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LAW OFFICES
VERNER, LIIPFERT, BERNHARD, McPHERSON AND HAND

CHARTERED

SUITE 700
901-15TH STREET, N.W.
WASHINGTON, D.C. 20005-2301

(202) 371-6000

TELEX: 90-4124 VERLIP-WSH
TELECOPIER: (202) 371-6279

HOUSTON OFFICE

6901 TEXAS COMMERCE TOWER
801 MILAM
HOUSTON, TEXAS 77002
(713) 237-9034
TELECOPIER: (713) 237-1216

VIRGINIA OFFICES

5280 GREENSBORO DRIVE 10484-A ARMSTRONG STREET
MCLEAN, VIRGINIA 22102 FAIRFAX, VIRGINIA 22030
(703) 749-6000 (703) 591-2883
TELECOPIER: (703) 749-6027 TELECOPIER: (703) 385-7823

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STEPHEN L. GOODMAN

OF COUNSEL
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CHARLENE A. STURBITTS
HOWELL E. BEGLE, JR.
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NEIL T. PROTIGER
DOROTHEA S. WEREL

- NOT ADMITTED IN DC
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WILLIAM E. KENNARD
BENJAMIN H. FLOWE, JR.

LOUIS F. BESIO
VICE PRESIDENT FOR
FINANCE AND ADMINISTRATION

WRITER'S DIRECT DIAL NUMBER
(202) 371-6024

BY HAND

July 9, 1990

Office of the General Counsel
Federal Election Commission
Sixth Floor
999 E Street, N.W.
Washington, D.C. 20463

LATE COMMENT
AOR 1990-10

Re: AOR 1990-10 -- Request of Texas Air Corporation PAC for
an Advisory Opinion

Dear Sirs:

Eastern Air Lines Political Action Committee ("EALPAC")
hereby submits these comments in support of the request of the
Texas Air Corporation Political Action Committee ("TACPAC") for
an advisory opinion finding that TACPAC and EALPAC are no longer
affiliated because of the U.S. Bankruptcy Court's appointment of
an independent trustee to manage and operate Eastern Air Lines
("Eastern"), pursuant to 11 U.S.C. §1104(a).^{1/} As shown herein,

1/ Counsel for EALPAC only recently learned of TACPAC's
advisory opinion request. Thus, to the extent necessary under 11
C.F.R. §112.3(b), EALPAC requests leave to file these comments

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the trustee was appointed to manage and operate Eastern independent of Texas Air, and he has done so. Thus, the two PACs should be found to be similarly independent and disaffiliated.

I. RELEVANT FACTS

By way of background, Texas Air purchased all of Eastern's common stock in late 1986. On March 9, 1989, Eastern filed for bankruptcy under Chapter 11 of the Bankruptcy Code (11 U.S.C. §1101 et seq.) with the U.S. Bankruptcy Court for the Southern District of New York. At that time, Eastern continued to operate its business as a debtor-in-possession under 11 U.S.C. §§1107, 1108, and EALPAC and TACPAC remained affiliated. In April of 1990, the Official Committee of Eastern's Unsecured Creditors filed a motion with U.S. Bankruptcy Judge Burton R. Lifland, Chief U.S. Bankruptcy Judge for the Southern District of New York seeking the appointment of a trustee under 11 U.S.C. §1104(a)^{2/}

1/(...continued)

out-of-time because EALPAC's views are materially important to the gathering of a complete record on TACPAC's request.

2/ That provision is as follows:

(a) At any time after the commencement of a case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee --

(1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar case, but not

(continued...)

to replace the debtor-in-possession to enhance the value of the bankrupt estate and to proceed toward a viable reorganization.

After hearing four days of testimony, Judge Lifland found by clear and convincing evidence that appointment of a trustee was warranted, and Judge Lifland approved the appointment of Martin R. Shugrue, Jr. to serve as the trustee to operate and manage Eastern. A copy of Judge Lifland's decision, dated April 19, 1990, is attached hereto as Attachment A.

In his decision, Judge Lifland found the following:

"It is undisputed that Texas Air no longer has any equity interest in Eastern. Consequently, the airline, in a sense, is now owned by its creditors who cannot be forced to subsidize a debtor-in-possession forever." (Emphasis added.)

