UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:	**Chapter 11**
TRANS WORLD AIRLINES, INC., et al.,	**Case No. 01-00056 (PJW)**
Debtors.	**(Jointly Administered)**

OPPOSITION OF AMERICAN AIRLINES, INC., AND TWA AIRLINES LLC TO THE MOTION OF MBNA AMERICA BANK, N.A. FOR ASSIGNMENT OF, AND HEARING ON, CERTAIN CONFIRMATION ISSUES [D.I. 3235]

American Airlines, Inc. and TWA Airlines LLC (collectively, "American") respectfully object to the Motion of MBNA American Bank, N.A. ("MBNA") For Assignment Of, and Hearing On, Certain Confirmation Issues (the "Motion"):

1. MBNA's Motion seeks the extraordinary and unjustified relief of transferring the determination of objections to confirmation of Trans World Airlines, Inc.'s ("TWA" or the "Debtors") plan from Judge Walsh to Judge Walrath even though MBNA has no cognizable interest in the outcome of those objections and has stated in the Motion that it does not object to having them decided by Judge Walsh.

2. Before filing the Motion, MBNA filed an objection to confirmation of TWA's proposed plan of reorganization, asserting, as an alleged administrative expense creditor, that TWA's plan: (a) did not provide for payment of all administrative expense claims upon the effective date of the plan even though TWA allegedly did not

obtain the express consent of administrative creditors for that treatment; (b) did not require certain administrative creditors to disgorge payments previously received, so that all administrative creditors would receive equal treatment; and (c) violated the absolute priority rule because unsecured creditors could possibly receive a distribution even though administrative creditors may not receive full payment (collectively, the "Administrative Expense Objections").

3. On April 2, 2001, this Court (Walrath, J.) ruled that MBNA was not entitled to administrative expense claim treatment for its claims against TWA. Consequently, MBNA lacks standing to raise the Administrative Expense Objections. It nevertheless filed the Motion despite Judge Walrath's ruling, arguing it is entitled, along with undisputed administrative expense creditors who filed similar objections, to assert the Administrative Expense Objections. MBNA also asserts that Judge Walsh may overrule the objections of other administrative expense claimants before Judge Walrath hears MBNA's objections and that allegedly could "prejudice" MBNA's rights.

4. The relief MBNA seeks is entirely unjustified and if denied, MBNA will suffer no cognizable harm and the relief it seeks is entirely unjustified. MBNA plainly cannot raise the objections at issue because they pertain to plan provisions that it claims impair the rights of a creditor class (i.e., administrative creditors) of which MBNA is not a member. Thus, Judge Walsh could overrule the objections without impairing MBNA's rights. In any event, Judge Walsh, as the judge presiding over the TWA cases, is thoroughly familiar with TWA's Bankruptcy Case and MBNA admittedly has stated that it has no objection to having Judge Walsh hear and determine issues involving MBNA's claims. (Motion, fn. 2). And, Judge Walrath plainly can and would

make an independent judgment concerning any MBNA-specific objection to confirmation, regardless of the timing of any such determination.

5. Indeed, MBNA's remaining objections, which TWA strongly contests, are discrete and are unlikely to threaten confirmation. It makes little sense for MBNA's unique objections to be heard before Judge Walsh has the opportunity to hear and decide issues that may be raised by TWA's other objecting creditors.

A. FACTUAL BACKGROUND

6. On September 30, 1999, TWA and MBNA entered into certain affinity agreements (the "Affinity Agreements") whereby MBNA was authorized to offer a credit card affiliated with TWA's frequent flier membership program (the "Aviators Program").[1]

7. In order to avert a piecemeal liquidation (in which TWA obviously could not have performed under any of its agreements), TWA entered into an asset purchase agreement with American dated as of January 9, 2001, whereby American agreed to purchase substantially all of TWA's assets in a court-approved § 363 auction and sale (the "APA"). The APA contemplated that TWA would reject and terminate the Aviators Program and Affinity Agreements with Bankruptcy Court approval pursuant to Section 365 of the Bankruptcy Code. (APA, § 2.1; 9.7).[2]

[1] Under the Affinity Agreements, MBNA agreed to reimburse TWA for the costs associated with frequent flier miles earned by MBNA cardholders and to pay royalty payments to TWA for the use of its logos.

[2] The APA also provided that American would purchase, among other things, rights to payment in TWA's favor, including the amounts MBNA owed to TWA under the Affinity Agreements. (APA, § 2.1; 9.7).

