

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re

LOUIS J. PEARLMAN, et al.,

Debtors.

Case No. 6:07-BK-00761-ABB
Chapter 11
Jointly Administered

AGREED ORDER ON TRUSTEE'S EMERGENCY MOTION SEEKING: (I) TO COMPEL ANSWERS TO NUMEROUS DEPOSITION QUESTIONS; (II) TO COMPEL COMPLIANCE WITH COURT ORDERS IN REGARD TO DOCUMENT PRODUCTION; (III) TO CONDUCT AN IN-CAMERA INSPECTION OF ALLEGEDLY PRIVILEGED DOCUMENTS; (IV) TO APPOINT A COMPUTER EXPERT TO INSPECT, COPY AND SEARCH COMPUTERS; AND (V) FOR IMPOSITION OF SANCTIONS, INCLUDING CONTEMPT OF COURT

THIS MATTER came before this Court for hearing on October 15, 2007 on the Emergency Motion of Soneet R. Kapila, the Chapter 11 Trustee ("Trustee"), Directed to Reca Rene Chamberlain, Esq. ("Chamberlain") Seeking: (i) to Compel Chamberlain to Answer Numerous Deposition Questions; (ii) to Compel Chamberlain to Comply with this Court's August 21, 2007 Order Granting Trustee's Motion to Compel Deposition, Subpoena Compliance and for Sanctions (the "August 21, 2007 Order"); (iii) to Conduct an In-Camera Inspection of Unopened Mail Allegedly Belonging to One or More of the Debtors which Chamberlain Claims are Protected by the Attorney-Client Privilege; (iv) to Appoint a Computer Expert and Compel Chamberlain to Immediately Produce Her Laptop Computer, any Other Computers that she may have, Back-Up Disks and Other Electronically Stored Information ("ESI") Devices to the Expert for Inspection, Forensic Copying and Search; and (v) for the Imposition of Sanctions, including Specifically

Finding Chamberlain in Contempt of Court (Doc. No. 403) (the "Motion"). The Court makes the following Findings of Fact and Conclusions of Law after reviewing the pleadings, being advised of the agreement of Chamberlain, the Trustee and the Official Committee of Unsecured Creditors (the "Committee") to the contents of this Order, and being otherwise fully advised in the premises.

FINDINGS OF FACT

1. On March 1, 2007, Tatonka Capital Corporation, Integra Bank, American Bank of St. Paul and First National Bank & Trust Company of Williston (collectively, the "Petitioning Creditors") filed an involuntary petition under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") against Trans Continental Airlines, Inc. (Case No. 6-07-bk-00762-ABB) and Louis J. Pearlman (Case No. 6-07-bk-00761). The Petitioning Creditors filed an emergency motion seeking the appointment of a chapter 11 trustee (Dkt. No. 5) in the TCA and Pearlman cases.

2. On March 7, 2007, Roberta D. Jordan, David D. Mathis and Beverly Mathis ("Trans Continental Records Petitioning Creditors") filed against Trans Continental Records, Inc. (Case No. 6-07-bk-00832-ABB) an involuntary petition under Chapter 7 of the United States Bankruptcy Code with this Court. On April 4, 2007, the Trans Continental Records Petitioning Creditors revised the relief by filing a Motion to Convert the Chapter 7 Petition to one under Chapter 11 (Dkt. No. 18). The Trans Continental Records Petitioning Creditors also filed a Motion to Appoint Chapter 11 Trustee (Dkt. No. 19).

3. In each of the involuntary cases, the debtor did not contest the petition and order for relief was entered.

4. Gerald A. McHale, Jr. (the "Receiver"), was appointed as a state court receiver of all the assets and properties of Trans Continental Airlines, Inc., Trans Continental Airlines Travel Service, Inc., Trans Continental Enterprises, LLC a/k/a Trans Continental Enterprises, LLC and Louis J. Pearlman Enterprises, LLC on February 2, 2007 ("the Receivership Order") in a proceeding in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida Civil Division (Case No.: 48-2006-CA-0111136-0) (the "State Court Action"). The Receivership Order was entered in response to the Verified Motion and Verified Complaint filed by the State of Florida, Office of Financial Regulation in the State Court Action.

