U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	
DAISYTEK INTERNATIONAL	§	**Jointly Administered Under**
CORPORATION, *et al.*	§	**Case No. 03-35724 HDH-11**
	§	
Debtors	§	

MEMORANDUM OPINION ON MOTION
FOR 2004 EXAMINATION OF ERNST & YOUNG, LLP

Greg Pritchard, Trustee of the DIC Creditors' Trust ("Trustee"), seeks to take a Rule 2004 examination of Ernst and Young, LLP ("E&Y"), the auditors of the Debtors prepetition. E&Y objects to the motion of the Trustee. The Court conducted a hearing on November 24, 2004, on the motion and the objection.

E&Y argues that the Trustee cannot use Rule 2004 after confirmation, that the Court lacks jurisdiction under Fifth Circuit precedent over any action the Trustee may file against E&Y, and finally, that an arbitration provision in the engagement letter between E&Y and the Debtors precludes discovery, including a Rule 2004 examination, prior to the institution of an arbitration action against E&Y, and without approval of the arbitration panel.

Taking these arguments in the above order, the Court overrules E&Y's objection and grants the Trustee's motion.

First, Rule 2004 is a broad and powerful provision. It does not contain the restrictions argued by E&Y. As long as the proposed examination relates to the acts, conduct or property, or to the liabilities and financial condition of the Debtors, such examination is proper under the rule.

In the present case, E&Y served as the Debtors' auditor before the bankruptcy case was filed. The information sought by the Trustee is within the scope of Rule 2004.

Second, for the present, the Trustee has not indicated whether he intends to sue E&Y for anything. The Trustee's counsel candidly stated in court that the Trustee is only in the investigation stage. Any claims of the Debtors or the Estate against E&Y would necessarily be prepetition claims which devolve under the plan to the Trustee for prosecution. The cases cited by E&Y, including *In re Craig's Stores of Texas, Inc.*, 266 F.3d 388 (5th Cir. 2001), are simply inapposite to the present case.

Third, the arbitration clause of the engagement letter, raised late by E&Y, cannot trump the rights and powers of the Trustee to do his job under the plan, utilizing all of the powers of the Code and the Federal Rules of Bankruptcy Procedure, including Rule 2004. At present, the arbitration clause does not appear to apply because it relates to a "controversy or claim" related to the services of E&Y to the Debtors. Presently, there exists no controversy or claim. Further, it is unclear that the arbitration clause between the Debtors and E&Y would bind the Trustee. However, assuming that the clause applies, such contract provision does not supercede the Trustee's plan and Code-given authority to investigate the Debtors' affairs under Rule 2004. To hold otherwise would impact the rights of every creditor to these proceedings.

Accordingly, the motion of the Trustee will be granted. The Trustee's counsel is directed to submit an appropriate order to the Court.

Signed this 1st day of December, 2004.

Harlin D. Hale
United States Bankruptcy Judge