

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

**U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI
FILED
SEP 18 1997
CHARLENE J. PENNINGTON, CLERK
BY _____ DEPUTY**

IN RE:

CHAPTER 11

**NATCHEZ INTERNATIONAL
LIMITED PARTNERSHIP**

CASE NO. 95-03046WEE

**ATLANTIC HOLDINGS LIMITED
PARTNERSHIP AND
GENERAL INNKEEPING ACCEPTANCE
CORPORATION**

PLAINTIFFS

VS.

ADVERSARY NO. 97-0006WEE

**NATCHEZ INTERNATIONAL
LIMITED PARTNERSHIP**

DEFENDANT

Hon. Charles N. Wooten, Sr.
Charles N. Wooten Ltd.
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Attorney for Debtor in Possession

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Attorney for Debtor in Possession

Hon. Richard T. Bennett
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Attorney for Atlantic Holdings Ltd.
Partnership and General Innkeeping
Acceptance Corp.

Hon. Charles W. Broun, III
Holiday Inns, Inc.
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Acceptance Corp.

Hon. Daniel S. Bleck
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Attorney for Atlantic Holdings Ltd.
Partnership

Edward Ellington, Bankruptcy Judge

**SUPPLEMENTAL FINDINGS OF FACT
AND CONCLUSIONS OF LAW TO
MEMORANDUM OPINION DATED AUGUST 6, 1997**

This case is before the Court on the *Combined Motion for New Trial and Amendment of Findings* filed by Natchez International Limited Partnership in response to this Court's *Memorandum Opinion* and *Final Judgment* entered August 6, 1997 on the *First Application for Interim Compensation and Reimbursement of Expenses by Attorneys for the Debtor and Debtor in Possession* and the *Motion of Atlantic Holdings Limited Partnership and General Innkeeping Acceptance Corporation to Compel Debtor to Turnover Funds in the Debtor-in-Possession Account(s)*. In its motion for new trial and amendment to findings, Natchez International states that while the Court ordered that all cash collateral in the Debtor's possession, except for \$30,000, be turned over to Atlantic Holding Limited Partnership and General Innkeeping Acceptance Corporation, the Court did not find exactly which of the funds in the Debtor's possession amount to cash collateral.

After reviewing the evidence presented at trial and the Court's August 6, 1997, *Memorandum Opinion*, the Court finds that the motion for supplemental findings of fact and conclusions of law is well taken. Therefore, the Court makes the following supplemental findings of fact and conclusions of law as to whether all remaining funds in the Debtor's possession constitute cash collateral.

The Debtor filed its petition for relief on September 18, 1995. Shortly thereafter, Atlantic and GIAC filed a motion to prohibit the use of cash collateral, resulting in the execution of a stipulation dated October 4, 1995, among the Debtor, Atlantic and GIAC regarding the use of cash collateral. The October 4, 1995 stipulation provides in part as follows:

WHEREAS, pursuant to paragraph 7 of the Deed of Trust and pursuant to the Security Agreement, the Debtor has granted the Secured Parties a security interest in all cash collateral of the Debtor generated by and from the operations of the Hotel;

WHEREAS, any and all revenues generated by and from the operations of the Hotel are deemed cash collateral of the Secured Parties (the "Cash Collateral");

WHEREAS, the Debtor has no cash collateral or liquid assets with which it can operate its business, pay expenses, including its employees, other than through the use of the Secured Parties' Cash Collateral; and

WHEREAS, the Secured Parties have consented to the use of the Cash Collateral subject to the terms and conditions of this Stipulation.

In the October 4, 1995 stipulation, the Debtor stipulated that any and all revenues generated by and from the operations of the Hotel are cash collateral and may be used only under the terms of the stipulation. In its August 6, 1997 opinion, this Court found that Atlantic and GIAC hold a first priority security interest against virtually all of the assets of the Debtor.

Pursuant to the August 6, 1997 final judgment, the Debtor did return a portion of the funds in the Debtor's possession to the secured parties. However, the Debtor retained certain other funds, contending that those funds remaining in the Debtor's possession are not cash collateral. The Debtor has divided the remaining funds into three classes: money being held for the payment of trade accounts payable, reserve for the Mississippi State Tax Commission on an administrative claim, and funds received by the Debtor from refunds to the Debtor from utilities and workers compensation insurance.

First, the Court will consider whether those funds being held in reserve for the payment of trade accounts payable amount to cash collateral that should be returned to the secured parties. In accordance with the terms of the October 4, 1995 stipulation, the Court holds that those reserved funds for the payment of trade accounts are cash collateral. However, under the terms of the stipulation, the secured parties consented to certain uses of cash collateral. Therefore, the question remaining as to those funds is whether, under the terms of the stipulation, Atlantic and GIAC agreed to the Debtor's proposed use of those funds.

Paragraph 6 of the October 4, 1995 stipulation provides in part as follows:

The Debtor and/or the management of the Hotel, may utilize the Secured Parties' Cash Collateral solely to pay the reasonable, ordinary and necessary business expenses of the Debtor, limited to those expenditures specifically set forth in the budgets submitted to the Secured Parties on a monthly basis (the "Budget") and approved by such Secured Parties; the initial budget to be in accordance with those items provided for on Exhibit "A". The Debtor further agrees to provide the Secured Parties with its anticipated monthly expenses for the next succeeding month in the form of a Budget (which Budgets shall also be filed with the Court) at least two (2) weeks prior to the expiration of the current Budget. The Debtor further represents and warrants that the expenditures as set forth in any such Budget will be its reasonable, ordinary and necessary expenses. Further, any Budget submitted to the Secured Parties may be modified by agreement between the Debtor and the Secured Parties and any such modified Budget shall also be filed the Court.