Attachment A at pgs. 11-12.^{3/}

In discussing the appointment of a trustee, Judge Lifland wrote that the trustee "would be empowered, and indeed mandated,

2/ (...continued)

including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; or

- (2) if such appointment is in the interest of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor.

3/ Judge Lifland went on to reiterate that "it is undisputed that Texas Air's interest as an equity holder has been wiped out..." Id. at pg. 12.

to operate the airline as a going concern." Id. at page 14.

Accordingly, the Judge ordered that:

"The United States Trustee is directed to appoint an eminently qualified person, with the ability to continue to operate the airline, as quickly as is practical and such person is charged with operating Eastern Airlines as a going concern and exploring a viable business plan..."

Id. at pg. 16. In a companion order, Judge Lifland approved the appointment of Mr. Shugrue, a long-time and highly qualified airline executive.

As shown below, Texas Air has no legal authority to control Eastern, and Mr. Shugrue has the sole legal authority to do so. This is evidenced by the following facts.

Since his appointment, Mr. Shugrue has operated and exercised sole decision-making authority over Eastern. Several of Eastern's top executives, including its President and Senior Vice President for Human Resources, left the company at the outset of his tenure. Mr. Shugrue has selected new law firms, investment advisors, advertising and public relations agencies and other consultants to Eastern without any involvement whatsoever by Texas Air. A new team is in place at Eastern.

For its part, Texas Air has had no control over or involvement in Eastern's operations since Mr. Shugrue's appointment.^{4/} Indeed, on June 11, 1990, Texas Air changed its

4/ Judge Lifland did find that under the specific requirements of the Employment Retirement Income Security Act of 1974

name to Continental Airlines Holdings, Inc. "to reflect the fact that the principal business of the company is Continental," as its Chairman, Frank Lorenzo, put it. See Attachment B (three newspapers articles concerning the name change). Consequently, Texas Air presently does not and cannot exercise any control over Eastern's business.

II. ARGUMENT

The Federal Election Commission should find based on the foregoing facts that TACPAC and EALPAC were no longer affiliated as of April 19, 1990, the date of Mr. Shugrue's appointment. Under 11 U.S.C. §1108, a trustee such as Mr. Shugrue is empowered to operate the debtor's business. Courts will not entertain objections to a trustee's conduct involving a business judgment made in good faith, upon a reasonable basis, and within the scope of his authority under the Bankruptcy Code. See, e.g., In re Curlew Valley Associates, 14 B.R. 506, 513-514 (Bankr. D. Utah 1981).^{5/}

4/ (...continued)
("ERISA"), the appointment of a trustee did not change the composition of Eastern's "controlled group" (including Texas Air) so that the appointment did not relieve Texas Air of any liability for underfunding of Eastern's pension plans. Id. at pg. 15. This finding relates to the extent of Texas Air's financial obligations, and does not give it any operational control over Eastern or its business.

5/ As that court put it,

(continued...)

The pertinent bankruptcy law establishes that Texas Air no longer has any control over Eastern. Under 11 U.S.C. §323(a), the trustee is the representative of Eastern's estate, which consists of all legal and equitable interests of Eastern as of the filing of its bankruptcy petition. See 11 U.S.C. §541(a)(1). Upon appointment of a trustee,

"the management is completely ousted, although occasionally a trustee hires former management to handle day-to-day operations. The trustee is put completely in control of the business."

H.R. Rep. No. 595, 95th Cong., 1st Sess. 220-221 (1977).

Here, Mr. Shugrue was appointed to serve as trustee to assure that Eastern would be operated independently of Texas Air, and he has done so. Moreover, Judge Lifland found that Texas Air's ownership of Eastern's common stock is a practical nullity. Texas Air has no equity interest in Eastern, and the company is, in effect, owned by its creditors. Not only is Eastern being operated independently by Mr. Shugrue, but Texas Air's paper ownership of Eastern common stock has no value.

Under the indicia of control utilized by the Commission, 11 C.F.R. §100.5 (g)(4)(ii), Eastern and Texas Air's PACs are no longer affiliated. Texas Air has no ability to direct or

5/(...continued)

In other words, so long as the trustee can articulate reasons for his conduct (as distinct from a decision made arbitrarily or capriciously), the court will not inquire into the basis for those reasons.

