

UNITED STATES BANKRUPTCY COURT

DISTRICT OF HAWAII

In re)	Case No. 03-00817
)	Chapter 11
HAWAIIAN AIRLINES, INC.,)	Hearing: October 27, 2005
)	
Debtor.)	Related Docket No. 5428
_____)	

**MEMORANDUM DECISION ON
TRUSTEE’S APPLICATION FOR FINAL COMPENSATION**

The chapter 11 trustee in this highly successful case seeks final compensation comprised of \$1,153,333.33 (representing interim compensation allowed and paid to date) plus \$276,562.41 (representing housing, automobile, and expense allowances, most of which has been allowed and paid on an interim basis) plus \$8,000,000.00 (the “additional amount”¹), for a total of \$9,429,895.74.

No party contends that the trustee should receive less than the interim compensation previously paid. No party seriously challenges the requested expense reimbursement. (One union says that the expenses are too high but fails to explain its contention or identify any particular expense which the union finds

¹The objectors call the additional amount a “bonus.” A “bonus” is “[a] boon or gift over and above what is normally due as remuneration to the receiver . . .” Oxford English Dictionary (2d ed. 1989). As is discussed below, it is difficult if not impossible to determine what is “normally due as remuneration” to the operating chapter 11 trustee of an airline. Labelling part of the trustee’s request a “bonus” is therefore arbitrary. It is also irrelevant because, under the bankruptcy code, the trustee is entitled to “reasonable compensation.” Calling one component of a compensation request a bonus does not help determine whether the overall compensation is reasonable.

unreasonable.)

The parties disagree sharply about the additional amount. The trustee argues that the additional amount should be \$8,000,000.00. The Office of the U.S. Trustee (“UST”) contends that an additional amount should be allowed but that it should not exceed \$1,153,333.33. The other objectors contend that the additional amount should be zero.

For the reasons explained in this memorandum, I will award final compensation and reimbursement in the amount of \$1,679,895.74. This includes an additional amount of \$250,000.00.

The trustee is entitled to “reasonable compensation for actual, necessary services rendered by the trustee” and “reimbursement for actual, necessary expenses.” 11 U.S.C. § 330(a). In deciding what compensation is “reasonable,” the court must

consider the nature, the extent, and the value of such services, taking into account all relevant factors, including –

- (A) the time spent on such services;
- (B) the rate charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, as case under this title;
- (D) whether the services were performed within a reasonable

amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

- (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
- (E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Id. § 330(a)(3). The court may not allow compensation for duplicative, unnecessary, or non-beneficial services. Id. § 330(a)(4). Congress intended that bankruptcy professionals be compensated at rates comparable to those enjoyed by non-bankruptcy professionals, in order to encourage competent and experienced individuals to work in the bankruptcy arena.

I have considered all relevant factors, including but not limited to those listed in section 330. In my judgment, the most relevant factors in this case are the following:

Results Achieved. The outcome of this case is exceptional. Other than creditors holding claims based on aircraft leases, all unsecured creditors have received a cash payment equal to the full amount they were owed on the date of bankruptcy. The aircraft lease creditors received a combination of cash and securities which they found satisfactory. Stockholders' interests were diluted but preserved. The company was recapitalized and is now in an enviable financial

position compared to its competitors. To my knowledge, no airline reorganization case has produced results nearly as favorable as this case, and few chapter 11 cases in any industry have ended as well for creditors and stockholders.

Allocation of Benefits and Burdens among Stakeholders. Although the overall result of this case is outstanding and all parties in interest were treated fairly, the benefits and burdens were not allocated equally. Labor is a case in point. Because the company survived and prospered, the employees' jobs were preserved and made more secure. But labor made substantial sacrifices. The company reneged on its promises to give future pay raises, pension plans were dramatically changed to the detriment of workers, and work rule changes mean that the employees will work longer and harder. These changes were necessary to permit Hawaiian Airlines to compete successfully, and Hawaiian Airlines' employees have done well compared to their peers at other airlines, but the changes were still painful. The sacrifices made by labor militate against excessive payments to people at the top of the corporate pyramid.

This does not mean that the trustee or the professionals should be paid less simply because one group of creditors is unhappy. Because the trustee argues for a generous fee based on the success of the case, however, it is relevant and important to note that success has many measures and that some constituencies in

this case benefitted more than others.