By its terms, the stipulation expired on March 31, 1996. While the stipulation does provide for the use of cash collateral to pay trade accounts during the operation of the stipulation, the Debtor did not offer proof as to the specific time period for which the trade payables are attributable. The only evidence offered was an exhibit¹ showing the total amount held in reserve for the payment of

¹ See Exhibit A-1 to the hearing held February 28, 1997 on the *The First Application for Interim Compensation and Reimbursement of Expenses by Attorneys for the Debtor and Debtor in Possession* and the *Motion of Atlantic Holdings Limited Partnership and General Innkeeping Acceptance Corporation to Compel Debtor to Turnover Funds in the Debtor-in-Possession Account(s)*.

trade payables. The Debtor has not shown that the trade accounts payable, for which the funds are being held in reserve, are expenses for which cash collateral may be used under the terms of the stipulation. Therefore, the Court holds that those funds being held in reserve for the payment of trade payables should be turned over to the secured parties.

The Court will next consider whether those funds being held in reserve for payment to the Mississippi State Tax Commission are cash collateral to which the secured parties are entitled.

At the trial of this matter the Debtor offered no evidence to show that the funds held in reserve for the payment of the Mississippi State Tax Commission do not constitute the cash collateral of the secured parties or that the secured parties consented to the payment of the taxes. There was no evidence presented as to the nature of the taxes or the dates that the taxes became due. Therefore, the Court holds that those funds being held in reserve for the payment of the Mississippi States Tax Commission constitute cash collateral of Atlantic and GIAC. The Court will order that the Debtor pay those funds held in reserve for the payment of the Mississippi State Tax Commission to the secured parties without prejudice to any right that the Mississippi State Tax Commission may have to the funds under applicable law.²

The final class of funds in the Debtor's possession is made up of a refund from Mississippi Valley Gas Company, a refund from Entergy, and a refund from Service Industries, the Debtor's workers compensation carrier. The Debtor takes the position that these refunds do not constitute cash collateral of the secured parties.

² “[C]ongress has generally left the determination of property rights in the assets of a bankrupt's estate to state law.” Butner v. United States, 440 U.S. 48, 54 (1979).

The stipulation provides that "any and all revenues generated by and from the operations of the Hotel are deemed cash collateral of the Secured Parties." The question, therefore, is whether the refunds amount to revenues generated by and from the operations of the hotel.

The refund check from the workers compensation carrier indicates on its face that it is a refund for the 1995 and 1996 policy years, during which time the secured parties' security interest in the Debtor's cash collateral was in existence. Since the original premium was paid with cash collateral, the refunded premium also amounts to cash collateral.

The refund checks from Mississippi Valley Gas and Entergy do not indicate a date of payment for which the refund is attributable. Neither did the Debtor introduce any evidence at trial showing the dates that the sums refunded were originally paid. Without evidence showing that the amounts refunded were paid by the Debtor prior to the existence of the secured parties' security interest in the Debtor's cash collateral, the Court must find that the funds being held by the Debtor which are refunds from Mississippi Valley Gas Company and Entergy are cash collateral of the secured parties.

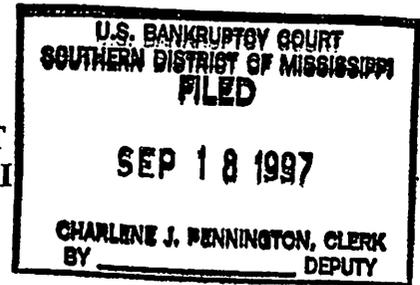
In conclusion, the Court finds that all of the funds remaining in the Debtor's possession amount to cash collateral of the secured parties, and in accordance with this Court's Final Judgment dated August 6, 1997, should be turned over to the secured parties.

A separate supplemental final judgment will be entered in accordance with Rules 7054 and 9021 of the Federal Rules of Bankruptcy Procedure.

This the 18th day of September, 1997.


UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
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PLAINTIFFS

VS.

ADVERSARY NO. 97-0006WEE

NATCHEZ INTERNATIONAL
LIMITED PARTNERSHIP

DEFENDANT

SUPPLEMENTAL FINAL JUDGMENT
ON THE FIRST APPLICATION FOR INTERIM COMPENSATION AND
REIMBURSEMENT OF EXPENSES BY ATTORNEYS FOR THE DEBTOR AND DEBTOR
IN POSSESSION AND THE MOTION OF ATLANTIC HOLDINGS LIMITED
PARTNERSHIP AND GENERAL INNKEEPING ACCEPTANCE CORPORATION TO
COMPEL DEBTOR TO TURNOVER FUNDS IN THE DEBTOR IN POSSESSION
ACCOUNT(S)

Consistent with the Court's ruling entered contemporaneously herewith on the *Combined Motion for New Trial and Amendment of Findings* filed by Natchez International Limited Partnership, it is hereby ordered and adjudged as follows:

1. All funds remaining in the possession of the Debtor after payment of the \$30,000 attorney fees to the law firm of Charles N. Wooten, Ltd. and Hon. Perry Brown constitute cash collateral of Atlantic Holdings Limited Partnership and General Innkeeping Acceptance Corporation;

2. As the remaining funds constitute cash collateral of Atlantic and GIAC, the Debtor shall immediately turn over said funds to Atlantic and GIAC in accordance with this Court's order dated August 6, 1997; and

3. Payment of said funds to Atlantic and GIAC shall be without prejudice to any right that the Mississippi State Tax Commission may have to the funds under applicable law. See Butner v. United States, 440 U.S. 48, 54 (1979).

SO ORDERED this the 18th day of September, 1997.


UNITED STATES BANKRUPTCY JUDGE