

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
)	Case No. 01-00056 (PJW)
)	
TWA INC. POST CONFIRMATION)	(Jointly Administered)
ESTATE,)	
)	Hearing Date: September 30, 2002 at 11:00 a.m.
Debtors.)	Responses Due: August 23, 2002
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**CITY AND COUNTY OF SAN FRANCISCO'S
RESPONSE TO SECOND OMNIBUS OBJECTION TO CLAIMS (Dkt. #3536)**

The City and County of San Francisco, acting by and through its Airport Commission ("San Francisco"), by and through its undersigned counsel, respectfully files this Response to the Second Omnibus Objection to Claims (this "Response"). As grounds for this Response, San Francisco states as follows:

1. On January 10, 2001, Trans World Airlines, Inc. ("Debtor")¹ filed a voluntary petition under Chapter 11 of Title 11.
2. On June 14, 2002, the Court entered its Order Confirming Joint Liquidating Plan of Reorganization of the Debtors and the Official Committee of Unsecured Creditors Pursuant to Chapter 11 of the United States Bankruptcy Code (the "Confirmation Order").
3. San Francisco is the holder of prepetition and administrative claims in this case and the owner and operator of an airport system including facilities at San Francisco International Airport ("SFO").

¹The Debtors are the following entities: TWA Group, Inc., TWA Standards & Controls, Inc., TWA Stock Holding Company, TWA - D.C. Gate Company, Inc., TWA-LAX Gate Company, Inc., TWA Logan Gate Company, Inc., TWA NY/NJ Gate Company, Inc., TWA-Omnibus Gate Company, Inc., TWA-San Francisco Gate Company, Inc., TWA-Hanger 12 Holding Company, TWA-Nippon, Inc., TWA Employee Services, Inc., TWA Getaway Vacations, Inc.

4. Debtor used SFO's facilities in the operation of its business by, among other things, causing passenger aircraft to land at and takeoff from SFO, using SFO's baggage handling facilities, utilities and security services and occupying ticket counters, offices and maintenance facilities. Debtor's use of SFO occurred both prepetition and postpetition.

5. After filing its Chapter 11 petition, Debtor continued to use facilities at SFO for eleven months until December 4, 2001.

6. San Francisco has filed four administrative expense claims and one prepetition claim for Debtor's unpaid prepetition and postpetition rental charges, landing fees, security fees, water/sewer fees, electricity, environmental remediation, rejection damages and other charges accrued due to Debtor's use of SFO. The claims filed by San Francisco are summarized as follows:

	Claim Number	Amount	Date Executed
1	# 00835	\$ 4,709,646.13	5/9/2001
2	# 06124	\$ 2,085,913.80	6/14/2001
3	# 06131	\$ 8,735,516.85	6/14/2001
4	# 08740	\$ 4,959,174.29	7/30/2001
5	# 09702	\$89,296,821.00	1/3/2002

7. Claims 1, 2, 3, and 5 were filed pursuant to 11 U.S.C. §§ 503(a) and 503(b)(1)(A) and are entitled to the administrative expense priority provided for in 11 U.S.C. § 507(a)(1). The administrative expense claims are claims for actual and necessary costs of preserving the estate.

8. The confirmed Plan provided for appointment of a Plan Administrator who would be responsible for objecting to claims. On August 2, 2002, the Plan Administrator filed its Second Omnibus Objection to Claims (the “Objection”).

9. The Objection addresses the Claims as follows:

a. Objection to Claim 1 (# 00835) in the amount of \$4,709,646.13 stating that such claim is superceded by Claim 3 (# 06131) in the amount of \$8,735,516.85. The Objection states that Claim 3 (# 06131) shall be allowed as the surviving claim.

b. Objection to Claim 2 (# 06124) in the amount of \$2,085,913.80 as filed late.

c. No objection to Claim 4 (#08740) filed as a prepetition claim in the amount of \$4,959,174.20.

d. No objection to Claim 5 (#9702), filed as an administrative expense claim in the amount of \$89,296,821.

