

Hearing Date: June 4, 2013 at 11:00 a.m.
Objection Deadline: May 24, 2013 at 12:00 p.m.

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re	:	Chapter 11
	:	
AMR CORPORATION, <i>et al.</i> ,	:	Case No. 11-15463 (SHL)
	:	(Jointly Administered)
Debtors.	:	
	:	

**HEWLETT-PACKARD ENTERPRISE SERVICES, LLC’S, RESPONSE TO THE
UNITED STATES TRUSTEE’S OBJECTION TO DEBTORS’ MOTION FOR AN
ORDER (I) APPROVING DISCLOSURE STATEMENT; (II) ESTABLISHING A
RECORD DATE; (III) ESTABLISHING NOTICE AND OBJECTION PROCEDURES
FOR CONFIRMATION OF THE PLAN; (IV) APPROVING SOLICITATION
PACKAGES AND PROCEDURES FOR DISTRIBUTION THEREOF; (V) APPROVING
THE FORMS OF BALLOTS AND ESTABLISHING PROCEDURES FOR VOTING
ON THE PLAN; AND (VI) APPROVING THE FORM OF NOTICE TO
NON-VOTING CLASSES UNDER THE PLAN**

TO: THE HONORABLE SEAN H. LANE,
UNITED STATES BANKRUPTCY JUDGE:

Hewlett-Packard Enterprise Services, LLC (“HP”), by its undersigned counsel,
respectfully submits this response to the objection of the United States Trustee (the “UST”) to
the motion of AMR Corporation and its affiliated debtors (collectively, the “Debtors”) for an
Order (I) approving disclosure statement; (II) establishing a record date; (III) establishing notice
and objection procedures for confirmation of the plan; (IV) approving solicitation packages and

procedures for distribution thereof; (V) approving the forms of ballots and establishing procedures for voting on the plan; and (VI) approving the form of notice to non-voting classes under the Plan (the “UST Objection”) [Docket No. 8309]. In support hereof, HP respectfully states:

FACTUAL BACKGROUND

1. On November 29, 2011, the Debtors each filed petitions for relief under Chapter 11 of Title 11, United States Code (the “Bankruptcy Code”). By Order dated November 29, 2011, the Debtors’ cases were jointly administered [Docket No. 46].

2. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

3. On December 5, 2011, the UST appointed an official committee of unsecured creditors in the Debtors’ cases (the “Committee”) [Docket No. 128]. HP was one of nine members appointed to the Committee. HP has incurred fees and costs, including legal fees, in connection with its service on the Committee.

4. On April 15, 2013, the Debtors filed their Joint Chapter 11 Plan (as same may be amended, the “Plan”) [Docket No. 7631]. On the same day, the Debtors also filed their Proposed Disclosure Statement for the Debtors’ Joint Chapter 11 Plan (as same may be amended, the “Disclosure Statement”) [Docket No. 7632].

5. As part of the heavily negotiated global settlement and merger embodied in the Plan, in which the Committee played a significant and pivotal role, the Debtors agreed to incorporate, *inter alia*, Articles 2.4 and 6.23 into the Plan. Article 2.4 of the Plan, entitled “Special Provisions Regarding Fees and Expenses of Indenture Trustees,” is inapplicable to HP. Article 6.23 of the Plan is called “Creditors’ Committee Member Fees” (the “Committee Member Fees Provision”) and provides as follows:

Subject to the occurrence of the Effective Date, the reasonable fees and out-of-pocket expenses (including professionals fees in an amount to be agreed upon by the Debtors and the Creditors' Committee) of the individual members of the Creditors' Committee, in each case, incurred in their capacities as members of the Creditors' Committee, shall, to the extent incurred and unpaid by the Debtors prior to the Effective Date, be Allowed as Administrative Expenses and paid by the Reorganized Debtors without further Bankruptcy Court approval upon the submission of invoices to the Reorganized Debtors. The foregoing shall not include any such fees and out-of-pocket expenses paid pursuant to section 2.4 hereof.

LEGAL ARGUMENT

6. The UST asserts the Disclosure Statement should not be approved because the Committee Member Fees Provision renders the Plan patently unconfirmable. For the reasons set forth herein and in the anticipated response to the UST Objection to be filed by the Debtors and the Committee, which HP adopts as to the Committee Member Fees Provision, the UST Objection should be overruled. At best, any continuing objections to the Committee Member Fees Provision should be deferred to the confirmation hearing.

7. First, it cannot be disputed that the Disclosure Statement contains adequate information about the Committee Member Fees Provision to enable a creditor to make an informed decision as to whether to vote in favor or against the Plan. See Disclosure Statement, Article IV.F.24. Therefore, the Disclosure Statement satisfies the requirement for containing adequate disclosure.

8. Second, even the case cited in the UST Objection for the proposition that plan confirmation issues should be considered by the Court now - at the Disclosure Statement hearing stage - recognizes that confirmation issues generally should be addressed at the confirmation, not at the disclosure statement hearing. In re Am. Capital Equipment, LLC, 688 F.3d 145, 153-54 (3d Cir. 2012); See UST Objection, p. 6. Even in American Capital, the United States Court of

Appeals for the Third Circuit noted that a bankruptcy court may address issues of plan confirmation at the disclosure statement stage only “where it is obvious at the disclosure statement stage that a later confirmation hearing would be futile because the plan described by the disclosure statement is patently unconfirmable.” Id. 154 (emphasis supplied). The Court of Appeals explained that a ‘plan is patently unconfirmable where (1) confirmation “defects [cannot] be overcome by creditor voting results” and (2) those defects “concern matters upon which all material facts are not in dispute or have been fully developed at the disclosure statement hearing.”’ Id. at 154-155 (citing In re Monroe Well Serv., Inc., 80 B.R. 324, 333 (Bankr. E.D. Pa. 1987)).

