IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
	:	
CHI-CHI'S, INC., et al.,	:	Bankr. Case No. 03-13063 (CGC)
	:	
Debtors.	:	Jointly Administered
	:	
	:	**Objections Due: 1/05/04 at 4:00 p.m. ET**
	:	**Hearing Date: 1/12/04 at 10:00 a.m. ET**

OBJECTION OF THE ACTING UNITED STATES TRUSTEE TO THE APPLICATION OF CHI-CHI'S, INC. FOR ORDER PURSUANT TO 11 U.S.C. SECTION 327(a) AND FED.R.BANKR.P. 2014(A) AUTHORIZING THE EMPLOYMENT AND RETENTION OF COMMERCIAL LIQUIDATORS OF AMERICA AS LIQUIDATOR FOR CERTAIN OF THE DEBTOR'S PERSONAL PROPERTY

In support of her Objection to the Debtor Chi-Chi's, Inc.'s Application for an Order pursuant to 11 U.S.C. § 327(a) and Fed.R.Bankr. P. 2014(A) authorizing the employment and retention of Commercial Liquidators of America ("CLA") as liquidator for certain of the Debtor's personal property (the "Application"), Roberta A. DeAngelis, the Acting United States Trustee for Region 3 ("UST"), by and through her undersigned counsel, states as follows:

Background

1. This Court has jurisdiction to hear the above-referenced Objection.

2. Under 28 U.S.C. § 586, the UST is charged with monitoring applications filed under section 327 of the Bankruptcy Code "and, whenever the United States trustee deems it to be appropriate, filing with the court comments with respect to the approval of such applications." 28 U.S.C. § 586(a)(3)(H). This duty is part of the UST's overarching responsibility to enforce the laws as written by Congress and interpreted by the courts. *See United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.),* 33 F.3d 294,

295-96 (3d Cir. 1994) (noting that UST has "public interest standing" under 11 U.S.C. § 307 which goes beyond mere pecuniary interest); *Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500 (6th Cir. 1990) (describing the UST as a "watchdog").

3. Pursuant to 11 U.S.C. § 307, the UST has standing to be heard with regard to the above-referenced Objection.

4. On October 8, 2003, the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses as debtors-in-possession. 11 U.S.C. §§ 1107, 1108.

5. On October 20, 2003, the Official Committee of Unsecured Creditors (the "Committee") was appointed.

6. The Application requests authority to employ and retain CLA to liquidate the personal property removed from Chi-Chi's restaurant locations in Indiana, Iowa, and Ohio, whose leases the Debtor has rejected.

Grounds/Basis for Relief

7. Section 327(a) of the Bankruptcy Code provides:

> The trustee, with the court's approval, may employ one or more auctioneers. . .or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title. .

11 U.S.C. § 327 (a).

8. The United States Trustee objects to the provision in the Application that states that CLA is not required to file an application to the Court for payment of its commission.

Because CLA is being employed as a professional under section 327(a), its fees are subject to further review under section 330. Without a fee application, the Court, and all parties in interest, lose their statutory right to review the reasonableness of the professional's fees.

9. The UST further objects to the commission requested on a "buyer's premium basis" because it will provide a chilling effect on the bidding process and may eliminate potential buyers. It is also unclear whether CLA's commission will be charged on top of the bid made by a buyer or whether it will be taken out of the percentage of the bid made by the buyer.

10. Moreover, CLA's requested commission of 15% of the total gross proceeds collected at the auctions plus a 10% buyer's premium is excessive and unreasonable and is above the standard rates charged by auctioneers in this jurisdiction.

11. The UST further objects to the Application because it does not provide an itemization of CLA's estimated expenses, including for advertisement and labor. A list of estimated expenses should be provided to the Court and parties in interest to allow them an opportunity to determine if the expenses are reasonable at this juncture and provide them with a comparison when the final fee application is filed.

12. The UST leaves the movants to their burden and reserves any and all of her rights to, *inter alia*, conduct discovery and to modify, amend, supplement or augment this objection and take whatever other actions are deemed necessary and appropriate.

WHEREORE the UST requests that this Court issue an order consistent with the foregoing objection and/or granting such other relief that this Court deems appropriate.

Respectfully submitted,

ROBERTA A. DeANGELIS
ACTING UNITED STATES TRUSTEE

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Dated: January 5, 2004

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Debtors.	:	Jointly Administered
	:	
	:	
	:	

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on this 5th day of January, 2004, Objection of the Acting United States Trustee to the Application of Chi-Chi's, Inc. for Order Pursuant to 11 U.S.C. Section 327(a) and Fed.R.Bankr.P. 2014(A) Authorizing the Employment and Retention of Commercial Liquidators of America as Liquidator for Certain of the Debtor's Personal Property was served by sending copies via facsimile to the following persons:

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