10. San Francisco does not dispute that Claim 3 (# 06131) in the amount of \$8,735,516.85 supercedes Claim 1 (# 00835) in the amount of \$4,709,646.13. San Francisco objects to any other relief requested in the Objection and requests that Claim 2 (# 06124) and all of its other remaining claims be allowed.

The Confirmation Order Provides Special Protections for the San Francisco Claims

11. The Confirmation Order, at Paragraph 50, provides as follows:

50. Certain Claims of the City of San Francisco. The Plan Administrator, on behalf of the Post Confirmation Estate, shall use commercially reasonable efforts to communicate regarding, reconcile and allow the administrative expense claims of the city of San Francisco (“San Francisco”) prior to the first distribution of funds set forth paragraph 27 above. San Francisco shall be

authorized to amend and shall amend that portion of its administrative expense claims on account of lease rejection damages to reflect such portion of its administrative expense claims as a timely filed unsecured claim.

12. This provision of the Confirmation Order recognizes San Francisco's administrative claims and preserves San Francisco's rights to convert certain of its previously asserted administrative claims into timely filed allowed prepetition claims. San Francisco objects to any order that would impair the protections provided by the Confirmation Order.

13. The Plan Administrator has not yet communicated with San Francisco regarding reconciliation and allowance of administrative expense claims. Pursuant to the Confirmation Order, San Francisco is currently reviewing appropriate amendments to its administrative expense claims but has not yet filed such amendments.

14. The Plan Administrator has objected to Claim 2 as being filed late. However Claim 2 is an administrative expense claim for rental, landing fees, security fees, electricity and other charges for TWA's postpetition use of SFO during the months of January through May 2001. It was not until December 2001 that the lease and use agreements with San Francisco were ultimately rejected by the Debtor. Claim 2 includes postpetition claims that resulted from TWA's rejection of agreements with San Francisco and therefore such claim could have been filed at any time after the contracts were rejected, regardless of the Debtors proposed bar date of June 15, 2001.

15. So long as Debtor held open the possibility that it might assume the agreements with San Francisco, there was a possibility that the contracts would be assumed and all of San

Francisco's claims would have been cured. It was not certain until December 2001 that San Francisco would even have had any unpaid administrative claims.

16. After the Debtor's December 4, 2001 rejection of the San Francisco agreements, San Francisco timely filed its Claim 5, (#09702) in the amount of \$89,289,872, as a rejection claim and administrative expense claim. Claim 5 includes the administrative expense claim amounts asserted in Claim 2. The Plan Administrator has not yet objected to the postpetition administrative claim amounts described in Claim 5. To the extent that the Plan Administrator complies with the Confirmation Order and negotiates a satisfactory division between the allowed postpetition administrative claim and the prepetition rejection claim, San Francisco would not object to treating Claim 2 as duplicative of Claim 5, so long as Claim 5 was recognized as being timely filed.

San Francisco Timely Executed and Filed Claim 2.

17. TWA proposed a bar date of Friday, June 15, 2001 for filing administrative claims incurred through May 30, 2001.

18. San Francisco timely executed Claim 2, an administrative claim, on Thursday June 14, 2001, prior to the bar date. San Francisco then, using an overnight courier service, forwarded Claim 2 to the claims agent, expecting that Claim 2 would be received by Friday, June 15, 2002. A copy of the San Francisco transmittal letter dated June 14, 2002 is attached hereto as Exhibit A.

19. The Claims Agent, Bankruptcy Services LLC, had as its address only a post office box, to which overnight delivery services normally do not deliver. Nonetheless, the courier was

successful in delivering to the post office and obtained a signed receipt dated June 15, 2001. A copy of the receipt is attached hereto as Exhibit B.