Responsibility for Results Achieved. Many people deserve credit for the success of this case. Everyone agrees that the trustee's professionals, including his attorneys, Hennigan Bennett and Dorman and Carlsmith Ball, and many others, performed superbly. The objectors contend that all of the credit belongs to the professionals and none to the trustee. But a professional does not function without a client. The trustee made the decisions about goals and strategy and his professionals executed those decisions. Both the trustee and his professionals are entitled to a fair measure of credit. Similarly, many other participants in this case did excellent work. These include (but are not limited to) the company's managers, the Official Committee of Unsecured Creditors and its attorneys and other professionals, and the parties who participated in the bidding process. The labor unions and their leaders and professionals also performed well, fighting hard for their members' interests when appropriate and striking good bargains at the right moment.

No one has given sufficient credit, however, to the company's rank and file employees. This case was successful because many people were willing to pay a lot of money in order to own Hawaiian Airlines. The investors found the company attractive because it is successful and profitable, and that is so because

the airline delivers people and their luggage to the right places, at the promised times, and for a fair price, and treats them well en route. The rank and file employees who maintain and fly the aircraft and attend to the passengers' needs are crucial to any airline's success. The trustee, the professionals, and senior management will receive ample and well-earned rewards. Sadly, under current market conditions, the rank and file will not fare so well.

Time Expended. The trustee has established that he spent 4,995 hours on the job. He claims that this figure underestimates the time he actually spent because he did not record all of the hours he worked while at home in the evening or during travel. No one challenges the trustee's hours.

Timeliness of Services. Some of the objectors claim that the trustee did not complete the reorganization quickly enough. The trustee's decision to take some time after his appointment to identify and diagnose the company's problems was a reasonable exercise of his business judgment. This period was not devoted solely to the trustee's self-education. Any prudent executive, no matter how experienced in the airline business, would have reviewed the business carefully before launching a reorganization strategy. Some chapter 11 cases have been completed in less time, but commentators argue that many debtors fail again after an initial chapter 11 reorganization because their chapter 11 plans were confirmed

too hastily. Lynn M. LoPucki & Joseph W. Doherty, Why are New York and Delaware Bankruptcy Reorganizations Failing?, 55 Vand. L. Rev. 1933 (2002).

The notion that the outstanding results of this case could have occurred sooner is inherently unprovable and, in the final analysis, relatively unimportant.

Rates Charged. There is no “going rate” for a chapter 11 trustee, particularly one charged with operating a business as large and complex as an airline. In re Borrego Springs Dev. Corp., 253 B.R. 271, 279 (S.D. Cal. 2000) (“there are no ‘prevailing hourly rates’ for the type of services performed by bankruptcy trustees”). The parties point to various alleged comparables, including the hourly rates charged by bankruptcy attorneys, chief restructuring officers, and crisis managers and the compensation packages earned by executives at other airlines and other debtor companies. All of the alleged comparables are relevant to some degree but none is an exact fit.

The amounts earned by Mr. Dunkerley, Hawaiian Airlines’ current CEO, and David Banmiller, CEO of Aloha Airlines, Inc., a close competitor which is also in a chapter 11 proceeding, are relevant. The duties, skills, and compensation earned by these individuals are different from but still comparable to those of the trustee. The biggest difference is that Mr. Dunkerley and Mr. Banmiller have stock or options to buy stock in their employers, while the trustee

does not. The trustee argues that the stock or options have substantial value and that the trustee's cash compensation should be set accordingly. Under current market conditions, the value of airline stocks is volatile and uncertain. Mr. Banmiller's stock in Aloha Airlines is probably worthless. The value of Mr. Dunkerley's stock in Hawaiian Airlines varies widely depending on the valuation date. For purposes of comparison, it is appropriate to assign relatively little, if any, value to those executives' stock rights.

Another helpful point of comparison is the amounts the trustee has earned in other jobs. The trustee has held many important and responsible positions. Some of those positions have been more remunerative than this one, but some of them (particularly those in government service) were much less lucrative. The allowed final compensation is within the range of the trustee's own earning experience.

The hourly rates charged by bankruptcy attorneys, CROs, and similar professionals are not particularly helpful because those rates are paid, not just for the services of the individual professional, but also for the services of the firm to which the professional belongs. Paying the same hourly rate to an individual who provides only his own services and does not have overhead expenses would be too generous.

