

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In the Matter of: : Case No.: 01-00056
: :
TWA POST CONFIRMATION : Wilmington, Delaware
ESTATE, : September 19, 2005
Debtor. :

TRANSCRIPT OF OMNIBUS HEARING
BEFORE THE HONORABLE PETER J. WALSH
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For Debtors: JAMES E. O'NEILL, ESQ.
Pachulski, Stang, Ziehl, Young,
Jones & Weintraub
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For Creditor:

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1 THE COURT: Please be seated.

2 MR. O'NEILL: Good morning, Your Honor. James
3 o'Neill, Pachulski, Stang, Ziehl, Young, Jones & Weintraub,
4 here today on behalf of the TWA post confirmation estate.

5 Your Honor, looking at the agenda for today, there
6 are a number of resolved and continued matters. And the first
7 going forward matter appears at number 8 which is on page 5 of
8 the agenda.

9 THE COURT: Okay.

10 MR. O'NEILL: Which is the TWA post confirmation. It
11 states thirty-first non-substantive objection.

12 Your Honor, there were no -- well, there was one
13 response filed by the Internal Revenue Service. And the
14 Internal Revenue Service did file a response indicating that
15 they agreed with the treatment as proposed as long as their
16 remaining claim would in fact remain, and that is what we
17 sought to do.

18 So, Your Honor, this morning I filed a certification
19 of counsel which reflects the relief requested in the thirty-
20 first omnibus objection. I have a copy of the certification
21 with me and also a proposed form of order on top which I can
22 hand up.

23 THE COURT: Okay.

24 (Pause)

25 THE COURT: Okay.

1 MR. O'NEILL: Thank you. Number 9 on the agenda, Your
2 Honor, is the TWA post confirmation estates thirty-second
3 substantive omnibus objection to claims.

4 There were a number of responses which we received
5 and the agenda reflects the status of each one of the
6 responses.

7 I will note for the record, in the thirty-second
8 omnibus objection, the estate objected to the claim of Henry A.
9 Sullivan. Mr. Sullivan filed a response. It is the first item
10 listed at number 9A on the agenda. And after review of that
11 response, the estate has agreed to withdraw its objection to
12 Mr. Sullivan's claim. And the order that I will be handing up
13 shortly reflects the fact that the estate has withdrawn its
14 objection to Mr. Sullivan's claim.

15 I believe that Mr. Sullivan is appearing by telephone
16 today and I just wanted to confirm for him that we have
17 withdrawn our objection.

18 THE COURT: Okay.

19 MR. O'NEILL: There are a number of other matters
20 which are listed there, responses. A number of them are
21 continued to our next hearing which is November 18th at 11 a.m.

22 And I would also note for the record, the estate
23 filed an objection to Pratt & Whitney, the claim of Pratt &
24 Whitney, and counsel for Pratt & Whitney is in the courtroom
25 today. And the order which I have to hand up indicates that the

1 estate's objection to the claim of Pratt & Whitney has been
2 resolved through a settlement which does not require Court
3 approval. So that objection is resolved.

4 Other than that, Your Honor, if there are no comments
5 from anyone, I do have a proposed form of order which reflects
6 the resolution or continuances of the matters in the thirty-
7 second omnibus objection. We did file a certification of
8 counsel this morning, and I have a proposed form of order I can
9 hand up with that certification.

10 THE COURT: Okay. And do you have a resolution of
11 Wells Fargo also?

12 MR. O'NEILL: Yes, Your Honor. Wells Fargo -- yes,
13 Your Honor. That is also resolved through a settlement which
14 does not require Court approval. And that is their claim number
15 998400. This has been resolved through a settlement which does
16 not require Court approval. There were two other Wells Fargo
17 claims which are being expunged for insufficient documentation.
18 But the one Wells Fargo matter is Wells Fargo Bank Northwest As
19 indenture trustee has been resolved through an agreement which
20 does not require Court approval.

21 THE COURT: Okay.

22 MR. O'NEILL: And I can hand that up.

23 THE COURT: Okay.

24 (Pause)

25 MR. FALLON: Good afternoon -- sorry, good morning,

1 Your Honor. Brett Fallon for Pratt & Whitney, a division of
2 United Technologies Corporation.

3 Mr. O'Neill is correct. We have resolved the
4 objection in an amount certain. My understanding is that that
5 does not have to be reflected on this order, but it will be
6 reflected on the claims register.

