition of their assets and the priority of payment of claims thereof. The distributions which are the subject of the instant motion pertain to fiduciary accounts, not depositors and creditors of a state bank. Pursuant to T.C.A. §45-2-1504 (c), *As soon after the commencement of liquidation as is practicable, the commissioner shall take the necessary steps to terminate all fiduciary positions held by the*

state bank such action as may be necessary to settle its fiduciary accounts.

After the fiduciary accounts have been settled, the actions set forth in §45-2-1504 (d) through (h) may presumably ensue to completion. However, if fiduciary assets have been dissipated and diminished by the premature application of the fees and expenses authorized by the provisions of §45-2-1504(h)(1), it does not seem likely that the commissioner could comply with the mandated provision of the preceding T.C.A. §45-2-1504 (c) to settle the fiduciary accounts.

4. The Commissioner-in-Possession and Receiver have stated that the “focus of the proof of claim and payment procedures have been to address the deficiency that exists in the Pooled Fiduciary Account” resulting from expenditures Sentinel had made in connection with defaulted bond issues and related unreimbursed costs and expenses. If the Court permits the receivership action to consume trust assets prior to settlement of accounts with successor trustees, the deficiency cannot be resolved and the performing trust accounts transferred to successor fiduciaries will have been taxed to pay for the non-performing defaulted accounts and for the fees and expenses of the Commissioner-in-Possession and his appointed Receiver.
5. Pursuant to the provisions of T.C.A. §35-6-401(c) (3), a trustee shall allocate to principal “*Money received in total or partial liquidation of the entity*” and in T.C.A. §35-6-404, a trustee shall allocate to principal “*Money or other property from the sale, exchange, liquidation, or change in form of principal asset, including realized profit.*” The Receiver has collected approximately \$12.4 million from the disposition of defaulted