

Hearing Date:
June 24, 2004 at 10:30 a.m.
PORTLAND

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:)	Chapter 11
PEGASUS SATELLITE TELEVISION, INC., et al.,)	Case No. 04-20878
Debtors.)	(Jointly Administered)

**APPLICATION FOR ORDER AUTHORIZING THE DEBTORS
AND DEBTORS IN POSSESSION TO EMPLOY AND RETAIN
ARNOLD & PORTER LLP AS SPECIAL LITIGATION
COUNSEL PURSUANT TO 11 U.S.C. §§ 327(e) AND 328(a)**

Pegasus Satellite Television, Inc. and certain of its subsidiaries and affiliates, each a debtor and debtor-in-possession herein (collectively, the “Debtors”),¹ hereby file this Application (the “Application”) requesting entry of an order authorizing the Debtors to employ and retain the law firm of Arnold & Porter LLP (“Arnold & Porter”) as special litigation counsel pursuant to sections 327(e) and 328(a) of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) 2014 and 2016. The facts and circumstances supporting this Application are set forth in (i) the Affidavit of Ted S. Lodge, President, Chief Operating Officer

¹ The Debtors are: Argos Support Services Company, Bride Communications, Inc., B.T. Satellite, Inc., Carr Rural TV, Inc., DBS Tele-Venture, Inc., Digital Television Services of Indiana, LLC, DTS Management, LLC, Golden Sky DBS, Inc., Golden Sky Holdings, Inc., Golden Sky Systems, Inc., Henry County MRTV, Inc., HMW, Inc., Pegasus Broadcast Associates, L.P., Pegasus Broadcast Television, Inc., Pegasus Broadcast Towers, Inc., Pegasus Media & Communications, Inc., Pegasus Satellite Communications, Inc., Pegasus Satellite Television of Illinois, Inc., Pegasus Satellite Television, Inc., Portland Broadcasting, Inc., Primewatch, Inc., PST Holdings, Inc., South Plains DBS, LP., Telecast of Florida, Inc., WDSI License Corp., WILF, Inc., WOLF License Corp., WTLH License Corp.

and Counsel of Pegasus Satellite Communications, Inc., in support of First Day Motions and (ii) the Affidavit of David Eisen, Member of Arnold & Porter LLP in Support of Application for Order Authorizing the Debtors and Debtor-in-Possession to Employ and Retain Arnold & Porter LLP as Special Litigation Counsel pursuant to 11 U.S.C. §§ 327(e) and 328(a) and Disclosure of Compensation Pursuant to 11 U.S.C. § 329 (the “Eisen Affidavit”), attached hereto as Exhibit A. In further support of this Application, the Debtors respectfully state as follows:

STATUS OF THE CASE AND JURISDICTION

1. On June 2, 2004 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. On the Petition Date, the Debtors also jointly filed motions or applications seeking certain typical “first day” orders, including an order to have these cases jointly administered.

2. The Debtors are continuing in possession of their properties and are operating and maintaining their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. No request has been made for the appointment of a trustee or examiner in these cases, and no official committees have yet been appointed by the Office of the United States Trustee.

4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief sought herein is 11 U.S.C. § 327(e).

BACKGROUND OF THE DEBTORS

5. Pegasus Satellite Television, Inc. (“PST”), together with its subsidiaries, is the nation’s largest independent provider of DIRECTV® programming. Organized in 1996 as a Delaware Corporation, PST is headquartered in Marlborough, Massachusetts. PST is a wholly owned indirect subsidiary of Pegasus Satellite Communications, Inc.

6. The Debtors’ principal operating business is its direct broadcast satellite (“DBS”) business.² Specifically, the Debtors provide DIRECTV programming services to rural households across the United States and, as of December 31, 2003, had in excess of 1.1 million subscribers and the exclusive right to distribute DIRECTV services to approximately 8.4 million rural households in certain territories within 41 states.

7. DBS services are digital broadcasting services that require a subscriber to install or have installed a satellite receiving antenna (or dish) and a digital receiver. DIRECTV, in particular, requires subscribers to have a satellite dish, which can be as small as 18 inches in diameter depending on the services received, to which DIRECTV directly transmits programming services via five high power Ku band satellites. The Debtors in turn offer certain core programming packages to subscribers, which vary according to channels delivered and price.

