

**IN THE CHANCERY COURT OF HICKMAN COUNTY  
AT CENTERVILLE, TENNESSEE  
(Administrative Transfer from Lewis County Chancery Court)**

**IN RE:** )  
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SENTINEL TRUST COMPANY ) **CIVIL ACTION NO. 4781**  
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**COMMISSIONER-IN-POSSESSION AND SENTINEL TRUST RECEIVER'S MOTION  
FOR APPROVAL OF TRANSFER OF SENTINEL TRUST CORPORATE ASSETS TO  
THE SENTINEL TRUST RECEIVER'S TRUST ACCOUNT FOR USE IN PAYING  
PROPOSED SECOND PARTIAL DISTRIBUTION AND FOR ORDER GRANTING  
REQUEST TO BE ENTERED AS FINAL**

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**I. INTRODUCTION**

The Commissioner-in-Possession and Sentinel Trust Receiver, in a separate but contemporaneous motion, seek approval of a Second Partial Distribution in the Sentinel Trust Receivership. In conjunction with that motion, the Commissioner-in-Possession and Receiver also move the Court, herewith, to approve the transfer of an amount of Sentinel Trust corporate assets to fund the payments of the proposed Second Partial Distribution.

**II. RESPONSE DEADLINE AND HEARING DATE, IF NECESSARY**

Pursuant to Court Order entered August 8, 2006, any Response in Opposition to this Motion is to be filed on or before February 18, 2009. See Notice at end of Motion for specific instructions. If any Response in Opposition is filed, the matter will be heard at 9:30 a.m. on Friday, March 13, 2009 at the Hickman County Courthouse, Centerville, Tennessee.

### **III. BACKGROUND**

As was found in In re: Sentinel Trust, 206 S.W.3d 501 (Tenn. Ct. App. 2005), the insolvency of Sentinel Trust, and the need for the taking possession of that company, was caused by a multi-million dollar shortfall in Sentinel Trust's fiduciary/trust account. Id. at 510-12. That trust account was supposed to be where funds were deposited to be held in trust by Sentinel Trust, and used to pay the periodic principal and interest payments on various bond issues. However (and as found in In re: Sentinel Trust), Mr. Bates (and perhaps others) used the funds deposited into that trust account for purposes other than the purposes for which the funds were deposited. Id. at 524-25. These activities by Mr. Bates, and perhaps others, caused the multi-million dollar shortfall in the trust assets held by Sentinel Trust. Id.

A principal focus throughout the Sentinel Trust Receivership has been to address the shortfall created in the funds that were supposed to be held, in trust, by Sentinel Trust at the time of the institution of the receivership.<sup>1</sup> It has always been the position of the Commissioner-in-Possession and the Receiver that funds belonging to Sentinel Trust, as a corporate entity, in excess of what was needed to pay the expenses of the Receivership and asset collection efforts, were to be used to address the shortfall in the pre-receivership trust account – i.e., to pay the claims relating to the shortfall in amounts that were to have been held in trust.<sup>2</sup>

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<sup>1</sup> This focus, however, did not detract attention from obligations of liquidating collateral and paying bondholders of defaulted bond issues when the Commissioner-in-Possession and Receiver realized upon collateral of any particular defaulted bond issue.

<sup>2</sup> For instances of this consistent statement of position in this Receivership, see Motion for Approval of Transfer of Funds at p. 2 (filed June 9, 2005), Notice of Filing of Schedule of Claim Determination at p. 15 (filed January 31, 2006), and Filing Concerning 1) Whether Bates Had Standing to Object and 2) Whether Bates' Objections Impact Upon Proposed Methodology at p. 16 (filed April 24, 2006).

#### **IV. AMOUNTS AVAILABLE TO FUND SECOND INTERIM DISTRIBUTION**

Approximately \$400,000 (as of December 31, 2008) is held in a trust capacity by the Sentinel Trust Receivership.<sup>3</sup> Through the progression of the Sentinel Trust Receivership, and pursuant to various Orders of Court, funds from asset recovery efforts and defaulted bond collateral liquidations have been paid, as corporate assets, to the Sentinel Trust Receivership. The present total of these Sentinel Trust corporate assets is approximately \$1.15 million (as of December 31, 2008).

In the Commissioner-in-Possession and Receiver's Motion to Approve Partial Distribution, they propose payment of approximate \$1.0 million to the holders of approved claims arising from bond issues impacted by the shortfall in trust funds that were supposed to be on deposit at the institution of the Sentinel Trust Receivership. To fund that distribution, and to leave a reasonable amount as remaining in the Sentinel Trust trust account, the Commissioner-in-Possession and the Receiver request that \$650,000 of Sentinel Trust corporate assets be transferred to the Sentinel Trust trust account to be added to the approximate \$400,000 already there, to, in turn, fund the proposed Second Partial Distribution.

If \$650,000 of the Sentinel Trust corporate assets are transferred, approximately \$500,000 would remain as Sentinel Trust corporate assets which, in the good faith belief of the Commissioner-in-Possession and Receiver, would be an adequate reserve to address the sole remaining asset recovery effort -- i.e., the Lavender v. Bates action -- and to address the expenses of the Sentinel Trust Receivership estate through to, and including, the final distribution and closure of the matter.