5. The Receivership Order includes a provision specifically giving Mr. McHale, the Receiver, the authority to file voluntary petitions under Title 11 of the United States Code for the receivership entities. On February 22, 2007, the state court expanded the scope of the Receivership Order, the related injunctions and the Receiver's powers over additional defendants, including but not limited to, Louis J. Pearlman Enterprises, Inc. and Trans Continental Studio, Inc.

6. The Receiver filed voluntary chapter 11 petitions in this Court for Louis J. Pearlman Enterprises, Inc. (Case No. 6-07-bk-01505-ABB) and Trans Continental Studios, Inc. (Case No. 6-07-bk-01504-ABB) on April 18, 2007.

7. On May 3, 2007, the Receiver filed a voluntary chapter 11 petition for relief for Louis J. Pearlman Enterprises, LLC (Case No. 6-07-bk-01779-ABB).

8. On May 8, 2007, Trans Continental Television Productions, Inc. filed a voluntary petition under Chapter 11 of the United States Bankruptcy code with this Court (Case No. 6-07-bk-01856-ABB).

9. This Court has entered an Order Granting Application for Authority to Appoint Chapter 11 Trustee, Soneet R. Kapila, in each of the following cases: Louis J. Pearlman, Bankruptcy Case No. 6-07-bk-00761-ABB on March 30, 2007 (Dkt. No. 46); Trans Continental Airlines, Inc., Bankruptcy Case No. 6-07-bk-00762-ABB on March 30, 2007 (Dkt. No. 31); Trans Continental Records, Inc., Bankruptcy Case No. 6-07-bk-00832-ABB on March 25, 2007 (Dkt. No. 52); Trans Continental Studios, Inc., Bankruptcy Case No. 6-07-bk-01504-ABB on March 25, 2007 (Dkt. No. 21); Louis J. Pearlman Enterprises, Inc., Bankruptcy Case No. 6-07-bk-01505-ABB on March 25, 2007 (Dkt. No. 17); Louis J. Pearlman Enterprises, LLC, Bankruptcy Case No. 6-07-bk-01779-ABB (Dkt. No. 41); and Trans Continental Television Productions, Inc. case, Bankruptcy Case No. 6-07-bk-01856-ABB (Dkt. No. 15). (Hereinafter, the debtors listed in this paragraph shall be referred to individually as the “Debtor” and collectively as the “Debtors.”)

10. The Debtors’ bankruptcy cases have been consolidated for procedural purposes and joint administration under the caption In re Louis J. Pearlman, Case No. 6-07-bk-00761-ABB.

11. On May 16, 2007, the Office of the United States Trustee for Region 21 (the “UST”) filed a Notice of Appointment of the Committee in Trans Continental Airlines, Inc., Case No. 6-07-bk-00762-ABB, to represent all unsecured creditors

pursuant to section 1102 of the Bankruptcy Code (Dkt. No. 95, Case No. 6-07-bk-00762-ABB).

12. The Trustee discovered that Chamberlain served as counsel to Pearlman and other entities owned, controlled or related to the Debtors (the “Pearlman Entities”) on various matters and, as such, may be in possession of documents related thereto, including in respect of assets of the Pearlman Entities. Further to the Trustee’s efforts to obtain all records related to the affairs of the Debtors, as well as to investigate fully all potential assets and claims the estates may have, on April 11, 2007, the Trustee sent Chamberlain a turnover demand letter via U.S. mail to her P.O. Box, which is the address that Chamberlain maintains with the Florida Bar.

13. Chamberlain claims not to have received said letter. The Trustee thereafter mailed Chamberlain a follow-up letter to her P.O. Box, again demanding turnover of the documents and information related to her representations of the Pearlman Entities. Chamberlain claims not to have received the follow up letter as well.

