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In the United States Bankruptcy Court  
for the  
Southern District of Georgia  
Brunswick Division

In the matter of: )  
) Chapter 7 Case  
TPI INTERNATIONAL )  
AIRWAYS, INC. ) Number 91-20162  
)  
*Debtor* )

**ORDER ON TRUSTEE'S MOTION TO ABANDON PROPERTY  
AND MOTION TO ASSIGN DEBTOR'S INTEREST IN LITIGATION**

On September 3, 1997, the Chapter 7 Trustee, Anne R. Moore, filed her notice of intent to abandon property described as follows:

Any interest in any claim against the United States Air Force, the United States Department of Labor, or any other United States governmental agency.

Any interest in any claim against the government of Zaire.

Any foreign accounts receivable.

In response to the Trustee's motion a notice of proposed abandonment was issued by the Clerk on September 9 and the matter was set for a hearing on November 6, 1997. At the November 6 hearing, an objection was entered by Frederick Catchpole, former president

of the debtor corporation and sole shareholder. After lengthy consideration by the Court the issue boiled down to whether the Trustee could assign the interest of the estate in the various litigation and other claims in exchange for the sum of \$1,000.00, for which an offer had been tendered, or should be permitted to abandon the claim.

The Trustee expressed her view to the Court that it would obviously be more beneficial to the estate to receive \$1,000.00 in exchange for the assignment of these claims and litigation interests than to simply abandon them. However, she stated that the offeror wanted certain warranties from the Trustee concerning the offeror's right to continue to pursue the claims which the Trustee was not prepared to give. After lengthy colloquy the Court directed the Trustee to file a motion seeking authority to assign the Debtor's interests and directed that a continued hearing on the motion to abandon would be scheduled at the same time as the motion to assign.

Thereafter the Trustee on November 12, 1997, filed her motion to assign the debtor's interest in litigation seeking authority to assign

. . . the bankruptcy estate's rights in the litigation to P & R Investments, a company in which Frederick Catchpole has a significant interest. The assignment will be whatever rights TPI International Airways, Inc., the debtor in bankruptcy, has in the litigation outlined above and the assignment will be without warranties or guaranties. THE ASSIGNMENT

WILL BE AS IS AND WHERE IS.

Trustee's Motion to Assign Debtor's Interest in Litigation, filed November 12, 1997, ¶

5. The Motion described the assets subject to assignment as

Among the potential assets of the debtor at the time of conversion were lawsuits against the United States Air Force, the Federal Aviation Administration, the United States Department of Labor and foreign banks in Belgium.

¶ 3. The consideration for the assignment was payment of \$1,000.00 and the withdrawal of all claims of directors and shareholders against the bankruptcy estate. Notice of the Trustee's motion was given by the Clerk on November 17 and scheduled for a hearing on December 11. On December 4 Frederick R. Catchpole filed a motion concerning the Trustee's proposal which was not scheduled for a hearing, but the essence of which was taken up at the December 11 hearing. Mr. Catchpole raised, in essence, two points: (1) whether the acquisition of the litigation interests and claims of TPI would be warranted free of defenses of the United States government or other defendants; and (2) whether the transfer should include a "transfer of the corporate entity." ¶ 4. At the hearing the Court ruled that any transfer by the Trustee would be made without any warranties or guaranties of the viability of a claim. I informed the parties that if such a limited assignment was unacceptable to the purchaser, then the only alternative was to authorize abandonment by

the Trustee.