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<sup>3</sup> This amount is comprised of the amount left over from the First Partial Distribution, plus interest earned on amounts that remained in trust earning interest from the time of ordered payments until the payment/distribution checks cleared.

## **V. COURT APPROVAL REQUESTED UNDER T.C.A. § 45-2-1504(a)**

The \$650,000.00, for which approval to transfer is sought, are corporate assets of Sentinel Trust. The source of these funds trace back to any number of transactions and asset recovery efforts wherein corporate assets were recovered – e.g., the sale of Sentinel Trust buildings, the receipt of Sentinel Trust fees and charges from liquidated collateral on defaulted bond issues, recovery upon a fidelity bond claim relating to injury caused by Mr. Bates’ activity, etc. Prior to a final disposition of an asset of the company in receivership (e.g., a sale or a release of a claim), the Commissioner-in-Possession and Receiver must obtain approval of the Court. T.C.A. § 45-2-1504(a). Therefore, it has been the position of the Commissioner-in-Possession and Receiver that a transfer of Sentinel Trust corporate assets for payment of claims should be based upon an order of the Court approving such transfer. See Sentinel Trust Receiver’s Motion for Approval of Transfer of Funds (filed June 9, 2005) and Order of Court (entered July 7, 2005) granting motion.

## **VI. NOTICE TO CLAIMANTS POTENTIALLY AFFECTED BY REQUESTED TRANSFER**

As also discussed in the Commissioner-in-Possession and Receiver’s Motion to Approve Second Partial Distribution, the claimants that filed Proofs of Claim that were approved in the Sentinel Trust Receivership proceedings fell into various prioritized groups (Classes 1-6) as required by T.C.A. §45-2-1504(h).<sup>4</sup> While some of the approximate \$1.0 million, that is requested to be paid in a Second Partial Distribution, would be used to address Class 1 claims,

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<sup>4</sup> Class 1 were claims relating to obligations incurred by the Commissioner-in-Possession; Class 2 were claims for wages by Sentinel Trust officers and employees (not to exceed \$600); Class 3 were claims relating to fees and assessments due to the Department of Financial Institutions; Class 4 were claims relating to holders of deposit to the extent of \$10 per deposit; Class 5 were claims made by all other claimants that were timely filed and Class 6 were late-filed claims.

because there are no pending Class 2, 3 or 4 claims, the bulk of those funds would be paid, pro rata, to Class 5 claimants.

By previous Order of Court (December 20, 2006 Order), Class 5 claimants were separated into two classifications: Class 5 and Class 5B. Class 5 claimants were claimants whose claims related to a bond issue and/or the shortfall in the trust funds that were supposed to have been on deposit at the time of the institution of the Receivership. Class 5B claimants were claimants who presented claims related to services rendered to Sentinel Trust as a corporate entity or to matters arising from Sentinel Trust's corporate activities. Also, by previous Order of Court (January 22, 2007 Order), the Court implicitly approved the recommendation of the Commissioner-in-Possession and Receiver that Class 5 claims be paid before Class 5B claims were paid.

The Commissioner-in-Possession and Receiver are requesting, in this Motion, that Sentinel Trust corporate funds be moved to a trust account to address claims made against trust account shortfalls. Arguably, this would reduce the amount of funds that, if ordered by the Court, could be paid to the claimants that have claims more directly against Sentinel Trust as a corporation -- the Class 5B claimants. Because of this situation, the Commissioner-in-Possession and Receiver will mail each Class 5B claimant a copy of this motion (with the included "Response Deadline and Hearing Date, if Necessary" section) so as to allow the Class 5B claimants the opportunity to respond.

All other Class 5 approved claimants will be mailed a notice, the form of which is attached as **Exhibit 1**, which will inform them of this Motion, the response deadline and hearing date (if necessary), and will refer them to the Tennessee Department of Financial Institutions website for full text of the motion.

**VII. REQUEST TO CERTIFY ORDER AS FINAL PURSUANT  
TO RULE 54.02 TENN. R. CIV. P.**

Because this Motion seeks the relief of approving the transfer of funds that will, in turn, be distributed to claimants, finality with regard to that transfer is needed. Accordingly, the Commissioner-in-Possession and Receiver request that the order approving the transfer of funds be entered as a final order under Rule 54.02 Tenn. R. Civ. P. and for the Court to expressly determine that there is no just reason for delay and instruct that such be entered as a final order/judgment in relation to the relief granted in that order.

**VII. CONCLUSION**

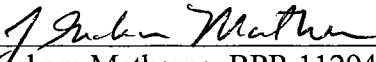
For the reasons set forth, the Commissioner-in-Possession and the Sentinel Trust Receiver request an Order be entered granting the relief requested herein and that such Order be entered as a final judgment on matters addressed therein. Rule 54.02 Tenn. R. Civ. P.