8. The Debtors maintain an independent retail network through dealer relationships to distribute DIRECTV programming. The Debtors have expanded this network to include over 4,000 consumer electronics stores and other independent retailers serving rural areas in the Debtors’ service area. Today, the Debtors’ retail network is one of the few sales and

² Debtor Pegasus Media & Communications, Inc. also conducts television broadcast operations through twelve (12) subsidiaries, all of which have filed voluntary petitions under chapter 11 and are Debtors in these cases.

distribution channels available to digital satellite service providers seeking broad and effective distribution in rural areas throughout the continental United States.

9. As of March 31, 2004, the Debtors had assets aggregating approximately \$1.6 billion related to their DBS business, which generated net revenues of approximately \$831.2 million during calendar year 2003. The Debtors have approximately 942 employees.

RELIEF REQUESTED

10. By this Application, the Debtors seek entry of an order pursuant to sections 327(e), and 328(a) of the Bankruptcy Code authorizing the employment and retention of Arnold & Porter as their special litigation counsel in connection with these chapter 11 cases. The Debtors believe that the attorneys at Arnold & Porter are well qualified to act as special litigation counsel on behalf of the Debtors in these chapter 11 cases.

11. The Debtors anticipate the possibility that they will continue to be involved in certain complex litigation matters throughout the pendency of these Chapter 11 cases. As such, the Debtors will require the services of special litigation counsel with a national reputation and with extensive experience in complex litigation matters. The Debtors have selected Arnold & Porter, subject to the Court's approval, to serve as their special litigation counsel in connection with certain litigation matters to be encountered in these chapter 11 cases, including litigation involving DIRECTV. The Debtors believe that Arnold & Porter is particularly well qualified to act as their special litigation counsel in these matters based on Arnold & Porter's extensive experience with litigation, anti-trust and patent matters, its familiarity with the Debtors and their businesses, and particularly in light of the fact that for approximately five years, Arnold & Porter has actively represented the Debtors in litigation involving DIRECTV and is extremely familiar with the facts and law relating to such litigation.

12. Over the last five years, the attorneys at Arnold & Porter have represented certain of the Debtors, including Pegasus Satellite Television, Inc., in connection with various complex litigation matters, including litigation with DIRECTV, as well as anti-trust and patent law issues. Through their representation of the Debtors in these matters, the members of Arnold & Porter have become uniquely and thoroughly familiar with the Debtors and their business affairs, and particularly with the facts and legal issues involved in litigation matters involving DIRECTV. Based on Arnold & Porter's familiarity with the DIRECTV litigation matters, the Debtors believe that the continued retention of Arnold & Porter is essential to the Debtors' effectuating a successful chapter 11 process. In particular, as the Debtors and their other retained professionals will clearly need continued access to Arnold & Porter's in depth knowledge of the legal and factual issues involved in the DIRECTV litigation, the continued retention of Arnold & Porter will provide substantial benefit to the Debtors and their estates. Given their in depth knowledge of complex litigation matters that are certain to continue post-petition, the Debtors believe that Arnold & Porter is well qualified to represent them as their special counsel for litigation matters.

13. Accordingly, the Debtors believe Arnold & Porter is well-qualified to serve as special Litigation counsel for the Debtors' in their chapter 11 cases.

APPLICABLE LEGAL AUTHORITY

14. The Debtors submit that the retention of Arnold & Porter under the terms described herein is appropriate under sections 327(e) and 328(a) of the Bankruptcy Code. With the court's approval, a debtor in possession has the power to employ attorneys as special counsel pursuant to section 327(e) of the Bankruptcy Code, which provides:

The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case,

an attorney that has represented the debtor, if in the best interests of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

11 U.S.C. § 327(e). Simply put, section 327(e) authorizes the retention of an attorney who previously represented a debtor prepetition, provided that: (a) such retention is for a special purpose; (b) the purpose of the retention is not to conduct the chapter 11 cases; (c) the retention is in the best interests of the estates; and (d) the attorney does not hold any interest adverse to the debtor respecting the subject of its retention. As detailed below, the Debtors' proposed retention of Arnold & Porter as special Litigation counsel falls squarely within the scope of and purpose for which Congress enacted section 327(e).

