

LAW OFFICES
SCHWENDIMANN & ASSOCIATES
12 EAST FOURTH AVENUE
P.O. BOX 366
HOHENWALD, TN 38462
TELEPHONE: (931) 796-1147 TELECOPIER: (931) 796-5692

DONALD W. SCHWENDIMANN
dwslaw@bellsouth.net

LARRY JOE HINSON, JR.
hinsonjoe@bellsouth.net

April 21, 2006

Honorable Jay Steven Stafford
Chancellor, Twenty-Ninth Judicial District
P.O. Box 1471
Dyersburg, TN 38025-1471

VIA FACSIMILE
(731) 286-8389
AND U.S. MAIL

Re: Sentinel Trust Company, Lewis County Chancery No. 4781

Dear Chancellor Stafford:

I am faxing herewith my clients' Response to your directive at the conclusion of the hearing in Hohenwald on April 12, 2006.

It is my understanding that after reviewing our response and the response of the Commissioner and Receiver, you will rule on whether Mr. Bates and/or the Board of Directors have standing in the matters before the Court and whether you will afford a hearing for the purpose of introducing evidence by oral testimony.

Yours very truly,

Schwendimann & Associates

By: 
Donald W. Schwendimann

DWS/lm

Enclosure

cc: Mr. Danny N. Bates
Ms. Janet Kleinfelter
Mr. Graham Matherne

IN THE CHANCERY COURT OF LEWIS COUNTY, TENNESSEE
AT HOHENWALD

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

**RESPONSE TO COURT'S ENUMERATION OF ITEMS FOR CONSIDERATION
IN CONNECTION WITH OBJECTIONS AND ANSWERS RELATED TO
METHODOLOGY FOR CLAIMS DETERMINATION AND PAYMENT OF
RECEIVERSHIP FEES AND EXPENSES**

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 Parties"), responding to the Court's ruling at the hearing of April 12, 2006 of items due for consideration by April 21, 2006, in connection with objections and responses made by the Objecting Parties, to wit: (i) authority for their standing to object to methodology for Claims determination; (ii) listing of specific topics as to which Danny N. Bates would testify; and, (iii) written argument or authority as to how the objections of Objecting Parties would affect the proposed methodology for claim determination.

A. BACKGROUND

Objecting Parties have requested permission of the Tennessee Supreme Court to appeal decisions by the Court of Appeals upholding rulings by the Lewis County Chancery Court approving the sale of the Bellevue property of Sentinel Trust Company and the give-away of Sentinel Trust Company's fiduciary accounts and business and the ruling by Davidson County Chancery Court that the decision by the Commissioner of Financial Institutions to seize and liquidate Sentinel Trust Company was justified. On

January 30, 2006 the Commissioner-in-Possession and Receiver filed with this Court their (1) Post-Receivership History of Sentinel Trust SunTrust Fiduciary Bank Account #4049233 (Pooled Fiduciary Account) as of December 31, 2005, (2) Sentinel Trust Receivership Schedule of Revenues, Expenses and Net Assets for the Period May 18, 2004 through December 31, 2005, and (3) Notice of Filing of Commissioner-in-Possession's and Receiver's Schedule of Claim Determinations and Approval of Methodology Proposed to Calculate Distributions of Accepted Claims. Objecting Parties timely filed Objections with the Court pointing to inadequacies perceived in the information necessary to permit informed judgment and the effect of the characterization of receipts from the sale or liquidation of trust assets as corporate assets of Sentinel Trust Company.

B. AUTHORITY FOR STANDING TO OBJECT

1. Pursuant to T.C.A. §45-2-1504(g), "Within twenty (20) days after the filing of the commissioner's schedule, any creditor, depositor or **stockholder** [emphasis added] may file an objection to any determination made." Danny N. Bates, one of the Objecting Parties identified above, is the principal stockholder of Sentinel Trust Company and therefore has, by statute, standing to object by virtue of stock ownership.

2. The Board of Directors of Sentinel Trust Company, joint and severally the Objecting Parties, is responsible for the exercise of its fiduciary powers and, pursuant to the provisions of T.C.A. § 45-2-402(d), "...shall not accept or voluntarily relinquish a fiduciary account..." and pursuant to T.C.A. § 45-2-402 (e), is responsible "...for the investment and disposition of property held in a fiduciary capacity." The Board of Directors of Sentinel did not voluntarily relinquish its trust accounts and has continually

objected to the disposition of property held in a fiduciary capacity for fees and expenses of the Commissioner and Receiver. Until all statutory directives have been complied with and the final accounting of the Receiver has been approved¹, the Board of Directors believes it has a continuing duty to object when it deems appropriate to the treatment of its fiduciary accounts, disposition of fiduciary assets and actions of the Receiver.