14. Thereafter, on April 30, 2007, the Trustee filed a Motion to Compel Turnover of Documents Relating to Property of the Estate (the “Motion to Compel”) against Chamberlain because the Trustee did not receive any response from Chamberlain to the turnover letters. The certificate of mailing of the notice of hearing (Dkt. 119) reflects service of the notice of hearing on Chamberlain’s P.O. Box. On July 16, 2007, this Court entered an Order (the “July 16, 2007 Order”) granting the Motion to Compel as it related to Trans Continental Airlines, Inc. and denied it without prejudice as to the

Debtor. Chamberlain asserts she did not receive the Motion or Notice of Hearing on same.

15. In connection with his investigation, the Trustee also issued a 2004 examination notice and Subpoena seeking Chamberlain's deposition and the production of documents in connection therewith. There is a dispute between the Trustee and Chamberlain as to whether or not said subpoena was properly served.

16. The Trustee asserts that the date and time for the examination and production were agreed to in advance by Trustee's counsel and Chamberlain. Chamberlain disputes that and further asserts that she was precluded from attending the examination due to certain unexpected medical needs of a family member. Chamberlain asserts she left a message for Trustee's counsel relative to the emergency, which message the Trustee's counsel asserts was never received. The examination was to commence on August 3, 2007, with documents to be produced on July 30, 2007.

17. On July 30, 2007, certain documents were produced by Chamberlain in response to the July 16, 2007 Order. At such time, Chamberlain asserts that she advised that the production was not yet completed. Chamberlain asserts that based on the medical emergency she did not appear for her examination.

18. As a result, on August 3, 2007, a Certificate of Non Appearance was taken at the examination. Thereafter, the Trustee filed his Motion to Compel Deposition, Subpoena Compliance, and for Sanctions against Chamberlain (the "Motion to Compel"), which Motion to Compel was granted in the August 21, 2007 Order. Chamberlain asserts

that she does not recall receiving the Motion to Compel or the corresponding Notice of Hearing.

19. Specifically, the August 21, 2007 Order required Chamberlain to:
 - a. produce within 7 days all responsive documents to the Trustee's Rule 2004 Examination and Subpoena Duces Tecum dated July 10, 2007 (the "Subpoena");
 - b. produce within 7 days a privilege log; and
 - c. appear for her deposition.

20. On August 21, 2007, Chamberlain was sent via email and U.S. Mail the August 21, 2007 Order. In addition, the Trustee mailed Chamberlain a Second Notice of Rule 2004 Examination. Trustee asserts Chamberlain failed to produce any documents or a privilege log as required by the dates set forth in the August 21, 2007 Order.

21. Thereafter, on September 7, 2007, the Trustee conducted the 2004 examination of Chamberlain. At the beginning of the scheduled Rule 2004 examination, Chamberlain provided a document purporting to be a privilege log (the "Privilege Log") to the Trustee's counsel and she produced approximately 2,000 pages of documents.

22. The Privilege Log is comprised mostly of unopened mail forwarded to Chamberlain after Pearlman left the country. Chamberlain asserts that she was not sure of her duty and the related issues concerning the privacy rights and Fifth Amendment privileges of the Debtor, as well as that pertaining to attorney-client privilege, and therefore Chamberlain asserts that she attempted to preserve the Debtor's rights in the Privilege Log. Unable to reach resolution on the privilege assertion at the deposition with Chamberlain, the Trustee agreed with Chamberlain to hold the unopened mail in a

secure box until such time as this Court can conduct an in-camera inspection of such items, subject to notice and an opportunity to be heard to the Debtor and his criminal counsel.

23. During the 2004 examination, Chamberlain asserted that she exercised her client's right when she refused to answer questions posed by the Trustee's counsel based on her former client's alleged attorney-client privilege.

24. Chamberlain also testified that her laptop computer which contained responsive documents to the Subpoena was lost and/or stolen. According to Chamberlain, she did not know where the computer was lost or stolen on August 9, 2007 and it could have been lost or stolen in three cities she claims to have traveled through on the date in question. Chamberlain also testified that since she was unable to state the precise location of the theft, and due to her deductible and the replacement cost, she did not file a police report for insurance purposes for fear of being charged with filing a false police report.