9. That is simply not the case here and, therefore, the UST’s opposition to the Committee Member Fees Provision is not ripe for consideration. The UST argues the Plan is patently unconfirmable because it does not comply with the applicable provisions of the Bankruptcy Code as required by Section 1129(a)(1). The UST then contends the Creditor Member Fees Provision purports to violate Sections 503(b)(3), (b)(4) and (b)(5) of the Bankruptcy Code.¹ This is the precise argument the UST advanced and lost in the case of In re Lehman Bros. Holdings Inc., 487 B.R. 181 (Bankr. S.D.N.Y. 2013), appeal docketed, 13-CV-02211-RJS (S.D.N.Y. 1997). In Lehman Bros., Judge Peck found that the:

UST’s argument is built on the proposition that Section 503(b) has a controlling and preclusive impact and is the exclusive pathway by which a member of an official committee can ever be entitled to receive compensation for legal fees incurred while serving on such

¹ The UST suggests the attorneys’ fees of individual committee members to be paid under Article 6.23 of the Plan have to be paid in cash, in full on the Effective Date. See UST Objection, p. 9. Article 6.23 does not say that. Rather, the provision contemplates solely that the fees will be paid by the Reorganized Debtors after submission of invoices by the Committee Member seeking payment of its legal fees. In any event, the applicable statute contemplates that administrative creditors may agree to different treatment than being paid on the effective date of a plan. See 11 U.S.C. § 1129(a)(9)(A).

a committee. Under her interpretation, the limitations in Sections 503(b)(3) and 503(b)(4) are disqualifying for members of the Committee. She submits that they both eliminate the potential for members of an official committee to receive payment for counsel fees under these sections *and* foreclose the option for such compensation to be paid permissibly by any other means. Her argument, if accepted, would negate in absolute terms the possibility of plan treatment that might offer to compensate members of an official committee for their personal professional fees under any and all circumstances.

That reading goes too far.... The flaw in the UST's argument is the embedded assumption that the administrative claim formulation of Section 503(b) functions as a trump card that extends across the Bankruptcy Code to block the formulation of a plan that proposes independent grounds for granting comparable payment rights. There is no basis for such a contention. Moreover, the objection of the UST discounts both the enormous leeway granted to the architects of plans under Section 1123(b)(6) of the Bankruptcy Code (providing that a plan may include any other appropriate provision not inconsistent with the applicable provisions of this title) and the authority and discretion of the bankruptcy court to approve payments in connection with a plan as being reasonable under Section 1129(a)(4).

Id. at 186 (emphasis in the original)

10. In Lehman Bros., Judge Peck further found that In re Adelphia Communications Corp., 441 B.R. 6 (Bankr. S.D.N.Y. 201) supported his conclusion that payment of legal fees to members of a statutory committee can be accomplished under a plan of reorganization even though Adelphia involved members of an *ad hoc* committee seeking payment of legal fees. Id. at 191-192. Judge Peck fully embraced Judge Gerber's reasoning in Adelphia:

Applications for the payment of administrative expenses as provided in Section 503(b) and the right to payments made consensually under a plan are clearly distinct. As noted in Adelphia, there are basic differences between a claim for reimbursement of professional fees under Section 503(b) and payments that are made pursuant to a plan of reorganization. Requests for payment under Section 503(b) are "nonconsensual in nature," 441 B.R. at 12, but a payment "made in connection with a reorganization plan" ordinarily will be made on a consensual basis. Id. at 13.

Lehman Bros., 487 B.R. at 192.

11. In view of two cases from the Bankruptcy Court for the Southern District of New York, which are squarely on point and reject the UST's contentions here, it is incorrect for the UST to argue that the Committee Member Fees Provision renders the Plan patently unconfirmable even though one of the cases is on appeal.

CONCLUSION

12. For all these reasons and authorities, as well as those to be set forth in the Debtors' and Committee's responses to the UST Objection, HP respectfully requests that the portion of the UST Objection relating to the Committee Member Fee Provision be denied or, alternatively, be deferred to the hearing on confirmation of the Plan, and grant such other relief as the Court deems just and appropriate under the circumstances.²

Dated: New York, New York
May 31, 2013

Respectfully submitted,

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² HP reserves its rights to raise any and all additional arguments in opposition to the UST's objection to the Committee Member Fees Provision at the confirmation hearing.

CERTIFICATE OF SERVICE

I, Michael D. Warner, hereby certify that on this 31st day of May, 2013, a hard copy of *Hewlett-Packard Enterprise Services, LLC's, Response to the United States Trustee's Objection to Debtors' Motion for an Order (I) Approving Disclosure Statement; (II) Establishing a Record Date; (III) Establishing Notice and Objection Procedures for Confirmation of the Plan; (IV) Approving Solicitation Packages and Procedures for Distribution Thereof; (V) Approving the Forms of Ballots and Establishing Procedures for Voting on the Plan; and (VI) Approving the Form of Notice to Non-Voting Classes Under the Plan* was served on the following parties as indicated below:

By hand delivery/courier service:

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