8. On January 10, 2001, the Debtors filed for bankruptcy protection under Chapter 11 of the Bankruptcy Code. Chief Bankruptcy Judge Walsh, who has presided over TWA's Bankruptcy Case virtually from the petition date, approved the APA at the end of an intensive auction and sale process (the "Sale Order"). In re Trans World Airlines, Inc., No. 01-00056, 2001 Bankr. LEXIS 980 (Bankr. D. Del. April 2, 2001). On April 9, 2001, this Court also approved the rejection and termination of the Affinity Agreements and Aviators Program under Section 365 of the Bankruptcy Code.

9. After the Aviators Program and Affinity Agreements were terminated, MBNA commenced an adversary proceeding against American and TWA alleging that, among other things, it was entitled to assert an administrative expense claim of "not less than $20 million" against the Debtors. (Compl. at p. 16).[3] American and TWA then moved to dismiss MBNA's claims and argued, *inter alia,* that MBNA did not have an administrative expense claim the ("Dismissal Motions").

10. Before those motions were decided, MBNA filed an Objection By MBNA Bank, N.A. To Confirmation Of Third Amended 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 "MBNA Plan Objection," attached hereto as Exhibit 1), in which it asserted the Administrative Expense Objections discussed above. Certain other parties holding administrative expense claims also asserted the Administrative Expense Objections in response to TWA's proposed plan of reorganization.

[3] The adversary proceeding was referred to Judge Walrath in light of Judge Walsh's decision to recuse himself from MBNA-related disputes.

11. On April 2, 2002, Judge Walrath issued a ruling on the pending Dismissal Motions and, among other things, rejected MBNA's "assertion of administrative status and request for the establishment of a reserve for its claims under the Debtors plan of reorganization" on the grounds that MBNA was not an administrative creditor of the Estates. See MBNA American Bank, N.A. *v.* Trans World Airlines, Inc. et. al., Ad. Proc. 01-7802, Slip. Op. (Bankr. D. Del. April 2, 2002). MBNA neither appealed this ruling nor moved for reconsideration.

12. On May 3, 2001, MBNA filed the Motion seeking to assign from Judge Walsh to Judge Walrath the responsibility to hear and determine the Administrative Expense Objections made by all parties (including MBNA) and to do so before Judge Walsh rendered any decision regarding whether TWA's proposed plan should be confirmed.

B. MBNA HAS NO STANDING TO RAISE THE ADMINISTRATIVE EXPENSE OBJECTIONS AND THEREFORE ITS MOTION IS BASELESS

13. MBNA has no standing to assert the Administrative Expense Objections and therefore its request for an assignment of, and hearing on, those objections must be rejected. A party may object to aspects of a proposed plan of confirmation only if that party's pecuniary interests are *directly* affected by the allegedly objectionable plan provisions at issue. See 11 U.S.C. § 1128(b); In re Century Glove, Inc., Civ. A. Nos. 90-400-SLR, 90-401-SLR, 1993 WL 239489 (D. Del. Feb. 10, 1993); CoreStates Bank, N.A. v. United Chem. Techs., 202 B.R. 33 (E.D.Pa. 1996).

14. For example, in Century Glove, 1993 WL 239489, a creditor challenged a proposed plan confirmation on the grounds that too much time had elapsed

from the filing of the debtors' disclosure statements to the time of the confirmation hearing and that all creditors might benefit from new reorganization plans. The District Court (Robinson, C.J.) rejected the creditor's objections because, among other reasons, it lacked standing to assert objections based on alleged injury to other creditor classes. In deciding that it would be inappropriate to allow creditors in one class to assert objections based on injury to other creditor classes, the court reasoned that:

> [b]ankruptcy proceedings regularly involve numerous parties, each of whom might find it personally expedient to assert the rights of another party even though that other party is present in the proceedings and is capable of representing himself.

Id. at *3.

15. Likewise, in CoreStates Bank, 202 B.R. 33, a secured creditor objected to plan confirmation because it afforded certain unsecured creditors preferential treatment at the expense of secured creditors. The court held that the secured creditor lacked standing to raise this argument given that the treatment of various unsecured creditors did not affect the treatment of its own claims and ruled that "the only creditor who can argue unfair discrimination is a dissident claimant who has been the direct object of unfair treatment." Id. at 48.