(i) Special Purpose

15. Arnold & Porter's proposed retention pursuant to section 327(e) of the Bankruptcy Code is for the limited purpose of representing the Debtors as special Litigation counsel. Prior to the Petition Date, Arnold & Porter served as outside litigation and patent counsel to the Debtors. Arnold & Porter has actively represented them for approximately five years in litigation involving DIRECTV and is extremely familiar with the facts and law relating to such litigation. The Debtors expect that Arnold & Porter will continue to provide similar services to the Debtors in connection with litigation matters and such other matters as are designated by the Debtors and do not constitute matters central to the Debtors' reorganization. In these activities, Arnold & Porter will work closely with general bankruptcy counsel so that the experience of Arnold & Porter respecting the Debtors can be made available to the Debtors' bankruptcy counsel in these cases.

(ii) Conduct of the Cases

16. Arnold & Porter's proposed retention is for the discrete matters referenced above, and Arnold & Porter will not be rendering services typically performed by a debtors' bankruptcy counsel. The Debtors have chosen Sidley Austin Brown & Wood LLP ("Sidley") as their general reorganization and bankruptcy counsel. The Debtors are submitting, concurrently with this Application, a separate retention of Sidley pursuant to section 327(a) of the Bankruptcy Code. Sidley and Arnold & Porter have advised the Debtors that they will make every effort to avoid any duplication of their work, with Sidley being chiefly responsible for general bankruptcy and related corporate advice to the Debtors, and Arnold & Porter focusing on litigation matters arising in or related to the ordinary course of the Debtors' business. By delineating Arnold & Porter's limited role at the outset, the Debtors have ensured there will be no duplication of services.

(iii) Best Interests of the Estates

17. Arnold & Porter's retention also is in the best interests of the Debtors, their estates and creditors. The Debtors selected Arnold & Porter prepetition because, among other things, its attorneys have extensive experience and knowledge in litigation, anti-trust and patent matters. As Arnold & Porter has represented the Debtors in such matters for more than four years, Arnold & Porter has developed an extensive knowledge and in-depth understanding of the Debtors' complex array of assets, liabilities, businesses, regulatory issues and the Debtors' operational structure. This information leaves Arnold & Porter uniquely situated to assist the Debtors in providing the services described above.

18. Accordingly, Arnold & Porter enjoys a familiarity with the Debtors which, to obtain today from new counsel, would result in the additional and unnecessary expenditure of

both time and money. Courts have recognized the benefits of retaining special counsel under such conditions. See In re Sharon Steel Corp., 156 B.R. 14, 16 (W.D. Pa. 1993) (noting that appointment of special counsel will “eliminate the possibility of derailing reorganization because the expertise and knowledge of pre-petition counsel in the areas of their prior service will be maintained” and “result in significant cost savings”). Arnold & Porter is best suited to serve as special litigation counsel and to ensure that these cases proceed in an efficient and successful manner. As such, Arnold & Porter should be retained as the Debtors’ special counsel.

(iv) Adverse Interest

19. To the best of the Debtors’ knowledge, the members and associates of Arnold & Porter do not have any connection with the Debtors, their creditors or any other party in interest, or their respective attorneys, except to the extent set forth in the Eisen Affidavit. Arnold & Porter has informed the Debtors that it represents no interest adverse to the Debtors’ estates respecting the matters on which it is to be retained. Arnold & Porter will conduct an ongoing review of its files to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new relevant facts or relationships are discovered, Arnold & Porter will supplement its Application in a disclosure to the Court.

20. Where, as here, there is no conflict concerning the subject matter of the proposed special engagement, an application to employ special counsel should be granted. As recognized in In re Carla Leather, Inc., 44 B.R. 457, 474 (Bankr. S.D.N.Y. 1984), aff’d, 50 B.R. 764 (S.D.N.Y. 1985), “[section] 327(e) bars engagement of special counsel only in the presence of an actual conflict of interest concerning the subject matter of the engagement.” (citations omitted).