7 THE COURT: Okay.

8 MR. FALLON: Thank you.

9 MR. O'NEILL: That's correct, Your Honor. We will
10 mark the register to reflect that resolution.

11 Those are the only matters which are on the agenda
12 for today, Your Honor.

13 THE COURT: Okay.

14 MR. O'NEILL: And so the hearing is concluded.

15 THE COURT: Okay.

16 MR. SULLIVAN: Hello, Judge Walsh. This is Henry
17 Sullivan. I'm appearing pro se. Could I speak up, please?

18 THE COURT: Did you hear what counsel said about your
19 claim?

20 MR. SULLIVAN: Yes, I did, Your Honor. This was the
21 second time they had objected to my claim, and I had filed
22 responses earlier, and they withdrew their objection then.

23 What I wanted to ask you, Your Honor, is whether it
24 would be all right, whether I'd be in violation of any court
25 order or rule if I were to file a motion requesting a

1 declaratory order from the Court which would enable me to seek
2 appropriate redress from American Airlines, resulting from the
3 actions that I believe, concerted actions of American and TWA
4 in violation of my due process rights. I did not receive
5 actual notice that they intended to terminate the travel
6 benefits that I had as a former TWA employee under a voluntary
7 termination program in 1986.

8 And as I say, I don't want to run afoul of any of
9 your orders, specifically the injunction in the sale order of
10 March 12th, 2001 that American invoked when I made a claim
11 against American.

12 THE COURT: I honestly don't know what you're
13 referring to, Mr. Sullivan.

14 MR. SULLIVAN: Well, this is all explained in my
15 response to the thirty-second substantive objection. I could
16 elaborate it, if you give me a minute, Your Honor.

17 THE COURT: Okay, well, I didn't read your response
18 because the agenda letter indicated that the matter was
19 resolved by the debtor withdrawing its objection.

20 MR. SULLIVAN: Okay, would you like me to briefly
21 explain it to you?

22 THE COURT: Okay, go ahead.

23 MR. SULLIVAN: In my response to the objections, I
24 explained that I'm a former TWA attorney who exchanged his
25 continued employment for lifetime passes on TWA pursuant to

1 voluntary termination program in 1986. And that I did not
2 receive actual notice of any of the pleadings which resulted in
3 the Court's approval of American Airlines bid for TWA's assets,
4 and assumption of certain limited and defined liability.

5 I understand that individuals who retired from TWA
6 under standard retirement understandings also did not receive
7 actual notice of the proposed sale, and that this was because
8 American had agreed to offer retirement benefits to TWA
9 retirees generally.

10 And it's my belief that American made a belated
11 decision to reject TWA's obligations to me, even though I was
12 receiving retirement benefits from TWA when it filed the
13 voluntary petition for relief under Chapter 11.

14 Further, it appears that American then engaged in a
15 concerted effort with TWA to obtain Court approval of the asset
16 sale on limited notice for the purpose of avoiding expected
17 opposition from interested parties such as myself. And I
18 believe that such actions by American and TWA violated my due
19 process rights by preventing me from making the singular
20 argument before the Court that my agreement with TWA should not
21 be rejected by American because the agreement provided TWA with
22 a profit, not a liability.

23 When using our passes, we occupy seats which
24 otherwise would have been empty, and we typically pay
25 surcharges of 30 to \$50 per flight segment per person. We paid

1 even greater amounts for fair market value space available
2 tickers under TWA's extended eligibility program for employees
3 and retirees. For example, \$250 for a ticket to Europe in
4 October 2000.

5 And as I explained, American has taken the position
6 that it has no liability for my claim for damages on the
7 grounds that the Court's April 9, 2001 order specifically
8 approved the rejection of contracts.

9 Further, American contends that under the asset
10 purchase agreement, flight travel benefits or privileges are
11 retained by the TWA estate, and that as a holder of a retained
12 liability, I'm enjoined from filing suit against American by
13 the injunction in the March 12th, 2001 sale order.

14 And that's why I'm asking Your Honor whether you
15 would permit me to file a motion, perhaps to be heard at the
16 next scheduled time on your calendar for this TWA case in
17 November, in which I would seek a declaratory order from you
18 which would enable me to try to obtain appropriate redress from
19 American for the damages that I believe resulted from their
20 actions in violation of my due process rights.