3. None of the Objecting Parties is a debtor or prospective debtor of Sentinel Trust Company. The Commissioner-in-Possession and Receiver have alleged that some or all of the Objecting Parties could be found liable for monetary damages and should therefore be construed as "prospective debtors" without standing to object.² However, the provisions of T.C.A. § 45-1-125 provide that "a director or officer...shall not be liable to the financial institution in receivership...or to the receiver, shareholders, depositors or creditors of the closed financial institution for money damages, unless the claim or action arises out of the breach of the director's duty of loyalty to the financial institution or for acts or omissions not in good faith or which involved intentional misconduct or knowing violation of the law by such director or officer during the director's or officer's term of office with such financial institution." T.C.A. § 45-2-127 further provides that, "Any claim for breach of a fiduciary responsibility of a financial institution or any officer or director thereof may only be asserted within the time provided in § 48-18-601."³ Inasmuch as the Commissioner of Financial Institutions assumed and exercised his authority to examine and supervise Sentinel Trust Company

¹ In re United Southern Bank, 718 S.W. 2d 251 (Tenn. 1986)

² Ibid.

³ T.C.A. § 48-18-601 provides in part, "Any action alleging breach of fiduciary duties by directors or officers...must be brought within one (1) year from the date of such breach or violation."

from and after July 1, 1999, having full and unfettered access to its corporate and fiduciary books and records for almost five years prior to the seizure of Sentinel Trust Company, any claim for damages, even if valid, would be time-barred.

4. The Memorandum and Order Dated April 13, 2005 of the Davidson County Chancery Court found that "The Commissioner acted to take possession and then to subsequently liquidate Sentinel because he contended that Sentinel 'had used pooled fiduciary funds to provide operating capital for non-related defaulted bond issues, thereby creating a fiduciary cash shortfall that greatly exceeds Sentinel's current operating capital...'"⁴ The Court concludes on page 32 that, "All this leads the Court to conclude that the facts support the conclusion of the Commissioner that an emergency existed and that the money in the pooled trust account belonging to the bond holders was in immediate threat if he did not act." The conclusions of the Court as set forth in the Memorandum and Order identified the cash shortfall in the Pooled Fiduciary Account as key justification of the Commissioner's action to seize and liquidate Sentinel Trust Company. The Objecting Parties contend that the subsequent characterizations of trust collections as assets of the corporation has resulted in the diversion of funds which should have been deposited into the Pooled Fiduciary Account, the effect of which deposit would have been a higher numerator of the proposed fractional distribution to claimants, and that no funds collected from the sale or liquidation of trust assets should be characterized as corporate assets of Sentinel Trust Company, when such funds had been identified as receivables on the records of Sentinel's Trust Department at the time of seizure.

⁴ Memorandum and Order Dated April 13, 2005, Walter C. Kurtz, Judge by Interchange, page 1, second paragraph.

C. SPECIFIC LIST AS TO WHICH DANNY N. BATES WAS PROPOSED TO TESTIFY

At the April 12, 2006 hearing, Counsel for the Objecting Parties had offered to call Danny N. Bates to answer questions in clarification of the securities ownership and registration issues discussed in the Response filed on April 11, 2006 in answer to the Reply of the Commissioner-in-Possession and Receiver to Objections filed on March 24, 2006. The specific list of items as to which Mr. Bates was prepared to testify are as follows:

- (1) the ownership in the Trust Department of Sun Healthcare common stock;
- (2) identification of the affected trust accounts and receivables related thereto;
- (3) the legal form in which the stock was initially registered and impact on marketability;
- (4) the subsequent transfer of the shares into marketable, "street name," form;
- (5) the deposit of the re-registered securities into the Hilliard Lyons safekeeping account; and
- (6) pre-May 18, 2004 request to sell Sun Healthcare common stock.

In addition, Mr. Bates would have answered any questions about the spreadsheet calculations attached as Exhibit B of the Response. Mr. Bates stands ready to answer such questions in person or by written affidavit, should the Court deem it appropriate, useful or necessary.

D. HOW OBJECTIONS MIGHT AFFECT METHODOLOGY OF CLAIM DETERMINATION

1. In short, the Objecting Parties have contended that funds collected from the sale or liquidation of trust assets held prior to May 18, 2004 were trust assets but a

significant portion of such funds have been diverted for post-May 18, 2004 receivership fees and expenses. Said Parties further contend that all funds collected from the sale or liquidation of trust assets should be deposited first into the Pooled Fiduciary Account to extinguish the pre-May 18, 2004 advances funded therefrom. To the extent that such deposits are made, the numerator of the proposed fractional payment would increase, resulting in higher payments for distribution.

2. Although the initial Objection has pointed out the implied double-counting of the amount used for June 1, 2004 bond payments, the March 24, 2006 Reply of the Commissioner-in-Possession and Receiver explained that the \$680,000.00 or so in question had already been deducted from the amount representing the proposed denominator of the fractional payment. The Objecting Parties had questioned the indicated denominator of the proposed fractional payment based on the information filed with the Court by the Receiver. The clarification by the Receiver in its Reply removes the basis for that part of its objection.

