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

In the matter of:)
) Chapter 11 Case
TPI INTERNATIONAL)
AIRWAYS, INC.) Number 91-20162
)
Debtor)

**ORDER ON UNITED STATES TRUSTEE'S
MOTION TO CONVERT**

The United States Trustee filed its Motion to Convert to a case under Chapter 7 on September 30, 1994. A hearing to consider the Motion was initially held on November 10, 1994, after which the Court entered an Order on November 15, 1994, denying the Trustee's Motion on an interim basis contingent upon the Debtor filing a Disclosure Statement by December 23, 1994. Debtor timely filed its Disclosure Statement to which certain parties filed objections. A hearing to consider the continued Motion, the Disclosure Statement and the objections thereto, was held in Brunswick, Georgia on January 12, 1995, after which the court again denied the Trustee's motion on an interim basis conditioned upon the Debtor filing an application to employ all professionals and consulting firms that had not previously been approved by the Court and filing a recast Disclosure Statement not later than

10 days after a written ruling was rendered by the Armed Services Board of Contract Appeals in the litigation that Debtor currently has pending against the United States Air Force. On June 10, 1996, the Board of Contract Appeals rendered its decision and denied all relief sought by the Debtor. That decision currently is being appealed. On September 12, 1996, this Court held a third hearing to consider Trustee's continued Motion to Convert.

As noted in the Order entered November 15, 1994, the United States Trustee has made a *prima facie* case for dismissal or conversion of this case. This Chapter 11 reorganization has been pending almost six years. It had been pending in this court for almost four years before Debtor filed, at the insistence of the court, a Disclosure Statement on December 23, 1994. Debtor has yet to file a Plan of Reorganization. Moreover, Debtor does not appear to be engaged in any appreciable business activity.

The primary assets remaining in the estate are a number of speculative but potentially lucrative causes of action against various parties. Debtor's President, Fred Catchpole and Debtor's in-house counsel, Jean Niven, have been and continue to pursue these actions on behalf of the estate without any expectation of compensation for their work until all creditors of the estate have been paid in full. Thus, this Court again is faced with the decision of whether to convert a case in which the Debtor incurs few expenses, but engages in no appreciable business activity, and is reduced to the pursuit of civil claims

against various parties who allegedly contributed to its demise.

Given the facts as they now exist, I hold that TPI International Airways, Inc. should be converted to a Chapter 7. On two previous occasions, the Trustee's Motion to Convert was denied primarily because of (1) Debtor's belief that the Air Force litigation would result in a favorable outcome, (2) Debtor's compliance with previous Orders of the Court, and (3) the minimal burden to fund the litigation with a substantial upside potential of recovering significant assets for the estate. At the present time, these factors no longer exist and, therefore, I will grant the Trustee's Motion.

Over the past two years, Debtor has represented to the Court three potential avenues for recovering civil claims substantial enough to fund a Chapter 11 reorganization: (1) litigation against the United States Air Force, (2) litigation against the Federal Aviation Administration ("FAA"), and (3) litigation against foreign banks in Belgium. As previously mentioned, the Armed Services Board of Contract Appeals has found no liability on the part of the Air Force. The damage case brought by Debtor against the FAA was dismissed on summary judgment by this Court and that decision was affirmed by the District Court. *See Matter of TPI International Airways, Inc.*, Case No. CV292-230, slip op. at 24 (S.D.Ga. Dec. 21, 1992)(Alaimo, J.). Debtor appealed the decision of the District Court to the Eleventh Circuit Court of Appeals; however, the Eleventh Circuit Court of Appeals dismissed finding

that the appeal was premature, there not having been any certification made under Fed. R. Civ. P. 54(b). That Order was entered on July 14, 1993, and no certification of necessity for an immediate appeal has been sought by Debtor since that date. In his lengthy response to this motion Fred Catchpole, president of Debtor, continues to argue against conversion, in part because of alleged wrongs committed by the FAA. Yet Debtor has done nothing to timely prosecute that claim.

In regard to the Belgian litigation, if the lawsuit has commenced, it has not developed further than a nascent stage. The procedural posture of that case is mystifying to the Court, apparently because it is to Debtors as well. Suffice it to say that whatever the case is worth, and whatever status it is in, Debtor has failed to demonstrate any progress in that litigation since the first consideration of this motion. Rather, it is clear to the Court, through the Debtor's representations at periodic status hearings, that the Air Force litigation has been the focus of the Debtor's efforts over the past year. Apparently, Debtor made that decision intentionally, believing that the Air Force litigation was the most promising claim of the three remaining. Unfortunately, Debtor recently lost that case at the trial level. Any appeal of the decision is speculative at best. In short, Debtor's efforts to recover funds to reorganize itself are dead in the water.

The United States Trustee has made a *prima facie* case for dismissal or

conversion of this case. In light of its lack of success in all pending litigation, the Debtor has failed to rebut the presumption that the case should be converted. Moreover, Debtor has failed to comply with this Court's Order of February 6, 1995, directing the Debtor to file a recast Disclosure Statement not later than 10 days after a written ruling was rendered by the Board of Contract Appeals. Considering the totality of the circumstances, I find that the Trustee has carried its burden of showing that cause exists for conversion or for dismissal of this case pursuant to 11 U.S.C. Section 1112(b)(1)-(3) which provides in relevant part:

(b) Except as provided in subsection (c) of this section, on request of a party in interest *or the United States trustee*, and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, for cause, including--

- (1) continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation;
- (2) inability to effectuate a plan;
- (3) unreasonable delay by the debtor that is prejudicial to creditors;

11 U.S.C. § 1112(b)(1)-(3). At this stage there clearly is no reasonable likelihood of rehabilitation of this company. Debtor has no present ability to effectuate a plan - indeed, Debtor has proposed no plan. Finally, it is in the best interest of all creditors to convert to this matter to Chapter 7 so that a trustee may objectively review the various causes of action,

make an evaluation of the value of these suits, the anticipated costs and the likelihood of recovery, and proceed to liquidate those claims and close the estate.

IT IS THEREFORE ORDERED that the case be, and the same is, converted to Chapter 7.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of October, 1996.