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UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

U.S. SECURITIES AND EXCHANGE COMMISSION,	:
	:
Plaintiff,	:
	:
v.	: 1:04-cv-2322(GEL)
	:
UNIVERSAL EXPRESS, INC., et al.,	:
	:
Defendants.	:
	:

**EX PARTE<sup>1</sup> MOTION OF RECEIVER FOR ORDER OF REAPPOINTMENT FOR  
LIMITED PURPOSE OF COMPLYING WITH 28. U.S.C. § 754**

Jane W. Moscowitz, Esq., court-appointed receiver (the “Receiver”) of Universal Express, Inc. (“Universal”), hereby files this *Ex Parte* Motion for Order of Reappointment (the “Motion”) with incorporated Memorandum of Law, and in support thereof states as follows:

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<sup>1</sup> The Receiver submits that the Court has the authority to grant this Motion on an *ex parte* basis without a hearing for the reasons discussed herein; nevertheless, as a courtesy the Receiver has served a copy of this Motion upon all parties on the service list.

On August 31, 2007 the Court issued its Order appointing Jane W. Moscovitz to be Receiver of Universal Express, Inc. and its subsidiaries (DE#203). An Amended Order was signed by the Court on September 10, 2007 (DE#204-2). The Receiver now seeks reappointment in order to comply with 28 U.S.C. § 754.

Section 754 of Title 28 of the United States Code vests a district-court appointed receiver with jurisdiction and control over all property of a receivership entity physically located within any other district court's territorial jurisdiction. *See* 28 U.S.C. § 754. Section 754 provides, in relevant part:

A receiver appointed in any civil or proceeding involving property, real, personal, or mixed, situated in different districts shall . . . be vested with complete jurisdiction and control of all such property with the right to take possession thereof . . .

28 U.S.C. § 754. Section 754, thus, operates to give an appointment court *in rem* jurisdiction over property of any receivership entity located within the territorial jurisdiction of another district court. *See Securities and Exchange Comm'n v. Vision Communications, Inc.*, 74 F.3d 287, 290 (D.C. Cir. 1996).

To preserve an appointment court's jurisdiction, the receiver appointed by that court must file copies of the receivership complaint and receivership order in the district court where property of the estate is located within ten days after the entry of the receivership order. *See Vision Communications*, 74 F.3d at 290. Section 754 provides that a receiver appointed by a district court "shall, within ten days after the entry of his order of appointment, file copies of the complaint and such order of appointment in the district court for each district in which property is located...failure to file such copies in any district shall divest the receiver of jurisdiction and

control over all such property in that district.” *See* 28 U.S.C. § 754.

While the Receiver filed an order pursuant to Section 754 at the time of the initial appointment for property located in the Southern District of Florida, the Receiver did not file in the District of Nevada or the District of Massachusetts. It now appears that such filings may be necessary.

Accordingly, the Receiver hereby requests the Court to enter an *ex parte* order reappointing the Receiver (the “Reappointment Order”) to allow her to record the Complaint, the Receivership Orders, and the Reappointment Order in those jurisdictions within the ten-day period prescribed by 28 U.S.C. § 754 to ensure the Receiver’s and this Court’s jurisdiction over receivership property located there. This Court has the power under the “All Writs Act,” 28 U.S.C. § 1651(a) to enter the requested relief.

The “All Writs Act,” 28 U.S.C. § 1651(a), provides a district court with the authority to enter orders to protect its own jurisdiction and ensure enforcement of its own orders. *See* 28 U.S.C. § 1651(a) (2003). Section 1651(a) provides: “The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” *Id.* Section 1651(a) provides a district court with a “legislatively approved source of procedural instruments designed to achieve ‘the rational ends of the law.’” *See United States v. New York Telephone Co.*, 434 U.S. 159, 172, 98 S.Ct. 364, 372, 54 L.Ed.2d 376 (1977). Pursuant to § 1651(a), a district court, unless specifically confined by Congress, “may avail itself of all auxiliary writs as aids in the performance of its duties, when the use of such historic aids is calculated in its sound judgment to achieve the ends of justice entrusted to it.” *See id.* (Quoting *Adams v. United States ex rel*