3. That part of the Objection involving the numerator of the proposed fractional payment has not been clarified however. With the May 18, 2004 balances of each trust account being available to the Objecting Parties and with the reports of deposits, collections, fees and expenses subsequently filed with the Court, the Objecting Parties were able to construct the spreadsheet detail previously identified as Exhibit B to the Response of April 11, 2006. The reconciliation of May 18, 2004 trust account balances with subsequent receipts and disbursements identified in various Motions and reports filed with the Court indicates that the amount reserved for "Vault Checks" had been netted from the reported balance of \$3,749,369.82 in the Pooled Fiduciary Account

as of December 31, 2005 and the Pooled Fiduciary Account had been deprived of approximately \$1,570,391.24 in deposits from collections of trust receivables due to it as of April 30, 2004, plus overdraft charges. These sums would obviously affect the determination of the numerator of the proposed fractional payments.

4. The first issue of concern to the Objecting Parties is how much in trust funds is deemed to be available for payment to rightful claimants of trust assets. If the Objecting Parties are correct in asserting that the proceeds collected from the liquidation of pre-May 18, 2004 trust assets comprise trust property, then neither they nor the Receiver have a corporate interest therein ranking higher in payment priority than reimbursement of the Pooled Fiduciary Account.

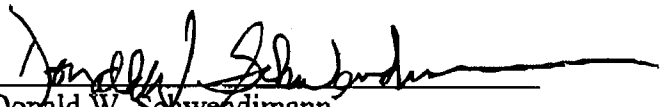
5. The Objecting Parties believe that the methodology for claim determination is deficient in that non-defaulted trust accounts are proposed to be dealt with as depositors in a failed bank and to be paid only after payment of the fees and expenses of the receivership and the Department of Financial Institutions. The claim determination was prioritized as set forth in T.C.A. § 45-2-1504 (h), which pertains to the liquidation of a state bank. The Objecting Parties submit that the whole statute means that the settlement of fiduciary affairs takes precedence, pursuant to paragraph (c)⁵, over the claim priority set forth in paragraph (h). Sentinel Trust Company is and was in fact a trust company, not a bank with loans, depositors and safe deposit boxes. Clearly the prioritization of claim determination has a bearing on the proposed methodology of the Commissioner-in-Possession and Receiver.

⁵ 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 and take such action as may be necessary to surrender all property held by the bank as a fiduciary and to settle its fiduciary accounts."

In conclusion, the Objecting Parties assert that they jointly and severally have standing to object and that the financial interests of the Commissioner-in-Possession and Receiver have been placed ahead of settlement of Sentinel's fiduciary accounts in connection with the claim priority determinations.

Respectfully submitted,

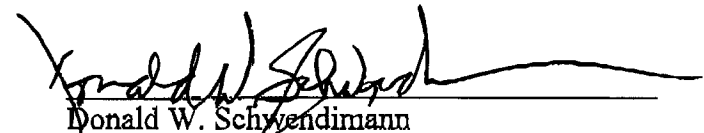
Schwendimann & Associates

By: 
Donald W. Schwendimann

Attorney at Law
12 East 4th Avenue
P.O. Box 366
Hohenwald, TN 38462
Tel: (931) 796-1147
Fax (931) 796-5692

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have **faxed** a copy of the foregoing to J. Graham Matherne, Attorney at Law, at (615) 256-1726 and to Janet M. Kleinfelter, Senior Counsel, at (615) 532-8223, this 21st day of April, 2006.


Donald W. Schwendimann

I, the undersigned, do hereby certify that I have mailed true and exact copies of the foregoing Response, by depositing said copies in the U.S. Mails, postage prepaid, this the 21st day of April, 2006, to:

J. Graham Matherne
Wyatt, Tarrant and Combs, LLP
2525 West End Avenue, Suite 1500
Nashville, TN 37203-1423

Janet M. Kleinfelter
Senior Counsel
Office of the Attorney General
Financial Division
425 Fifth Avenue North
P.O. Box 20207
Nashville, TN 37203

Thomas W. Hardin
Patrick M. Carter
102 West Seventh St., Suite 100
P.O. Box 929
Columbia, TN 38402-0929

David D. Peluso
106 East Main Street
Hohenwald, TN 38462

William B. Hubbard
Weed, Hubbard, Berry & Doughty
SunTrust Bank Building, Suite 1420
201 Fourth Avenue North
Nashville, TN 37219

James S. Chase
John A. Decker
Hunton & Williams, LLP
900 Gay Street, Suite 2000
P.O. Box 951
Knoxville, TN 37901

Carrol Kilgore
Moody, Whitfield & Castellarin
95 White Bridge Road, Suite 509
Nashville, TN 37205-1427

Larry Stewart
Stokes, Bartholomew, Evans & Petree
424 Church Street, Suite 2800
Nashville, TN 37219

James S. Hereford, Jr.
310 West College Street
P.O. Box 802
Fayetteville, TN 37334-0802

Diana M. Thimming
Roetzel & Andress
1375 East Ninth Street
One Cleveland Center, Ninth Floor
Cleveland, Ohio 44114


Donald W. Schwendimann