20. Delivery of Claim 2 to the P.O. Box was accomplished by the bar date of June 15, 2001, and such delivery was confirmed by a letter from San Francisco to the claims agent. A copy of the confirmation letter is attached hereto as Exhibit C.

21. In spite of the timely delivery, the records of the claims agent indicate that Claim 2 was received on June 19, 2002, the Tuesday following the Friday bar date. The stamped date of receipt, only two business days after the bar date, was due to no fault of San Francisco, who had timely prepared, executed and delivered the claim.

If Claim 2 is Deemed to Have Been Filed Late, Such Claim was Filed Only Two Business Days Late, and Such Late Filing was Due to Excusable Neglect that Did Not Prejudice the Debtor.

22. If Claim 2 is deemed to have been filed late, such filing, made only two business days after the bar date, should not be sufficient to disallow the claim. San Francisco respectfully requests that the Court extend the bar date for the filing of Claim 2 to June 19, 2001 based on excusable neglect and other equitable reasons. Fed. R. Bankr. P. 9006(b)(1).

23. The bankruptcy court may extend the bar date for cause to "permit a late filing if the movant's failure to comply with an earlier deadline" was the result of excusable neglect. *Pioneer Inv. Services Co. v. Brunswick Assocs. Ltd. Partnership*, 507 U.S. 380, 382, 113 S. Ct. 1489, 1491-92, 123 L. Ed. 2d 74 (1993) (quoting Bankruptcy Rule 9006(b)(1)).

24. In *Pioneer*, the creditors in a Chapter 11 bankruptcy were allowed to file late proofs of claim after the attorney handling their affairs failed to file them prior to the bar date.

The Supreme Court held that due to the circumstances of the case, the attorney's failure to file the necessary proofs of claim constituted excusable neglect. *Id.* at 397-399, 113 S. Ct. at 1498-90. The Court emphasized that excusable neglect was not limited to errors caused by circumstances beyond the late-filing party's control and concluded that the concept of neglect was "somewhat elastic" and could include "inadvertent delays." *Id.* at 392, 113 S. Ct. at 1496. *Accord United States v. Clark*, 51 F.3d 42, 43 (5th Cir. 1995). The Court stressed that the determination of whether a party's neglect of a deadline was excusable was "at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." *Id.* at 395, 113 S. Ct. at 1498.

25. In making a finding of excusable neglect, the Court should explore the following: (a) the danger of prejudice to the debtor, (b) the length of the delay and its potential impact on judicial proceedings, (c) the reason for the delay, including whether it was within the reasonable control of the movant, and (d) whether the movant acted in good faith. *Id.*

26. Under *Pioneer*, the primary inquiry is whether the debtor will be prejudiced. Here there is no prejudice to the Debtor. The TWA reorganization plan was negotiated and approved more than one year *after* TWA had notice of Claim 2. This is not a situation where the debtor's plan was formulated, negotiated, and confirmed before notice was given of a substantial late claim. *See, e.g., In re Drexel Burnham Lambert Group, Inc.*, 148 B.R. 1002, 1007 (S.D.N.Y. 1993) ("acceptance of a substantial late claim after consummation of a vigorously negotiated claims settlement and plan of reorganization thereon and a distribution of a major part of the assets hereunder, would disrupt the economic model on which the creditors, the debtor and the stockholders reached their agreements"); *In re Alexander's Inc.*, 176 B.R. 715, 722 (Bankr.

S.D.N.Y. 1995) (Debtors and other creditors prejudiced because proof of claim was filed *after* the Debtors' Plan was formulated, negotiated and confirmed.)

27. Quite the contrary, the San Francisco claim in this case was easily anticipated and probably expected by the debtor. *In re Alexander's Inc.*, 176 B.R. at 722 (expectation of claim is one factor to consider in determining if the debtor is prejudiced). The Debtor continued to operate at San Francisco Airport and failed to pay its postpetition landing fees, rent and other charges while it negotiated a sale of its assets to American Airlines, which sale successfully closed at the end of April 2001. Debtor's continued postpetition operations at SFO were likely a positive factor influencing American's willingness to purchase Debtor's assets.

