

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

<i>In re</i>	:	
	:	Chapter 11
TRANS WORLD AIRLINES, Inc., <i>et al</i>	:	
	:	Case Number 01-0056 (PJW)
	:	
Debtors.	:	Jointly Administered
	:	Hearing Date: TBD (Negative Notice)
	:	Objection Deadline: 11/30/2001 at 4:00 p.m.

UNITED STATES TRUSTEE'S OBJECTION TO JOINT MOTION OF DEBTORS AND AIRLINE PILOTS ASSOCIATION, INTERNATIONAL FOR ORDER PURSUANT TO 11 U.S.C. § 501(b)(1)(A) OR, ALTERNATIVELY, 11 U.S.C. §§ 503(b)(3)(D) AND (b)(4) APPROVING PAYMENT OF LEGAL FEES AND EXPENSES (D.I. 2422)

In support of his Objection to the Joint Motion of the Debtors and the Airline Pilots Association, International for an Order Pursuant to 11 U.S.C. § 501(b)(1)(A) [sic.] or, Alternatively, 11 U.S.C. §§ 503(b)(3)(D) and (b)(4) Approving Payment of Legal Fees and Expenses (the “Motion”), Donald F. Walton, Acting United States Trustee for Region 3 (“UST”), by undersigned counsel, avers as follows:

1. This Court has jurisdiction to hear the above-referenced Objection.
2. Pursuant to 28 U.S.C. § 586, the UST is charged with overseeing the administration of Chapter 11 cases filed in this judicial district. This duty is part of the UST’s overarching responsibility to enforce the bankruptcy 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”). In connection therewith, the Executive Office for United States Trustees has adopted procedural

guidelines (referred to herein as the “UST Guidelines”) to be used in reviewing applications for compensation and reimbursement.

3. In furtherance of his case supervisory responsibilities, as well as pursuant to 11 U.S.C. § 307, the UST has standing to raise and be heard on issues of compensation and reimbursement of expenses.

I. The Airline Pilots Association Did Not Incur Any Expenses Payable or Reimbursable Under 11 U.S.C. § 503(b).

4. In the Motion, TWA and the Air Line Pilots Association (“ALPA”) jointly seek payment to ALPA of the attorneys’ fees and disbursements that ALPA incurred in negotiating modifications to the collective bargaining agreement between ALPA and TWA (the “ALPA CBA”). TWA and ALPA allege that such modifications were a condition precedent to American Airlines’ (“AA”) closing of the asset purchase agreement between AA and TWA. The Motion asserts that ALPA and its attorneys commenced negotiations with TWA before the January 10, 2001 commencement of these cases, and engaged in “intense, expedited negotiations” until April 5, 2001, when ALPA and TWA executed agreements memorializing the changes to the ALPA CBA.

5. ALPA alleges that by negotiating the ALPA CBA modifications, ALPA provided benefits to TWA by enabling TWA to comply with a condition precedent to the asset purchase agreement between TWA and AA, and by preventing potential labor unrest which might have posed an obstacle to the sale. ALPA claims that it also provided a benefit to AA because AA was able to acquire TWA’s assets as a “turnkey operation” which included 2,500 ALPA-member

pilots. ALPA asserts that by helping AA to avoid the cost of training new pilots, funds available for TWA's creditors were somehow increased.

6. From the inception of this case, it was made clear that the only alternative to a sale of TWA's assets to AA was an immediate liquidation of TWA, which would entail a substantial loss of asset value to the estate. More importantly, such a liquidation would have also caused all ALPA members employed by TWA to lose their jobs, benefits and seniority.

7. ALPA supported the sale to AA, as described at length in paragraphs 26h and 26i of the Motion, and did so for the expressly stated purpose of preserving the jobs, benefits and seniority of its members.

8. The Motion seeks payment of \$703,105.07 to ALPA under 11 U.S.C. § 503(b)(1)(A) or alternatively, under 11 U.S.C. § 503(b)(3)(D) and (b)(4). That proposed payment comprises the following amounts:

(a) \$525,563.50 as compensation for services rendered and \$56,776.03 for reimbursement of expenses incurred by ALPA's bankruptcy attorneys, LeBoeuf, Lamb, Greene & McRae, LLP, during the period from January 10, 2001 to September 30, 2001;

(b) \$79,376.25 as compensation for services rendered and \$11,578.82 for reimbursement of expenses incurred by ALPA's labor attorneys, Cohen, Weiss & Simon, during the period from January 10, 2001 to September 30, 2001; and

(c) \$23,265.00 as compensation for services rendered and \$6,545.47 for reimbursement of expenses incurred by ALPA's local counsel, Saul Ewing, LLP, during the period from January 10, 2001 to September 30, 2001;

9. In order to hold administrative expenses to a minimum and to maximize the value of an estate, Section 503(b) of the Bankruptcy Code is narrowly construed. *See, e.g., In re N.P. Min. Co., Inc.*, 963 F.2d 1449, 1454 (11th Cir. 1992); *In re Philadelphia Mortgage Trust*, 117 B.R. 820, 828 (Bankr. E.D. Pa. 1990).