25. Chamberlain further testified that she "backed-up" her laptop with approximately 15-16 back-up disks which are currently in her custody and control. At her deposition, the Trustee attempted to work with Chamberlain to develop an acceptable method to secure and preserve the information contained on such disks which relate only to the Debtors. The Trustee offered several possible alternatives, including delivery of the disks to the Court for an in-camera inspection. In all instances, Chamberlain refused claiming that there were privilege issues and private and confidential documents pertaining to her other clients not related to these proceedings.

26. Chamberlain also testified that she had in her possession in May or June of this year (after the petition date) a box of documents which may have included financial information of the Debtor or one or more Pearlman Entities, which she delivered to a man at Pearlman's request. Chamberlain described the man during her deposition as a courier. Chamberlain testified that Pearlman contacted her and directed her to take such records to a person who would contact her. She testified that she was contacted by a man who had a British or Australian accent. Chamberlain asserts in her deposition that the man became lost and so Chamberlain met him on the side of the road and delivered the box of records to him. She did not keep a copy of such records, she did not know the man's name, she does not know or remember the man's phone number or for that matter anything other than he had a British or Australian accent. The Trustee is investigating this further and Chamberlain is searching her records to see if she retained the man's phone number.

27. This Motion followed and based upon the agreement reached between the Trustee, Chamberlain and the Committee, accordingly, it is

ORDERED, ADJUDGED AND DECREED that on or before October 22, 2007 (or a later date only if agreed to in writing by the Trustee), Chamberlain shall (i) fully and completely comply with this Court's August 21, 2007 Order, including, but not limited to, producing all documents responsive to the Rule 2004 subpoena; (ii) produce all documents responsive to the turnover demand letter (except the list of representations referenced in the turnover demand letter, which shall be provided on or before October 29, 2007); and (iii) produce all back-up disks for her laptop computer and all ESI Devices (as defined below) in the manner set forth herein; and it is further

ORDERED, ADJUDGED AND DECREED that this Court will conduct an in-camera inspection to ascertain the validity and applicability of the privilege asserted for the items identified in the Privilege Log. The Trustee is directed to serve this Order upon R. Fletcher Peacock, Esq., as criminal counsel for Louis J. Pearlman. A copy the Privilege Log will accompany the Trustee's Certificate of Service of the Order to Mr. Peacock, who shall have five (5) business days thereafter in which to file any motion or pleading regarding same; and it is further

ORDERED, ADJUDGED AND DECREED that at the request of the Trustee, the Court hereby appoints Andrew Reisman and Litigex, Inc. ("Litigex"), to serve as the Court's expert to carry out the authorized inspection, copying, search and disclosure only as specified herein. Litigex shall serve as a third party confidential expert and is not an agent of or professional for the Trustee or the estate. The Trustee will assume initial responsibility for the payment of Litigex' fees, but reserves his right to seek an award from Chamberlain for reimbursement or payment of all such fees and costs. Chamberlain reserves all rights to contest same; and it is further

ORDERED, ADJUDGED AND DECREED that Litigex' inspection, copying, search and disclosures shall be conducted pursuant to the following procedure to preserve the confidentiality, privacy rights and privileges, if any, of Chamberlain and any third parties, including Pearlman, whose information may be included on the computers and other ESI devices:

- a. Chamberlain shall deliver to Litigex in Orlando, Florida on or before October 22, 2007 her Laptop Computer, any Other Computers that she may have and all original back up disks in Chamberlain's possession or control, and all other electronically stored information ("ESI") devices

(“ESI Devices”) within her possession or control, including, without limitation, blackberries, telephones, PDAs, flash drives, thumb drives, hard drives, disks or diskettes or other computer storage data, without deleting, destroying or modifying any data pertaining to the Debtors or any Pearlman Entities contained therein from or after October 15, 2007 at 12:00 p.m., and Litigex shall maintain the confidentiality of the information in accordance herewith;