28. Allowance of Claim 2 will not upset the expectations of recovery that may have supported the creditors' votes for the plan. Indeed, the creditor body, through its representative creditor's committee, elected not to object to Claim 2 when it was filed. Further, the size of Claim 2, while significant to San Francisco, is not sizable in relation to the debtor's estate, nor would it disrupt the distribution of the assets among the timely filed creditors. Claim 2 is approximately \$2 Million. The TWA estate is a multi billion dollar estate.

The Length of the Delay was Insignificant

29. The maximum length of delay in the filing of the claim was two business days. Other courts have allowed much more significant and egregious delays in filing late claims. *See Greyhound Lines, Inc. v. Rogers*, 62 F.3d 730, 739 (5th Cir. 1995), (“egregious” six to eight month delay in filing claim not sufficient to disallow claim).

The Time Needed for Delivery of the Claim To the Claim's Agent's P.O. Box, by a Third Party, is a Justifiable Reason for the Delay

30. The failure of the claims agent to note the timely filing of the proof of claim was beyond the control of San Francisco. The delay was most likely caused by the claims agent failing to check its post office box on the claims bar date coupled with the difficulty involved in making overnight delivery to a post office box. San Francisco took all reasonable steps to insure timely filing of the claim, and due to the inaction of third parties the claim was not indicated as timely filed. Even if for some reason the delay were to be attributable to San Francisco, excusable neglect is not limited to errors caused by circumstances beyond the late filing party's control. *United States v. Clark*, 51 F.3d 42, 43 (5th Cir. 1995) (citing *Pioneer*, 113 S. Ct. at 1496). The standard for determining whether a party's neglect of a deadline is excusable is a flexible one because it is rooted in equity. *Id.* The equities of the present situation favor allowance of Claim 2 due to San Francisco's actual delivery of the claim to the post office box in a timely manner.

31. Even in the absence of a "dramatic," ambiguity in the claims process, a Claimants' neglect may be excusable. *See Pioneer*, 507 U.S. 380, 398, 113 S. Ct. 1489, 1500, 123 L. Ed. 2d 74 (1993). Where the Claimant's failure to timely file claims is the result of simple neglect and not due to some gross or intentional inadvertence, such claims may be allowed. *Greyhound*, *supra*, 62 F.3d at 740.

32. Finally, San Francisco acted in good faith by preparing, executing and transmitting Claim 2 on June 14, 2001, prior to the bar date. San Francisco actually delivered the claim to the claims agent's post office box on the bar date in absolute good faith. San Francisco made every effort to comply with the bar date and any ultimate non-compliance was due to the

time required to deliver Claim 2 to the post office box of the claims agent or the claims agent's failure to timely check the mail in the post office box.

33. In light of all of the circumstances of this case, including the lack of prejudice to debtor, the fact that the claim was prepared, executed and delivered by the bar date and the recognized receipt of the claim by the claims agent at its post office box on the second business day after the bar date, San Francisco respectfully requests that the Court rule that Claim 2 was timely filed or in the alternative that actual receipt of Claim 2 by the claims agent two business days after the bar date was due to excusable neglect and that Claim 2 should be allowed as filed. Fed. R. Bank. P. 9006(b)(1).

WHEREFORE, San Francisco requests that this Court overrule the objection to San Francisco's Claim 2 (#06124) and allow the claim in full.

Wilmington, Delaware
August 23, 2002

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Counsel for the City and County of San Francisco

CERTIFICATE OF SERVICE

I, William D. Sullivan, hereby certify that on August 23, 2002, I did serve the foregoing *City and County of San Francisco's Response to Second Omnibus Objection to Claims* by causing copies to be served on the persons listed below via electronic filing and/or as indicated below.

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August 23, 2002
DATE

/s/ William D. Sullivan
William D. Sullivan