**\*NOTICE\***


**Responses in Opposition to this Motion are to be filed with the Clerk and Master's Office for the Chancery Court of Hickman County, Hickman County Courthouse, 104 College Street, Suite 202, Centerville, Tennessee 37033, with a copy mailed to undersigned counsel and to Honorable Walter C. Kurtz, 708 Metropolitan Courthouse, Nashville, Tennessee 37201, on or before February 18, 2009. Failure to respond to this Motion timely may result in the entry of an order granting the relief requested without further notice given. If Responses in Opposition are timely filed, the hearing on that/those Response(s) will be held at the Hickman County Courthouse in Centerville, Tennessee at 9:30 a.m. on Friday, March 13, 2009.**

This 4<sup>th</sup> day of February, 2009.

Respectfully submitted,

  
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J. Graham Matherne, BPR 11294  
Wyatt, Tarrant & Combs, LLP  
2525 West End Avenue, Suite 1500  
Nashville, Tennessee 37203-1423  
615.244.0020

*Counsel for Receivership Management, Inc.,  
Receiver of Sentinel Trust Company*

  
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Janet M. Kleinfelder (by G. Matherne  
of counsel)  
Senior Counsel/Special Litigation Division  
Attorney General's Office  
425 Fifth Avenue North,  
P.O. Box 20207  
Nashville, Tennessee 37243  
615.741.7403

*Counsel for Commissioner-in-Possession  
Greg Gonzales*

**CERTIFICATE OF SERVICE**

This is to certify that, on February 4<sup>th</sup>, 2009, a copy of the foregoing Motion has been sent by First Class U.S. Mail, postage paid, and by Federal Express as noted, to:

Donald Schwendimann  
12 East Fourth Avenue  
P.O. Box 366  
Hohenwald, TN 38462  
(via Federal Express)

Larry Stewart  
Adams and Reese/Stokes Bartholomew  
424 Church Street, Suite 2800  
Nashville, TN 37219

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

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

David D. Peluso  
P.O. Box 250  
Hohenwald, TN 38462-0250

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

This is also to certify that on February 4<sup>th</sup>, 2009, a copy of the foregoing has been mailed to each Class 5B claimant of the Sentinel Trust Receivership and also, or before February 5, 2009, will have been posted on the website of the Tennessee Department of Financial Institutions, and that by February 6, 2009, a copy of **Exhibit 1** hereto will have been mailed via First Class U.S. Mail, postage paid, to all approved Class 5 claimants.

  
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J. Graham Matherne

# Receivership Management, Inc.

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P. O. Box 2307 Brentwood, TN 37024 (615) 370-0051 Fax (615) 373-4336

## **NOTICE TO APPROVED CLAIMANTS OF THE SENTINEL TRUST COMPANY LIQUIDATION ESTATE**

You are receiving this Notice because you are an Approved Claimant in the Sentinel Trust Company liquidation proceedings.

Please take note that on or before February 6, 2009, the Commissioner of the Tennessee Department of Financial Institutions, as Commissioner-in-Possession ("Commissioner"), and the Sentinel Trust Company Receiver ("Receiver") filed with the Chancery Court for Hickman County, Tennessee at Centerville, Tennessee, a) Motion for Approval of Transfer of Sentinel Trust Corporate Assets for Use in Paying Proposed Second Partial Distribution. This filing requests approval to transfer \$650,000 of Sentinel Trust Receivership corporate assets to be used to fund a distribution of approximately \$1.0 million to the Class 5 claimants, pro rata. The Commissioner and Receiver, on February 6, 2009, also filed with the Chancery Court of Hickman County, Tennessee a Motion for Approval of Second Partial Distribution. This filing requests approval of the distribution of approximately \$1.0 million to the Class 5 claimants, as set forth in the exhibits attached to that filing. No payments are scheduled for the Class 5B claimants from this requested distribution.

You may view a copy of both filings and their exhibits by accessing the website of the Tennessee Department of Financial Institutions at [www.state.tn.us/financialinst/](http://www.state.tn.us/financialinst/).

**Please note that the deadline for filing written objections to either or both filings is Wednesday, February 18, 2009.** All written objections must be filed with the Court on or before that date at the following address: Clerk and Master's Office, 104 College Avenue, Suite 202, Centerville, Tennessee 37033. Copies of any written objection must also be a) received by Receivership Management, Inc., 783 Old Hickory Boulevard, Suite 255, Brentwood, Tennessee 37027, and b) mailed to Hon. Walter C. Kurtz, 708 Metropolitan Courthouse, Nashville, Tennessee 37201 on that date. **If written objection(s) is/are timely filed and served, a hearing on that objection/those objections will be held on Friday, March 13, 2009 at 9:30 a.m. at the Hickman County Courthouse (Chancery Court) in Centerville, Tennessee. If no written objection(s) is/are timely filed and served, a proposed Order granting each Motion will be presented to the Court for consideration and entry and may be signed and entered without further notice.**

Approved Claimants with questions about this Notice may contact the Receiver for Sentinel Trust Company at 615.370.0051.

Receivership Management, Inc. as Receiver  
for Sentinel Trust Company, in Liquidation

Dated: February 4, 2009