- b. Litigex shall maintain the ESI in strict confidentiality, and shall not disclose this information to anyone except pursuant to this Order and further orders of the Court (upon notice and hearing), provided however that Litigex shall disclose to the Trustee and his professionals any and all documents related to the Debtors and/or Pearlman Entities that are not included in the privilege log to be provided by Chamberlain as contemplated herein. The Trustee shall be permitted to disclose all information he receives pursuant to this Order to the Committee and its professionals;
- c. Litigex’ review of privileged ESI shall not constitute a waiver of any right or privilege;
- d. Litigex shall inspect and make a forensic copy of all of Chamberlain’s computers, back-up disks, and any other ESI devices, and Chamberlain shall have the right to observe the copying directly or through an agent. Litigex shall maintain exclusive control and custody of those copies pursuant to the terms of this Order or further orders of the Court;
- e. Chamberlain shall cooperate fully to facilitate Litigex’ services hereunder, including provision of written notice within two (2) days prior to delivery of the cell phone(s) and laptop(s) hereunder, the exact model and make of the cell phone(S) and laptop(s) to be produced hereunder. The originals of the computers, all back-up disks, and any other ESI devices shall be promptly returned to Chamberlain’s control upon Litigex’ completion of its inspection and copying. All of the foregoing shall be returned to Chamberlain as soon as reasonably possible, and with respect to the laptop, disks and cell phone within seven business hours of presentment;
- f. Within ten days of the inspection and copying of each item of computer equipment and ESI Devices produced by Chamberlain, Litigex shall provide a report to the Trustee describing the computer equipment and ESI Devices Chamberlain produced and Litigex’ actions with respect to each piece of the computer equipment and ESI Devices. This report shall only include a detailed description of each piece of computer equipment and ESI Devices inspected and copied by Litigex, including the name of the

manufacturer, model number, serial number, and the first use and operation of the computer equipment and other ESI Devices;

- g. Once Litigex has created confidential forensic copies of Chamberlain's computers, back-up disks and other ESI Devices, it shall search and recover from the copies all available word-processing documents, incoming and outgoing email messages, text messages, PowerPoint or similar presentations, spreadsheets, web files, and all other non-program information files, including but not limited to those files that were "deleted" or encrypted or otherwise made difficult to locate or access. Litigex shall then search these files to determine which contain information that in any way relates to the Debtors or the Pearlman Entities; the terms of said search shall be developed by the Trustee in consultation with Litigex, or otherwise as may be ordered by the Court (the "Search"). This shall be broadly construed pursuant to Rule 26(b)(1) Fed. R. Civ. P. Once developed, the final Search terms utilized shall be provided to Chamberlain through her counsel via email, provided, however, that Chamberlain shall not have any right to modify or change the Search terms, unless otherwise ordered by the Court upon her application. Litigex may consult with the Trustee's attorneys as needed to conduct the Search, but as part of the Search process, shall not disclose the contents of any information, data, files or documents. Chamberlain shall receive copies of all written and electronic communication involving Litigex and the Trustee (and/or their agents);
- h. After the recovery and responsiveness Search has been completed, Litigex shall provide to Chamberlain a copy of the electronic documents recovered that Litigex determined may relate to the Debtors or the Pearlman Entities (the "Responsive Documents"). Litigex at this time shall also provide to Chamberlain and the Trustee (1) a directory print out listing all of the files produced to Chamberlain, including the directory structure; (2) the alphanumeric hash values of those files tied to the directory printout; and (3) to the extent possible, a report as to where each file was originally located, the type and character of ESI involved, and when any files were created, accessed, copied, or deleted, and information about the deletion or any deleted files that could not be recovered, or information as to any files that were disguised, encrypted or password protected. The contents of the files and data produced shall not be included in this Litigex report. Litigex shall also provide the Trustee with notice of when the set of Responsive Documents and data were provided to Chamberlain;
- i. Litigex shall at the time specified below destroy all information, data and files not included in the Responsive Documents, and shall provide a

certification of this destruction to the Court, with a copy to Chamberlain and the Trustee, which shall also confirm that no copies have been retained or published. The destruction and certification shall be made 365 days after Chamberlain serves her final privilege log on the Trustee as provided below, unless Litigex receives notice from the Trustee that there is a motion or order pending, including an appeal, that in any way pertains to Litigex' work hereunder, or any of the ESI produced or copied by Litigex. If there are any such motions or orders then pending, then Litigex shall delay its destruction and certification until 30 days after it receives notice from the Trustee or Court that no such motions or orders are still pending. The destruction and certification herein does not pertain to the copies of the Responsive Documents. Litigex shall preserve and maintain its copies of these Responsive Documents in accordance with the provisions hereof until further order of the Court;