21 THE COURT: Does this have anything to do with the
22 claim that was objected to and now withdrawn?

23 MR. SULLIVAN: Yes, Your Honor. This was explained in
24 that. But actually as a result of a notice that I received when
25 I got the thirty-second omnibus objection, I inquired whether

1 TWA estate was indeed trying, willing to settle the claim as
2 the notice indicated. And when I touched base with their
3 counsel, I found that American would not participate in any
4 settlement. So this caused me to think that maybe it would be
5 appropriate to file such a motion as I outlined to you.

6 MR. O'NEILL: With regard to the estate, the claim
7 against the estate, Your Honor, the claim was filed I believe
8 in a monetary amount, and I think that it was just an economic
9 decision on the estate's part, given what the anticipated
10 distribution would be, not to continue to raise objections to
11 the monetary amount asserted in the unsecured claim.

12 THE COURT: Okay. Mr. Sullivan, I obviously can't
13 comment on the merits of your --

14 MR. SULLIVAN: Of course not.

15 THE COURT: -- assertion, but if you wish to file
16 something and serve it on American and any other party that you
17 think that ought to be served, why, it can be brought on for
18 consideration at some future hearing.

19 MR. SULLIVAN: Thank you, Your Honor. And
20 specifically, there is an enormous service list attached to the
21 thirty-second omnibus objection. Do you think it would be
22 sufficient if I just served such a motion on the TWA estate and
23 American Airlines, since I am participating in this pro se?

24 THE COURT: I assume -- is there still a Committee?

25 MR. O'NEILL: I don't -- I don't think the Committee

1 is still functioning, Your Honor.

2 THE COURT: Okay. All right, I would think that
3 service on the estate and American would be sufficient.

4 MR. SULLIVAN: Fine, Your Honor. Okay, well, thank
5 you very much.

6 THE COURT: Okay. Anything else?

7 MR. O'NEILL: Thank you very much, Your Honor. No,
8 that's all for today.

9 THE COURT: Okay, we stand in recess.

10 MR. MC MILLIAN: excuse me, Your Honor, for the
11 record, my name is Herbert McMillian, for the record.

12 THE COURT: Yes. Do you have a matter scheduled here
13 today?

14 MR. MC MILLIAN: I did submit papers to the law firm
15 since April, and I came to both -- first, my name is Herbert
16 McMillian, and I'm pro se, in reference to the creditor.

17 I submitted a affidavit, I mean a request, for, to
18 enter a judgment by default of the creditor, and it supposed to
19 be on the agenda for April which I came and there was no
20 hearing. I never got notice. Then I came in July and there also
21 I never got notice, and I understand on the agenda. And I spoke
22 to Mr. O'Neill just a few minutes ago, he said I'm not on the
23 agenda.

24 So I just want to be on the record that I did submit
25 papers timely in order to be on the agenda, and I was denied

1 the opportunity to express my views, or there was never any
2 objections in reference to the request to enter a judgment by
3 default.

4 Also, I just like to bring two points, I'm not here
5 to argue, I just want to be on the record. I also request, the
6 third is I submitted a request which I just submitted today and
7 filed in the Clerk's Office and the service was sent out
8 yesterday to the debtors and the insurance in reference to my
9 ERIS - E.R.I.S.A. claims and benefits that I'm entitled to. And
10 I have a application here, reads request for judicial notice,
11 criminal investigation at grand jury procedures, and it is
12 addressed to the Honorable Mary L. Walford, a Chief Judge of
13 the United States Bankruptcy Court, at this address.

14 So I submitted to the debtors a copy just a few
15 minutes ago, Mr. O'Neill, but there was sent out by U.S. Mail
16 to the debtors and copy went to the U.S. Attorney's Office and
17 a copy went to U.S. Trustee's Office, and I just wanted to be
18 on the record in reference to a particular papers.

19 Also, I would like according to the rules, a
20 reference to the debtors or any party in the matter, do not
21 inform the other party in writing in reference to a schedule
22 date and whatnot, a violation of your court rules. And it's a
23 very serious rule. I think I have a right to hear my motion.