In re Curlew Valley Associates, 14 B.R. at 513 n. 11a.

participate in the governance of Eastern's PAC, and, most significantly, Texas Air has no authority or ability to hire, fire or otherwise appoint any officer of Eastern or its PAC in light of Judge Lifland's decision. See 11 C.F.R.

§§100.5(g)(4)(ii)(B), (C). There is no formal or ongoing relationship between Texas Air and Eastern's PACs, and the two companies operate at arm's length. See 11 C.F.R.

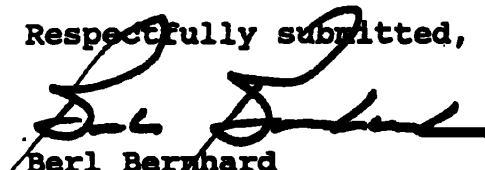
§100.5(g)(4)(ii)(D), (E), (F), (J). The PACs do not have common officers and do not operate jointly in any sense. 11 C.F.R.

§§100.5(g)(4)(ii)(B), (E). Moreover, as shown herein and in Texas Air's filing, Texas Air's ownership of Eastern stock does not give it any control whatsoever over Eastern. 11 C.F.R.

§100.5(g)(4)(ii)(A).

In sum, the Commission should take cognizance of Mr. Shugrue's independent operation of Eastern and find that Eastern's PAC is similarly independent of the Texas Air PAC.

Respectfully submitted,



Berl Bernhard
Dean R. Brenner
John Ackell

Attorneys for EALPAC

✓ cc: Susan Propper, Esq.
Carolyn Bigda, Esq.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

FILE

In re

IONOSPHERE CLUBS, INC., and
EASTERN AIR LINES, INC.,

Chapter 11 Case Nos.
89 B 10448 (BRL) and
89 B 10449 (BRL)

Debtors.

ABSTRACT OF BENCH
RULING

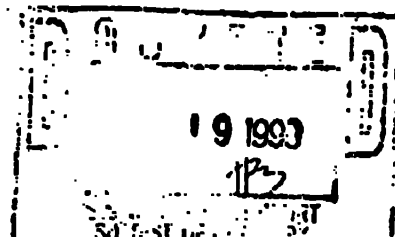
RULING ON MOTION BY CREDITORS' COMMITTEE FOR
THE APPOINTMENT OF A CHAPTER 11 TRUSTEE

Before: Hon. Burton R. Lifland, Chief U.S. Bankruptcy Judge

BACKGROUND

On March 9, 1989 (the "Filing Date") Eastern Air Lines, Inc. and its affiliate Ionosphere Clubs, Inc. (the "Debtors" or "Eastern") each filed a voluntary petition for relief under chapter 11, title 11, United States Code (the "Code"). By order dated March 9, 1989, the cases were consolidated for procedural purposes only. Since the Filing Date, the Debtors have continued to operate their businesses as debtors-in-possession pursuant to Code §§ 1107 and 1108.

Approximately, 13 months after the Filing Date, the Official Committee of Unsecured Creditors of Eastern (the "Committee"), pursuant to Code § 1104, has moved this Court to appoint a Chapter 11 trustee to replace the debtor-in-possession, in order "to enhance the value of the estate" and proceed toward a "viable reorganization". Prior to this time, the Committee has had a very cooperative relationship with the Debtors. For example, on at



least two separate occasions, in July 1989 and February 1990, the Committee authorized the issuance of press releases in support of the Debtors' management. In addition, the Debtors have obtained the use of \$320 million of escrowed cash collateral since the Filing Date without objection from the Committee. Moreover, since the Filing Date, the Committee has also supported the Debtors' asset disposition program, proceeds of which have been used to fund Eastern's massive losses totaling over \$1.2 billion.

At the end of March, the Committee lost all confidence in Eastern's management when Eastern announced to the Committee that it once again would have to renege on its previous agreement entered into six weeks earlier, and embodied in what has been referred to as the "Fifty-Cent" plan. Eastern reported to the Committee that its previous forecast had to be modified and that its losses in 1990 were now being estimated at \$329.7 million, which is \$184.4 million more than the \$145.3 million that had been forecast in January. The Committee responded to Eastern's new assessment by demanding that Texas Air Corp. ("Texas Air"), as Eastern's parent, indemnify on a subordinated basis the continuing staggering losses of Eastern. It was only after Texas Air failed to guarantee such an indemnification that the Committee filed its motion to appoint a trustee.

