

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

trust assets, all of which should have been treated as trust principal cash and deposited into the fiduciary pooled fund account. Contrarily, there has been carved out about \$4 million for fees and expenses of the Receiver and Commissioner-in-Possession producing a shortfall of distributable funds. In seizing Sentinel Trust Company, the Commissioner-in-Possession justified his action by stating that the prior management of Sentinel Trust Company had advanced trust cash to collect on the property of defaulted bond issues, producing a deficit in the Pooled Fiduciary Account. Yet the Commissioner-in-Possession and Receiver have themselves diverted almost \$4 million of collected trust funds, not for advances necessary to prime the collection of trust assets but for their own use and benefit to the detriment of the issuers and beneficiaries of performing trust accounts.

6. In addition, Exhibit B to the Commissioner-in-Possession's and Sentinel Trust Receiver's Notice of Filing of Financial Information as of December 31, 2005, reveals that \$195,127.22 was collected from the liquidation of the Hilliard Lyons safekeeping account, which held about 26,111 shares of Sun Healthcare common stock received by Sentinel Trust Company as trustee for various bond issues out of the Sun Healthcare bankruptcy settlement and a \$25,000 municipal bond. The monies received from the Hilliard Lyon account were presumably proceeds of the sale of that stock, which should have deposited into the Pooled Fiduciary Account in partial liquidation of the unreimbursed expenses carried by the trustee. Prior to seizure, the Commissioner of Financial Institutions had declined to give Sentinel permission to sell those shares of capital stock held in trust and to

deposit the proceeds into the Pooled Fiduciary Account. Apparently the shares were subsequently sold at a lower price, with the proceeds being counted as "revenue" of the receivership, according to Exhibit B of the referenced motion. In addition, according to the aforesaid Exhibit B, approximately \$1,224,191.05 in collections from defaulted bond issues wherein overdrafts or receivables of the Pooled Fiduciary Account were recorded were also included as revenues of the Sentinel Trust Receivership. If these trust funds had been deposited into the Pooled Fiduciary Account, its balance at 12/31/2005 would have been approximately \$1.5 million greater than the \$3,749,369.82 reported, ignoring all else.

7. However, there was excluded from the report other amounts payable to the Pooled Fiduciary Account but kept by the Receiver for its fees and expenses from the collection of assets of defaulted bond issues, specifically, the Ft. Pierce and Hernando County, Florida issues, the Jefferson County, Arkansas, Lee County, Alabama and Tarrant County, Texas issues, in the total amount of \$1,375,264.02, representing the difference between what the Pooled Fiduciary Account was owed at the time of seizure by these accounts and what the Receiver actually credited to the accounts. If overdrafts charges applicable only to the Ft. Pierce, Hernando County and Tarrant County issues had also been computed and applied in accordance with Sentinel's schedule of fees and charges, an additional \$142,418.62 would have been retained in the Pooled Fiduciary from the collections from those three defaulted bond issues. If these funds had been properly deposited and retained in the Pooled Fiduciary Account,

its December 31, 2005 balance would have exceeded the total owed to the successor fiduciaries.

8. According to Exhibit A to the Commissioner-in-Possession's and Sentinel Trust Receiver's Notice of Filing of Financial Information as of December 31, 2005, the sum of \$680,017.52 was taken from the Pooled Fiduciary Account to make the June 1, 2004 payments to bondholders. The amount which should have been on deposit in the Pooled Fiduciary Fund at May 18, 2004 was reported to be \$9,745,933.77, derived by "adding all positive cash balances recorded on Sentinel's books plus vault checks" amounting to \$351,432.47. Without addressing the validity of the claims set aside for vault checks, it is apparent that the methodology does not appear to deduct the \$680,017.52 used for June 1, 2004 payments in establishing the denominator of the proposed fractional payment. To the extent that any of the vault checks represent a valid claim the priority of payment should be addressed by the provisions of T.C.A. §45-2-1504(j).
9. The successor trustees previously approved by the Court are owed \$6,469,864.17 in trust cash, and, as of December 31, 2005, there was reportedly \$3,749,369.82 being held in the Pooled Fiduciary Account. Nevertheless, from the inception of the receivership through the end of 2005, the Receiver has reported collecting \$20,217,636.20 in cash (virtually all of which should have been held in the Pooled Fiduciary Account as trust funds) from which \$16,786,721.35 was reportedly paid to bondholders. Given these figures, the Receiver should be holding presently about \$7.2 million in trust cash available to pay off amounts due to the successor trustees and other claimants.

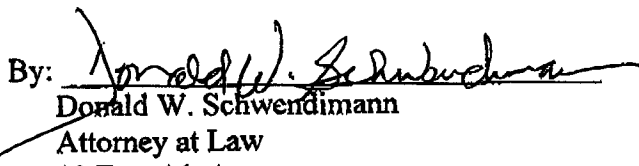
10. As of December 31, 2004, the Sentinel receivership was reportedly holding \$7,191,949.00 in cash, according to the 2004 Annual Report of the Tennessee Department of Financial Institutions, comprising \$2,462,793.00 held in the Pooled Fiduciary Account and \$4,729,156.00 in a separate bank account. The referenced Motion indicates that approximately \$3,749,369.00 is currently being held in the Pooled Fiduciary Account but no mention is made of other receivership funds being held in separate accounts. A complete accounting by independent professionals acceptable to the majority in interest of the successor trustees should be conducted so that all parties have full and accurate information to evaluate proposed payments and distributions. Neither the Court nor any affected party should be expected to make rational judgments involving trust funds based on incomplete information.
11. The Court is requested to require the Commissioner-in-Possession and his appointed Receiver to restore immediately the approximately \$4 million taken for receivership fees and expenses to the Pooled Fiduciary Account and appoint independent professionals acceptable to the majority in interest of successor trustees in order to ensure an equitable and just settlement of Sentinel's fiduciary accounts. We suggest that the Court consider requiring, from the collection of cash due to the trustee and/or collected by the Receiver in its fiduciary capacity, the payment priority to be, firstly, to the successor trustees of non-defaulting accounts in 100%, secondly, to beneficiaries or defaulted accounts after provision for and deduction of remaining advanced and accrued fees and expenses on defaulted accounts and, finally, from corporate income and assets of

Sentinel Trust Company to such other creditors or claimants as provided
by law.

WHEREFORE, these parties OBJECT to the grant of the such motion. If the
Court does not schedule a hearing after the expiration of time in which to object, these
parties reserve the right to schedule a hearing on these objections by notice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have faxed and mailed copies of the
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I, the undersigned, do hereby certify that I have **mailed** copies of the foregoing by depositing said copies in the U.S. Mails, postage prepaid, this 6th day of February, 2006, to:

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