10. An applicant seeking allowance of administrative expenses has the burden to establish entitlement to such an award pursuant to 11 U.S.C. § 503(b). *Lebron v Mechem Financial, Inc.*, 27 F.3d 937 (3d Cir. 1994); *In re Buckhead America Corp.*, 161 B.R. 11 (Bankr. D. Del. 1993). In *Lebron*, the United States Court of Appeals for the Third Circuit held that before an applicant may be reimbursed or compensated under 11 U.S.C. § 503, it must be shown that “the efforts of the applicant resulted in an actual and demonstrable benefit to the debtor’s estate and the creditors.” *Lebron*, 27 F.3d at 944, *citing In Re Lister*, 846 F.2d 55, 57 (10th Cir. 1988). The *Lebron* court further stated:

A creditor should be presumed to be acting in his or her own interest unless the court is able to find that his or her actions were *designed* to benefit others who would foreseeably be interested in the estate. In the absence of such a finding, there can be no award of expenses even though there may have been an incidental benefit to the chapter 11 estate.

Id. at 946 (emphasis added).

11. To be entitled to allowance as an administrative expense under any of 11 U.S.C. §§ 503(b)(1)(A), 503(b)(3) or 503(b)(4), the tasks performed must transcend the creditor’s own self interest and be performed for the benefit of the estate. If the claimant was acting to protect its own interests, the expense was not incurred to preserve the estate under 11 U.S.C. § 503(b)(1)(A) even if the estate received a benefit from the claimant’s actions. *Matter of Dayhuff*, 185 B.R. 971, 975 (Bankr. N.D. Ga. 1995)(*citing Lebron, supra*); *In re Williams*, 165 B.R. 840,

841-42 (Bankr. M.D. Tenn. 1993); *Buckhead America, supra*, 161 B.R. at 15, 16; *Wolf Creek Collieries Co. v. GEX Kentucky, Inc.*, 127 B.R. 374, 379-80 (N.D. Oh. 1991)(collecting cases and citing, *inter alia*, *In re Philadelphia Mortgage Trust, supra*); *In re Moore*, 109 B.R. 777, 783-84 (Bankr. E.D. Tenn. 1989); *In re SMB Holdings, Inc.*, 77 B.R. 29, 32 (Bankr. W.D. Pa. 1987). Similarly, if the claimant was acting to protect its own interests, the expense was not incurred in making a substantial contribution in the case under 11 U.S.C. § 503(b)(3) or (b)(4), even if the estate benefitted from the claimant's actions. *Lebron, supra*, 27 F.3d at 946; *Buckhead America, supra*, 161 B.R. at 15, 16; *Wolf Creek Collieries, supra*, 127 B.R. at 380.

12. Although the Motion is couched in terms suggesting that ALPA acted primarily out of concern for the well-being of TWA's estate and that ALPA received only incidental benefits, ALPA's motives were not so pure. ALPA did not undertake to preserve the estate for the benefit of all creditors and parties in interest or to contribute to the case; ALPA acted instead to preserve as many as possible of the 4,000 TWA pilot jobs held by ALPA members. Thus, ALPA had a pressing, independent interest in re-negotiating the ALPA CBA as required by AA. Self-interest motivated ALPA's activities, which were narrowly tailored to protect the interests of ALPA members, and any benefit to the estate was only incidental.

13. Because ALPA acted in pursuit of self-interest, its associated expenses do not qualify for administrative priority under 11 U.S.C. § 503(b). *Lebron, supra*, 27 F.3d at 946; *Matter of Dayhuff, supra*, 185 B.R. at 975, citing *Lebron, supra*.; *Buckhead America, supra*, 161 B.R. at 16; *In re Sound Radio, Inc.*, 145 B.R. 193, 209 (Bankr. D. N.J. 1992).

14. If ALPA's legal fees and costs of renegotiating the ALPA CBA are payable out of the estate as an administrative priority expense, then any non-debtor who renegotiates an

executory contract with a debtor would be entitled to shift its legal fees and costs to the estate, since renegotiation almost always benefits the estate by improving the debtor's end of the bargain. 11 U.S.C. § 503(b) would be stripped of its meaning, as it would be immaterial that the non-debtor party acted out of self-interest to retain some of the contract's economic benefit rather than lose all of it. Such fee shifting is flatly contrary to 11 U.S.C. § 503(b) and the myriad case law narrowly construing it.

II. The Application Does Not Comply with Applicable Third Circuit Law, the Rules of the Bankruptcy Court of the District of Delaware and the UST Guidelines.

15. Even if any portion of the expenses that ALPA seeks to recover were somehow incurred primarily to preserve the estate or to make a substantial contribution in the case, the Motion is improper in form and does not conform to the Rules of the Bankruptcy Court or UST Guidelines.