The Committee asserts in its motion that a trustee is warranted in this instance because, inter alia, (1) Eastern's devastating, constantly expanding and unending losses are extremely damaging to unsecured creditors and therefore to the interests of

the estate; (2) Texas Air and Eastern have demonstrated their inability to project the results of operations to the extent that the Committee has lost confidence in their stewardship of the business; and (3) Eastern and Texas Air have repeatedly reneged on their plan of reorganization agreements with the Committee, such that the Committee has no confidence in the ability or willingness of the Debtors and its common equity holder to adhere to basic understandings.

It should be noted that the Committee's motion differs from the motion for the appointment of a trustee filed by the Air Line Pilot's Association ("ALPA") several days after the commencement of this case. The ALPA motion was based on alleged pre-petition activity of the Debtors. In April 1989, this Court appointed an Examiner to investigate these allegations, and deferred consideration of ALPA's motion pending the report of the Examiner. On March 1, 1990, after an extensive investigation spanning the course of approximately eight months, the Examiner filed his report regarding the pre-petition transactions between the Debtors and Texas Air and its affiliates. The Examiner concluded that with respect to 12 of the 15 transactions reviewed, sufficient facts existed to warrant the assertion of colorable causes of action on the grounds that such transactions constituted fraudulent conveyances. The report valued those causes of action at between \$285 and \$403 million. Although Eastern and Texas Air executed a Memorandum of Understanding with the Examiner to settle all claims arising out of the pre-petition transactions, Texas Air and Eastern

have vehemently denied any wrongdoing. The Committee's motion, however, is not framed to include these pre-petition activities as grounds for the appointment of a trustee. Instead, the Committee, recognizing that the settlement of these pre-petition activities may no longer exist in view of the aborted 50¢ plan, also includes as a ground for the appointment of a trustee the need to pursue the claims against Texas Air and others.

DISCUSSION

Chapter 11 of the Code is designed to allow the debtor-in-possession to retain management and control of the debtor's business operations unless a party in interest can prove that the appointment of a trustee is warranted. In re General Oil Distributors, Inc., 42 Bankr. 402, 409 (Bankr. E.D.N.Y. 1984); In re BAJ Corp., 42 Bankr. 595, 597 (Bankr. D.Conn. 1984); In re La Sherene, Inc., 3 Bankr. 169, 174 (Bankr. N.D.Ga. 1980). The appointment of a trustee in a chapter 11 case is an extraordinary remedy. In re William A. Smith Constr. Co., Inc., 77 Bankr. 124, 126 (Bankr. N.D. Ohio 1987); In re Parker Grande Development, Inc., 64 Bankr. 557, 560 (Bankr. S.D. Ind. 1986); In re Anchorage Boat Sales, Inc., 2 C.B.C.2d 348, 361 (Bankr. E.D.N.Y. 1980). There is a strong presumption that the debtor should be permitted to remain in possession absent a showing of need for the appointment of a trustee. Committee of Dalkon Shield Claimants v. A.H. Robins Co., Inc., 828 F.2d 239, 241 (4th Cir. 1987); In re Evans, 48 Bankr. 46, 47 (Bankr. W.D. Tex. 1985); In re Eichorn, 5 Bankr. 755, 757

(Bankr. D. Mass. 1980).

Section 1104(a) of the Code provides:

(a) At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee--

(1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; or

(2) if such appointment is in the interest of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor.

Although in this case a full four day evidentiary hearing was conducted, in considering a motion for the appointment of a trustee, a bankruptcy court is not required to conduct a full evidentiary hearing. In re Casco Bay Lines, Inc., 17 Bankr. 946, 950 (1st Cir. B.A.P. 1982). The party requesting the appointment of a trustee has the burden of proof in showing "cause". See, In re William A. Smith Constr. Co., Inc., 77 Bankr. at 126; In re Cole, 66 Bankr. 75, 76 (Bankr. E.D. Pa. 1986); In re St. Louis Globe-Democrat, Inc., 63 Bankr 131, 138 (Bankr. E.D. Mo. 1985). The evidence supporting the motion for the appointment of a trustee must be clear and convincing. Id.; In re Evans, 48 Bankr. at 47; In re Tyler, 18 Bankr. 574, 577 (Bankr. S.D. Fla. 1982).