On the second issue, Mr. Catchpole stated that he has spent substantial sums of money to keep the corporate entity, TPI International Airways, Inc., in good standing and he continues to harbor the belief that he will be able at some point to recapitalize the company and begin operations once again. While it is highly unusual that a corporate Chapter 7 debtor would ever seek to commence doing business having been through a Chapter 7 liquidation, it is not beyond the realm of possibility that a debtor could do so. Theoretically, once the corporation's assets are fully liquidated and distributed to creditors a corporation may recommence doing business. If all claims have been paid in full in the Chapter 7 case, there would be no remaining liabilities that would attach to the corporation's future earnings. If, on the other hand, remaining balances are owed to any creditor, since there is no Chapter 7 corporate discharge, creditors would be able to pursue the post-bankruptcy earnings and assets of the former Chapter 7 debtor. *See* 11 U.S.C. § 727(a)(1) [no discharge is granted to a corporate debtor].

The question of whether to approve the Trustee's abandonment thus boils down to the question whether it is in the interest of creditors to approve the abandonment without any consideration in which case TPI, if it resumed doing business, could attempt to assert the various claims and would be subject to creditors' claims or whether to assign it to a third party for consideration. While \$1,000.00 consideration would be more

beneficial to the bankruptcy estate than a simple abandonment, the effect of transferring the claims to a non-debtor entity would, if the debtor corporation were reactivated, have the effect of freeing any recovery by TPI on its claims from unpaid claims of TPI's creditors. Therefore, while nominal value of \$1,000.00 would be received for the benefit of creditors, if TPI's claims are of substantial value as Mr. Catchpole continues to believe, the ultimate enjoyment of that benefit would not be realized by TPI's creditors post-bankruptcy. In a perverse sort of way therefore, simple abandonment, where the claims are left in the name of TPI post-bankruptcy and where Mr. Catchpole, as the sole shareholder, would have the option of pursuing them, but would be subjecting any recovery to creditors' claims, might ultimately benefit creditors more than the sale to an unrelated third party for nominal consideration.

In evaluating the interest of creditors given these two alternatives, it was ultimately concluded that a recess might afford the parties an opportunity to resolve the matter in a manner acceptable to Mr. Catchpole, would realize the immediate recovery of \$1,000.00 to the estate, and would still preserve TPI creditors' rights against the recovery, if any, post-bankruptcy. Following the recess the United States Trustee, Mr. Catchpole, and Ms. Moore, the case trustee, presented to the Court a handwritten order with agreed-upon language which provided for the assignment, as is and where is, of the litigation rights of TPI to P & R Investments as trustee for TPI International Airways, Inc., in exchange for the payment of \$1,000.00 in cash. Having considered the terms of

that order as proposed I concluded that it was in the interest of the estate to recover the \$1,000.00 and to transfer these claims, for whatever value they may have, to an entity which will pursue them and administer the funds as trustee for TPI International Airways, Inc., and derivatively the creditors of TPI post-bankruptcy should TPI be reactivated by Mr. Catchpole. Thereafter on December 19, 1997, Mr. Catchpole filed a proposed order which contained the precise terms agreed upon by the parties as previously presented in handwritten form to the Court.

For the foregoing reasons, IT IS ORDERED that the language agreed upon by the United States Trustee, the case Trustee, and Mr. Catchpole be made the Order of this Court. Therefore:

It is hereby ORDERED that the assignment, as is where is, of the rights and interests in the litigation of TPI International Airways, Inc., including that litigation against the Air Force, DOT/FAA, DOL, and foreign interests, is hereby assigned to P & R Investments, Inc., as trustee for TPI International Airways, Inc., for all matters not under the jurisdiction of the Chapter 7 Trustee. The assignment is without warranties or guaranties and is as is and where is.

It is further ORDERED that this assignment of rights and interests is made in consideration of the sum of \$1,000.00 and the withdrawal and/or waiver of all claims against the Chapter 7 Trustee TPI bankruptcy estate by Frederick R. Catchpole and Paul Stocker.

It is further ORDERED that a certified copy of this order shall be deemed the assignment of rights and interests from the Chapter 7 Trustee (bankruptcy estate) of TPI International Airways, Inc., to P & R Investments, Inc., as trustee for TPI International Airways, Inc. No

additional documentation of the assignment shall be required.

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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This \_\_\_\_ day of December, 1997.