24 So also I would like to, if it's possible, to
25 continue whatever, be on the agenda in the next hearing.

1 THE COURT: Do you know what motion he's talking
2 about, Mr. O'Neill?

3 MR. O'NEILL: I can respond. Mr. McMillian has
4 continued to put things on the docket that are very difficult
5 for me to understand the meaning of. They don't request any
6 particular thing, they're not in the form of a motion, they're
7 similar to other things that have been filed by Mr. McMillian
8 in the past. I have seen Mr. McMillian's request for entry of
9 default judgment appear on the docket several times. There is
10 no open matter for which a default could be entered.

11 So the estate has not been responding because the
12 pleadings which have been filed don't really address any open
13 matter that's pending before this Court.

14 Your Honor will recall the last thing that happened
15 with respect to Mr. McMillian was disallowance of his claim
16 which happened some time ago. And at that time, basically it
17 was the estate's view that the relationship with Mr. McMillian
18 as far as the estate was over. That was after several hearings,
19 several pleadings which were filed and disposition by this
20 Court.

21 Since that time, there have been things which have
22 been put on the docket. Again, there's no open matter. There's
23 nothing for this Court to decide in our view. The things which
24 are put on the docket aren't styled as a motion, and we have no
25 way really to respond other than to file a pleading that says

1 we're not going to respond to this.

2 So, this Mr. O'Neill Mr. McMillian handed me the
3 latest thing which got put on the docket which still it doesn't
4 really inform me of what he wants other than some kind of a
5 criminal investigation. There are claims which -- maybe there
6 are claims which he has against other people, but as far as the
7 estate's concerned, he has no claim against the TWA post
8 confirmation estate, and there's no continuing role for him to
9 play in the bankruptcy.

10 THE COURT: Okay. Mr. McMillian, look, if you want to
11 say something, you must identify for Mr. O'Neill by docket
12 number --

13 MR. MC MILLIAN: I have --

14 THE COURT: -- what item you want considered.

15 MR. MC MILLIAN: Docket number 5521.

16 THE COURT: Okay, that's --

17 MR. MC MILLIAN: If like he said, he didn't respond,
18 even though even just two words, I'm not responding, you know,
19 at least you know, there would be something on the court
20 record.

21 THE COURT: Okay, so you want the Court to consider
22 that on --

23 MR. MC MILLIAN: Right, consider that and that is to
24 put on the agenda and have --

25 THE COURT: All right, we'll put it on for the next

1 hearing. You can respond to it, Mr. O'Neill.

2 MR. O'NEILL: What was the docket number?

3 MR. MC MILLIAN: 5521.

4 MR. O'NEILL: I'll do that.

5 THE COURT: Do you know when the next omnibus hearing
6 is?

7 MR. O'NEILL: It's November 18th.

8 THE COURT: Okay.

9 MR. MC MILLIAN: And also too, Your Honor --

10 THE COURT: We'll put it on for November 18th.

11 MR. MC MILLIAN: Okay, thank you. Only other
12 question, I don't --

13 THE COURT: Mr. O'Neill, you'll respond to it.

14 MR. O'NEILL: Yes, I will, Your Honor.

15 MR. MC MILLIAN: Also, in reference to the criminal
16 investigation by grand procedure, that is decided by, got to be
17 proven by a grand jury, it can't be proven by me. The only
18 thing I can do is put down the issues that be triable in
19 reference to the charges. So I don't know what he's talking
20 about. Only thing when you have a jury trial, only has to be
21 proven triable issues that's raised on the agenda.

22 Only other question is that in reference to the
23 expunge, and I give you a copy of this if you want to see it
24 because your name is on here in reference to, disqualifying
25 yourself from the case.

1 THE COURT: I don't need to see it.

2 MR. MC MILLIAN: All right, Your Honor. But anyway, I
3 say, but anyway, so I'll be on the agenda for the next November
4 8th. Thank you very much.

5 THE COURT: Okay. We stand in recess.

6 (Matter concluded at 11:52 a.m.)

7 * * * *

C E R T I F I C A T I O N

I, Sandra Carbonaro, court approved transcriber,
certify that the foregoing is a correct transcript from the
official electronic sound recording of the proceedings in the
above-entitled matter.

SANDRA CARBONARO

Doman Transcribing & Recording Svcs. _____

AGENCY

DATE