16. To the extent the Motion seeks reimbursement pursuant to 11 U.S.C. §503(b)(3) or (b)(4), it must comply with Local Rule 2016-2 of this Court.

17. To substantiate the fees and expenses of ALPA's three law firms, separate "applications" for compensation for services rendered and reimbursement of expenses incurred are annexed to the Motion on behalf of LeBoeuf, Lamb, Greene & McRae, LLP (the "LeBoeuf Application"), Cohen, Weiss & Simon (the "Cohen Weiss Application") and Saul Ewing, LLP (the "Saul Ewing Application").

18. The Motion discusses ALPA's alleged preservation of the estate and/or its alleged substantial contribution to the case, and purports to seek payment only in the context of renegotiating the ALPA CBA. Nonetheless, the Applications do not encompass, and the Motion

does not seek, payment only for legal fees and costs in connection with renegotiating the ALPA CBA. Rather, the Applications reflect charges for, and the Motion seeks payment of, fees for all of the legal services that each Applicant rendered to ALPA, and reimbursement of all costs incurred, in connection with any and every aspect of the Applicants' representation of ALPA in this case.^{1/} It would appear that ALPA believes that if it provided *any* benefit to the estate, it is entitled to compensation and reimbursement for *all* of its legal fees and expenses in these cases.

19. In fact, the Applications annexed to the Motion reflect all services and expenses of ALPA's three law firms from the commencement of the case (actually, the LeBoeuf Application reflects services and expenses from *before* commencement of the case), without any attempt to differentiate whether particular time entries and the fees and expenses related thereto were incurred for the specific benefit of the estate as opposed to the benefit of ALPA.

20. ALPA's submission of an undifferentiated mass of time entries and expenses, and its attempt to recover all of its legal fees and costs under 11 U.S.C. § 503(b) without regard to whether they were incurred to advance the estate's interests or ALPA's self-interest and without regard to whether they actually provided a benefit to the estate, reflects an absence of good faith.

21. ALPA has essentially presented a "haystack" of legal invoices and demanded that anyone who objects to payment of the full amount requested by ALPA must find the "needle" of legal fees and expenses which might be appropriately payable as administrative expenses under 11 U.S.C. § 503(b). ALPA must bear the burden of proof on its request for administrative priority payment, and it is inappropriate for ALPA to shift to others the burden of combing

^{1/}Although each Application seeks compensation for services broader in scope than the services described in the Motion, only the Motion is before the Court for consideration. The Applications have not been filed as such with the Court.

through the time entries and expenses of ALPA's counsel to look for compensable items. If ALPA is unable or unwilling to meet its burden of showing specifically which of its legal fees and expenses are entitled to payment under 11 U.S.C. § 503(b), ALPA's Motion should be denied in its entirety.

22. The LeBoeuf Application and the Cohen Weiss Application do not comply with Del.Bankr.LR 2016-2(d)(vii), as they contain numerous time entries that are "lumped" together.

23. The LeBoeuf Application and the Cohen Weiss Application do not comply with Del.Bankr.LR 2016-2(d)(iv), which requires billing in one-tenth of an hour increments, as they contain numerous time entries that are billed in one-quarter of an hour increments.

24. The LeBoeuf Application, the Cohen Weiss Application and the Saul Ewing Application do not contain the Local Form 102 project category information required by Del.Bankr.LR 2016-2(c)(ii) and the time entries therein are not divided into general project categories in accordance with Del.Bankr.LR 2016-2(d)(i)

25. The LeBoeuf Application, the Cohen Weiss Application and the Saul Ewing Application do not contain the Certification required by Del.Bankr.LR 2016-2(f), stating that the professional person seeking approval of the compensation request has reviewed the requirements of Rule 2016-2 and that the request complies with the rule.

26. The LeBoeuf Application seeks reimbursement of expenses for facsimile transmissions and internal photocopying in excess of the \$1.00 per page for facsimile transmissions and \$0.15 per page for photocopying permitted by Del.Bankr.LR 2016-2(e)(iii).

27. The Saul Ewing Application does not comply with Del.Bankr.LR 2016-2(e)(iii) as it seeks reimbursement of expenses for facsimile transmissions and internal photocopying, but does not identify the rates charged.

28. Many of the services described in the Applications are duplicative of tasks performed by individual members of the Official Committee of Unsecured Creditors, counsel for the Creditors' Committee (who is well-qualified and has been diligent and zealous in representing the Creditors' Committee) or other professionals retained by the Creditors' Committee with the approval of the Court. Such services, being duplicative, were of no benefit to the estate and are not compensable by the estate.

29. The UST leaves ALPA to its burden of proof on the merits and reserves his discovery rights.

WHEREFORE, the Acting United States Trustee respectfully requests that this Court deny the Motion in its entirety.

Respectfully submitted,

DONALD F. WALTON
ACTING UNITED STATES TRUSTEE, REGION 3

Dated: November 30, 2001

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