

Liz Kramer
612.335.1927 **DIRECT**
liz.kramer@stinson.com

November 8, 2018

The Honorable Kevin W. Eide
Judge of District Court
Carver County Courthouse
604 East Fourth Street
Chaska, MN 55318

Re: *Response to Oct. 30, 2018 Order for Submissions*
Court File No. 10-PR-16-46

Dear Judge Eide:

I write on behalf of Stinson Leonard Street¹ in response to your Order for Submissions dated October 30, 2018. The Order for Submissions invited written responses to the Second Special Administrator's October 23, 2018 letter seeking clarification with respect to the appropriate scope of the Court's October 17, 2018 Order (the "Discharge Order"). Because mediation is scheduled to begin November 27 on the claims authorized by this Court, with pre-mediation statements due November 20, we ask that the Court clarify its Discharge Order and instruct Comerica to pay Stinson's fees by November 16, so that the parties and the Second Special Administrator know what potential claims need to be mediated in advance of writing their statements.

Stinson's Previous Briefing Did Not Seek Discharge for Itself

The briefing on the "Motion to Lift Stay of Discharge and Approve Payment of Attorneys' Fees and Costs" made clear that the Motion sought a discharge for Bremer Trust only. *See, e.g.*, July 16, 2018, Reply Memo at n.2 ("While the Court's language in its March 27, 2017 Order does refer to a discharge of both Bremer Trust and its agents, Bremer Trust's Memorandum in Support makes it clear that the relief Bremer Trust is seeking is solely that the Court lift the stay of discharge with respect to Bremer Trust itself.")

Therefore, while Stinson stands behind its work as part of the team assisting Bremer on the UMG Agreement, and believes the claims the Second Special Administrator has identified against Stinson lack merit, Stinson did not expect to be discharged at this time as part of the Court's Discharge Order. Unless the Court has analyzed the claims against Stinson and concluded they should not proceed,² the Discharge Order may be amended as indicated in the

¹ Stinson is writing separately, since no party has raised any question about whether Bremer Trust was discharged on October 17. The Second Special Administrator, in his October 23 letter, raised a concern whether Stinson and other "agents" of Bremer Trust were discharged.

² The letter Stinson filed on June 21, 2018, outlined some of the critical deficiencies in the Second Special Administrator's analysis of potential claims against Stinson.

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order proposed by Bremer Trust on November 6, 2018. We respectfully request the Court issue a clarifying Order before November 16, so that all parties know the universe of potential claims before mediation statements are due on November 20.

Stinson's Fees Should Be Paid Immediately

As part of its Motion to Lift Stay of Discharge, Bremer Trust sought the Court's approval for its outstanding attorneys' fees to the Stinson and Maslon firms. One Heir filed a generalized objection to that request (see July 16th submission of Mr. Bruntjen), citing the Court's authorization of claims against Stinson. Mr. Bruntjen made a similar argument during the hearing on July 19, 2018. No one made specific objections to any time entries of Bremer Trust's lawyers, or the hourly rates charged by those lawyers.

After considering the general objection, the Court rejected it and approved payment of the fees incurred by Bremer from February 1, 2017 through the July 19, 2018 hearing (to the extent they had not previously been approved). See Discharge Order. The Stinson fees approved by the Discharge Order do not involve Stinson's work on the drafting of the UMG Agreement.

Despite the Court's Order, Comerica has not paid the fees approved for Stinson and Maslon. In the past, Comerica had typically complied with the Court's orders requiring payment of attorneys' fees within 6-10 days.³ This time, more than three weeks have passed since the Court ordered payment. Our understanding is that the delay has been caused by two things: unrealized threats from Alfred Jackson's former counsel (Justin Bruntjen) that he may bring some type of motion for reconsideration of the Discharge Order; and now the "Emergency Motion For Relief" filed by Alfred Jackson's new counsel on November 6.

The Emergency Motion cites no rule or case law that authorizes the relief it seeks. It cites only Minn. R. Civ. P. 60.02 for its motion to stay, yet that rule specifically states that "a Rule 60.02 motion does not affect the finality of a judgment or *suspend its operation*." Minn. R. Civ. P. 60.02, emphasis added. While there are rules specific to staying enforcement of a judgment or order, i.e., Civil Rule 62.03 and Appellate Rule 108.02, those rules only authorize a stay if the moving party satisfies at least three conditions that Mr. Jackson's counsel have not satisfied: 1) filing a notice of appeal; 2) posting security; and 3) analyzing the factors identified in *Webster v. Hennepin County*, 891 N.W.2d. 290, 293 (Minn. 2017) ("whether the appeal raises substantial issues; injury to one or more parties absent a stay; and the public interest, which includes the effective administration of justice.").

Indeed, the factors outlined by the Minnesota Supreme Court in *Webster* do *not* support a stay of the Discharge Order in this case. This motion as well as the affidavits and invoices supporting it were filed July 5, 2018, four months ago. Mr. Jackson's counsel has never raised "substantial

³ For example, this Court filed its approval of submitted fees on January 31, 2017, and Comerica paid Stinson on February 9, 2017, the Court later filed its approval of submitted fees on April 5, 2017, and Comerica paid Stinson on April 11, 2017, and this Court filed its approval of submitted fees on November 1, 2017, and Comerica paid Stinson on November 8, 2017.

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issues" relating to Bremer's discharge or payment of its attorneys' fees, but only generalized objections that the Court rejected. Mr. Jackson will suffer no injury without a stay. The public interest, and the effective administration of justice, supports discharging Bremer Trust for its service that ended 22 months ago and paying the attorneys who represented it during that lengthy period of investigation.

As there is no legitimate basis to withhold payment, we ask that the Court deny the "Emergency Motion" and require the Estate to pay the fees ordered on or before November 16, 2018.

Respectfully submitted,

STINSON LEONARD STREET LLP



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