The parties cite numerous reported decisions on trustee's compensation. There are not many such decisions, probably because there have not been many trustees in major chapter 11 cases. The decisions use the same verbal formulations to describe reasonable compensation but reach dramatically different results. In re Borrego Springs Dev. Corp., 253 B.R. 271, 279 (S.D. Cal. 2000) (reversing an allowance of \$255,450 based on the bankruptcy court's failure to consider the section 330 factors); In re Miniscribe Corp., 309 F.3d 1234 (10th Cir. 2002) (affirming an allowance of \$1,828,812 to a chapter 7 trustee based on an hourly rate of \$400 and a multiplier of 2.57); In re Marvel Entertainment Group, Inc., 234 B.R. 21 (D. Del. 1999) (allowing \$352,000 to a chapter 11 trustee for 880 hours of work at \$400 per hour); In re Bennett Funding Group, Inc., Case No. 96-61376 (Bankr. N.D.N.Y. Feb. 20, 2003) (allowing \$13.85 million to a chapter 11 trustee based on an unopposed application and after a small reduction negotiated by the UST). The parties debate extensively the similarity, or lack thereof, of the allowances in those cases to the parties' positions in this case. All that one can deduce from the reported decisions is that the reasonableness of a fee in a particular case depends heavily on the facts of that case and that a reasonable fee in one case might or might not be reasonable in a different case.

The allowance of final compensation and reimbursement² amounts to about \$336 per hour or about \$876,500 per year. I find and conclude that, by either measure, the allowance is within the range of reasonableness.

The trustee correctly points out that, under section 330, compensation levels in bankruptcy cases must be set high enough to attract qualified people to work in the bankruptcy field. This allowance is consistent with that goal. The parties agree that there were many applicants for the trusteeship in this case. No binding assurances of any particular amount of final compensation were necessary to attract those applicants. This trustee was willing to undertake his daunting task with an agreed-upon monthly interim compensation payment but without any assurance whatsoever concerning the amount of final compensation. It is speculative at best to say that this allowance will discourage qualified individuals from accepting future trusteeships.

Risk of Nonpayment. In many bankruptcy cases, trustees effectively work on a “contingent fee” basis – they start the case with little cash in the bank and get paid only if they recover enough money for the estate to pay themselves and other administrative claimants. In re Miniscribe Corp., 309 F.3d at 1237. In

²The bulk of the expense reimbursement is for ordinary living expenses which most people pay out of their salaries. Therefore, for purposes of this calculation, I treat the compensation and the reimbursement interchangeably.

this case, the trustee never faced a meaningful risk that the estate would not have funds to pay him. Although the debtor's cash balance was lower than desirable at the beginning of the case, the debtor never faced a serious cash crisis. Unlike the vast majority of debtors in possession, which need a "DIP loan" to cover their cash needs during the bankruptcy, Hawaiian Airlines never needed DIP financing and was always able to finance its operations out of its own income.

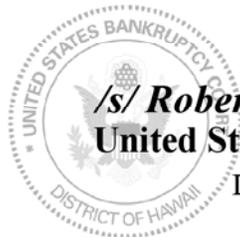
Skill and Qualifications. I reject the contention that the trustee lacked the experience and skills which his job required. As the findings of fact and conclusions of law supporting the appointment of the trustee make clear, the company's management was perfectly capable of running the airline on a day-to-day basis. The airline needed a person at the top to impartially serve the interests of all constituents and oversee the airline's operations and reorganization. The UST concluded that the trustee had those qualifications, and the results of the case prove that the UST was right.

* * *

My allowance is substantially less than the trustee's request. This does not mean that I accept any of the objectors' criticisms of the trustee's performance, conduct, or qualifications, their attempts to minimize the overwhelming success of this case, or their effort to deny the trustee credit for that

success. The exact opposite is true. The results of this case were remarkable. No other airline reorganization of which I am aware, and very few chapter 11 reorganizations of any business, have produced results comparable to this case. The trustee was a major participant in the case and he performed his function admirably. He deserves significant credit – not all of the credit, but a fair share of the credit – for the outcome. He also deserves substantial monetary compensation for his hard and successful work. Based on the circumstances of the case, including the factors discussed above, a total allowance of \$1,679,895.74 is reasonable.

An appropriate separate order will issue.



/s/ Robert J. Faris
United States Bankruptcy Judge

Dated: 11/01/2005