16. In this case, MBNA lacks standing to assert the Administrative Expense Objections -- which involve alleged injury only to administrative expense creditors -- given that it has been judicially established that MBNA's claims are not entitled to administrative expense treatment. Nor is there any question that the Administrative Expense Objections pertain only to alleged injury to administrative expense creditors. For example, MBNA objects to the plan (page 5 of the MBNA Plan

Objection) on the grounds that the plan violates 11 U.S.C. § 1129(a)(9)(A), which section provides that a plan may not be confirmed unless administrative expense claims are paid in full on the effective date or administrative expense creditors agree to other treatment:

> Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that --
>
> (A) with respect to a claim of a kind specified in section (507)(a)(1) or 507(a)(2) of this title, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim . . .

See 11 USC § 1129(a)(9)(A). Patently, if administrative claimants are being paid less than 100% of their claim, then an unsecured, non-priority creditor like MBNA does not have standing to complain about that alleged treatment.

17. Similarly, MBNA purports to object on the grounds that certain administrative expense creditors that already have been paid 100% of their claim may receive better treatment than other administrative creditors receiving less than that amount in violation of 11 USC § 1129(a)(4). That section mandates that any "payment made or to be made by the proponent . . . has been approved by, or is subject to the approval of, the court as reasonable." See 11 USC § 1129(a)(4). Assuming, *arguendo,* that certain administrative expense creditors will fare better than others, MBNA, as a non-administrative creditor, will not suffer any cognizable injury as a result of disparate treatment among a class of creditors of which it is not a member.

18. MBNA also wrongly asserts that it can advance the objection that the proposed plan violates the absolute priority rule because unsecured creditors allegedly will "be paid before holders of administrative claims are paid in full." See MBNA Plan

Objection at p. 13, Ex. 1. As a general unsecured creditor, MBNA should not be heard to complain about payments to its creditor class that violate the priority rights held by a different and senior creditor class.

19. In light of these facts, MBNA's motion must be denied. Judge Walsh can and should, hear and determine the Administrative Expense Objections made by bona fide administrative expense creditors. His doing so will not, in any way, impair MBNA's alleged ability to advance its own, separate and discrete objections. MBNA's discrete objections turn on whether it is entitled to a reserve based on alleged setoff defenses. Those issues, which are unique to MBNA and are relatively insignificant, will not be affected by rulings on the Administrative Expense Objections asserted by others.

20. Further, the relief sought by MBNA is not justified in any event because bona fide administrative expense creditors are the proper parties to raise these objections and MBNA has stated it has no objection to Judge Walsh hearing and deciding them. To the contrary, MBNA's motion, if granted, could have the effect of making MBNA the principal proponent of objections as to which it has no legally cognizable interest.

B. MBNA'S DISCRETE AND NON-MATERIAL OBJECTIONS SHOULD BE HEARD ONLY AFTER JUDGE WALSH DECIDES ALL OTHER CONFIRMATION ISSUES

21. MBNA also seeks to have its objections resolved before Judge Walsh hears and determines the objections of all other parties in connection with the confirmation process. It would be nonsensical for the Court to expend resources addressing MBNA's unique (and relatively insignificant) objections before it is determined whether the bulk of other creditor objections will be sustained or overruled.

22. Indeed, many of MBNA's objections, as it admits in its papers, have been resolved on a consensual basis with the Debtors. Aside from the Administrative Expense Objections (which it is not entitled to raise), MBNA's remaining objection to the plan of reorganization essentially is that it is entitled to a reserve for the claims it asserts in the adversary proceeding. That issue is discrete and MBNA-specific and Judge Walrath clearly should decide it, if necessary. See In re Fuller-Austin Insulation, No. 98-2038-JJF, 1998 WL 812388, at *3 (D. Del. Nov. 10, 1998) (where objector-insurers' rights were expressly preserved by plan and would be subject of separate litigation, insurers had no standing to object to plan confirmation given lack of injury).

CONCLUSION

23. For the reasons set forth above, American Airlines, Inc. and TWA Airlines LLC respectfully request that this Court deny MBNA's Motion.

RESPECTFULLY SUBMITTED,

BOUCHARD MARGULES & FRIEDLANDER

By:_____

Joanne Pileggi Pinckney (Bar. No. 3344)
222 Delaware Avenue
Suite 1400
Wilmington, Delaware 19801
(302) 573-3500
(302) 573-3501 (fax)

and

Alan B. Miller
Richard A. Rothman
Robert S. Berezin

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
(212) 310-8000
(212) 310-8007

Counsel for American Airlines, Inc. and
TWA Airlines, LLC

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Wilmington, Delaware