*McCann*, 317 U.S. 269, 273, 63 S.Ct. 236, 238, 87 L.Ed. 268 (1942)). The authority granted to a district court under § 1651(a) should be applied flexibly where in conformity with these principles. *See id.*

The receiver requests the Court to exercise its broad discretion under § 1651(a), as other federal courts have done in similar circumstances, to enter an order reappointing the Receiver to allow her compliance with recording requirements prescribed by Section 754.

Courts generally recognize that the ten day period prescribed by Section 754 is both unrealistic and onerous on receivers, as most are not in a position to fully know or understand the breadth and location of all receivership property within such a short time period. *Terry v. June*, 2003 WL 22125300, \*3 (W.D. Va. September 12, 2003); *SEC v. Infinity Group Co.*, 27 F.Supp.2d 559, 563 (E.D. Penn. 1998). Therefore, courts liberally permit a Receiver to request reappointment so as not to lose the jurisdictional and venue advantages of the Receivership. *See Terry*, 2003 WL 22125300 at \*3. The recording requirements of § 754 may be easily cured by the entry of an order reappointing the receiver. *See Vision Communications*, 74 F.3d at 291; *Terry*, 2003 WL 22125300 at \*3. “On remand, the court may reappoint the receiver and start the ten-day clock of § 754 ticking once again...” *Vision Communications*, 74 F.3d at 291.

Thus, this Court may enter an order of reappointment to allow the Receiver to comply with § 754 in the Districts of Massachusetts and Nevada. As discussed above, this Court has the authority under § 1651 (a) to enter such an order of reappointment to protect its own receivership jurisdiction and ensure the enforcement of the terms of the Receivership Order. Within ten (10) days of the reappointment, the Receiver will file the Complaint, Receivership Orders, and the Order of Reappointment in these jurisdictions. The reappointment and filing will properly

trigger this Court's extraterritorial in rem jurisdiction over receivership property wherever located. As the *Terry* court stated, such a result "is consistent with the role and purpose of a federal receivership." *Terry*, 2003 WL 22125300 at \* 3.

The Receiver submits that the Court may enter an order of reappointment on an *ex parte* basis and without a hearing, as it could have entered the original Receivership Order *ex parte*. If appointment of a receiver may be accomplished on an *ex parte* basis, then reappointment on the same terms may be similarly accomplished. In any event, the Receiver is serving this Motion on all parties on the Service List.

**WHEREFORE**, the Receiver respectfully requests that this Court enter an order in the form attached hereto as Exhibit "A" on an *ex parte* basis (i) granting this Motion; and (ii) reappointing the Receiver for the purpose of compliance with the recording requirements of 28 U.S.C. § 754.

Respectfully submitted,

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By: s/Jane W. Moscowitz  
Jane W. Moscowitz  
Fla. Bar No.: 586498

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

U.S. Mail on this 19<sup>th</sup>, day of November, 2007 to:

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Leslie J. Hughes  
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	:
Defendants.	:
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***EX PARTE* REAPPOINTMENT ORDER**

This matter has come before the Court upon the *Ex Parte* Motion of Jane W. Moscowitz, Receiver for Universal Express, Inc., for reappointment for the limited purpose of complying with 28.U.S.C. § 754. Being fully advised, the Court Orders, as follows:

- (1) The Receiver shall be deemed reappointed as of the date of this order;
- (2) The Receiver shall be allowed to record the Complaint, the Receivership Orders and the Reappointment Order in any jurisdictions in which property of the Receivership

is located within the ten-day period prescribed by 28 U.S.C. § 754 to ensure the Receiver's and this Court's jurisdiction over receivership property.

DONE and Ordered in chambers at the United States District Courthouse, New York, New York, this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

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GERARD E. LYNCH  
United States District Judge

cc: Counsel of Record