COMPENSATION AND BILLING

21. Section 328(a) of the Bankruptcy Code authorizes the employment of a professional person “on any reasonable terms and conditions of employment, including a retainer.” 11 U.S.C. § 328(a). The Debtors have paid Arnold & Porter approximately \$9,450,000.00 for services as litigation, anti-trust and patent counsel since June 1, 2003. Although the cost of professional fees on a going forward basis cannot be estimated with certainty, unless the Debtor’s request that Arnold & Porter represent them in new litigation, it is contemplated that Arnold & Porter’s professional fees will not exceed \$750,000.00 per year.

22. Subject to this Court’s approval, Arnold & Porter will charge the Debtors for its legal services on an hourly basis in accordance with its ordinary and customary rates for matters of this type in effect on the date such services are rendered, and for reimbursement of all costs and expenses incurred in connection with these cases as set forth in the Eisen Affidavit filed concurrently herewith. Arnold & Porter’s billing rates currently range from \$410/hr to \$670/hr for partners, \$225/hr to \$400/hr for associates and \$85/hr to \$185/hr for para-professionals. These hourly rates are subject to periodic adjustment increases in the normal course of Arnold & Porter’s business.

23. Arnold & Porter has advised the Debtors that it intends to apply to the Court for allowance of compensation for professional services rendered and reimbursement of charges and costs and expenses incurred in these chapter 11 cases in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules for the District of Maine and orders of this Court.

24. As to the time spent in assisting and advising the Debtors regarding the Services described above, Arnold & Porter will comply with this Application, sections 330 and

331 of the Bankruptcy Code, Bankruptcy Rule 2016, the Local Rules of this Court and any orders of the Court, the fee and expense guidelines established by the United States Trustee and all other applicable requirements, including the submission of detailed time records in tenths of an hour.

25. In accordance with section 504 of the Bankruptcy Code, there is no agreement or understanding between Arnold & Porter and any other entity, other than a member, partner or regular associate of Arnold & Porter, for the sharing of compensation received or to be received for services rendered in connection with these proceedings.

26. The Debtors believe that the fees of Arnold & Porter are fair and reasonable in light of industry practice, market rates both in and out of chapter 11 cases and the scope of work to be performed pursuant to Arnold & Porter's retention and Arnold & Porter's importance to the Debtors.

27. Subject to this Court's approval, Arnold & Porter has indicated its willingness to serve as the Debtors' special litigation counsel.

28. The Debtors believe that it is necessary and in the best interest of their estates and creditors to employ and retain Arnold & Porter as their special litigation counsel to render professional services on their behalf in connection with various litigation matters referenced above.

NOTICE

29. Notice of this Motion has been given to (i) the United States Trustee for the District of Maine; (ii) the Debtors' fifty (50) largest unsecured creditors on a consolidated basis, as identified in their chapter 11 petitions; (iii) the administrative agents for the credit facilities of Pegasus Media & Communications, Inc. and Pegasus Satellite Communications, Inc.

(“PSC”); (iv) each of the indenture trustees for each series of notes of PSC and (v) those parties in interest who have filed a notice of appearance. The Debtors submit that in light of the nature of the relief requested, no further notice is required.

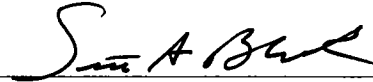
NO PREVIOUS RELIEF REQUESTED

30. No previous application for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE, for the foregoing reasons, the Debtors respectfully request that the Court approve the retention of Arnold & Porter as their special litigation counsel in these chapter 11 cases pursuant to sections 327(e) and 328(a) of the Bankruptcy Code and grant such other relief as may be just and proper.

Dated: Bala Cynwyd, Pennsylvania
June __, 2004

PEGASUS SATELLITE COMMUNICATIONS,
INC.
(for itself and on behalf of its debtor subsidiaries)
Debtors and Debtors in Possession



Scott A. Blank, Esq.
Senior Vice President, Legal and Corporate Affairs,
and General Counsel