- j. Within ten (10) days of the receipt of the Responsive Documents and data, Chamberlain shall complete a review of the records for privileges. Upon the expiration of said time frame (unless extended by agreement of the Trustee in writing) Chamberlain shall produce to the Trustee all documents and other ESI that Litigex produced to her, except only those documents that she claims are privileged. They will be produced in original native form on CD's, unless there is a claim of partial privilege as to a document, in which case these particular documents only may be printed and redacted and produced in paper form. As to any documents that Chamberlain claims a privilege, she shall within the next five (5) business days produce a full and complete privilege log. The log shall list each file to which she claims a privilege, and as to each shall expressly and in detail describe "the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection." Fed.R.Civ.P.26(b)(5)(A). Any document contained in the Responsive Documents that is not listed on the privilege log shall not be privileged and shall be produced by Chamberlain within the time frame proscribed above;
- k. Once the Trustee has reviewed the documents produced by Chamberlain, as well as the privilege log, if the Trustee raises a dispute as to any of the documents by providing a basis for challenging the claim of privilege, or for believing that there are further relevant documents, the Trustee shall request this Court to conduct an in-camera inspection on an expedited basis, and Chamberlain hereby consents to such in camera inspection.

- l. Trustee reserves all rights to challenge all issues of privilege, including without limitation, the alleged attorney client privilege Chamberlain claims with respect to Pearlman, and Chamberlain's and Pearlman's right to contest same is fully preserved.
- m. Litigex and Andrew Reisman consent to the jurisdiction of this Court for all purposes relating to this particular order, including relative to any violation of the provisions hereof and any corresponding issues regarding sanctions and/or contempt.
- n. Chamberlain shall not destroy any original documents or ESI pertaining to the Debtors or any Pearlman Entities during the same time period, as the same may be extended, set forth in subsection i. above applicable to Litigex' obligation to destroy ESI, data and files not included in Responsive Documents.

ORDERED, ADJUDGED AND DECREED that Chamberlain shall appear for her 2004 examination at the law offices of Trustee's special litigation counsel, in Ft. Lauderdale, Florida on not less than ten (10) business days' notice from the Trustee, said notice to be delivered no earlier than October 20, 2007, and Chamberlain consents to such 2004 examination being recorded on videotape. Service of such notice upon Chamberlain at the address listed below shall be deemed good and sufficient service of all notices contemplated by this Order, unless Chamberlain advises the Trustee in writing of a different address to be used for such purposes. To the extent that Chamberlain asserts any privilege at her videotaped 2004 examination, this Court shall oversee those 2004 examination questions in person or by telephone as elected by the Trustee or this Court within ten (10) business days and with notice to the parties. Trustee shall make a reasonable effort to schedule the hearing on a mutually agreeable date and time;

ORDERED, ADJUDGED AND DECREED that the Court reserves jurisdiction to determine any request for the award of the fees and costs associated with this Motion

and Order, as well as any other motions filed by the Trustee seeking turnover of estate property and/or Chamberlain's compliance with this Court's Orders, as well as other possible contempt sanctions against Chamberlain, provided, however, that all of Chamberlain's rights are reserved, including her ability to challenge or otherwise oppose same including any rights she may have relative to all prior orders.

DONE AND ORDERED at Orlando, Florida this 17th day of October, 2007.



ARTHUR B. BRISKMAN
United States Bankruptcy Judge

Acknowledged and accepted:

Reca Rene Chamberlain

Copies furnished to:

Gregory M. Garno, Esq., Genovese Joblove & Battista, P.A. 100 S.E. Second Street, 44th Floor, Miami, FL 33131;

Reca Rene Chamberlain, Esq., Alan Perlman, Esq., Adorno & Yoss, LLP, 350 East Las Olas Blvd., Suite 1700, Ft. Lauderdale, FL 33301;

R. Fletcher Peacock, Esq., Federal Public Defender, 201 S. Orange Ave., #300, Orlando, FL 32801;

All Creditors and Interested Parties