The language of § 1104(a)(1) of the Code represents Congressional recognition that some degree of mismanagement exists

in virtually every insolvency case. In re Evans, 48 Bankr. at 47; In re La Sherene, Inc., 3 Bankr. at 174. The philosophy of chapter 11 is to give the debtor a "second chance" and, consistent with such philosophy, current management should be permitted to identify and correct its past mistakes. H.R. Rep. No. 595, 95th Cong., 1st Sess. 220 (1977). While a certain amount of mismanagement of the debtor's affairs prior to the filing date may not be sufficient grounds for the appointment of a trustee, continuing mismanagement of the affairs of a debtor after the filing date is evidence of the need for the appointment of a trustee. See, In re Colby Constr. Corp., 51 Bankr. 113, 117 (Bankr. S.D.N.Y. 1985); In re McCorhill Pub., Inc., 73 Bankr. 1013, 1017 (Bankr. S.D.N.Y. 1987).

Code § 1104(a)(2) creates a flexible standard and allows the appointment of a trustee even when no "cause" exists. In re Sharon Steel Corp., 871 F.2d 1217, 1226 (3rd Cir. 1989); 124 Cong. Rec. H11,102 (daily ed. Sept. 28, 1978); S17,419 (daily ed. October 6, 1978). The House Report summarizes the reasons for Congress' adoption of a flexible standard for the appointment of trustees. The House Report, in part, reads as follows:

The twin goals of the standard for the appointment of a trustee should be protection of the public interest and the interests of creditors, as contemplated in current chapter X and facilitation of a reorganization that will benefit both the creditors and the debtors, as contemplated in current chapter XI. Balancing the goals is a difficult process, and requires consideration of many factors.

H.R. Rep. No. 595, 95th Cong., 1st Sess. 232 (1977) (emphasis added). Where the debtor's business affects such a large segment

of the general public, consideration of the "public interest" becomes a greater factor in deciding whether to order the appointment of a trustee. In this case, as has clearly been articulated by this Court time and time again, the flying public's interest must at all times be taken into account.

With respect to whether a trustee should be appointed under Code § 1104(a)(2), courts "eschew rigid absolutes and look [] to the practical realities and necessities," In re Hotel Associates, Inc., 3 Bankr. 343, 345 (Bankr. E.D.Pa. 1980). Among the factors considered are: (i) the trustworthiness of the debtor, In re Evans, 48 Bankr. 46, 48 (Bankr. W.D.Tex. 1985); (ii) the debtor in possession's past and present performance and prospects for the debtor's rehabilitation, In re Parker Grande Development, Inc., 64 Bankr. 557, 561 (Bankr. S.D.Ind. 1986); In re L.S. Good & Co., 8 Bankr. 312, 315 (Bankr. N.D.W.Va. 1980); (iii) the confidence -- or lack thereof -- of the business community and of creditors in present management, In re Concord Coal Corp., 11 Bankr. 552, 554 (Bankr. S.D.W.Va. 1981); and (iv) the benefits derived by the appointment of a trustee, balanced against the cost of the appointment, In re Microwave Products of America, Inc., 102 Bankr. 666, 675 (Bankr. W.D.Tenn. 1989).

Throughout this case, Eastern has continually made operating projections which it has failed to achieve with the resultant losses being borne by the unsecured creditors. For instance, in Eastern's April 1989 Business Plan it was projected that Eastern would suffer operating losses of approximately \$636.4 million for

the period from April through December, 1989, but concluded that Eastern would become marginally profitable in 1990, and have substantial net income in 1991 and thereafter. The actual results and current projections are as follows:

(i) Losses from April 1989 through year end exceeded \$865 million, more than 136% of the April Business Plan projections;

(ii) Losses from September 1989 through year end exceeded \$400 million, more than 170% of the August Business Plan projections of \$235.5 million;

(iii) Losses for 1990 are now projected to be \$329.7 million, \$184.4 million greater than the \$145.3 million projected in the January Business Plan;

(iv) Losses for 1991 are projected to be not less than another \$120 million; and

(v) Since the filing date, operating losses have amounted to more than \$1.2 billion.

By admission of the Chairman of the Board, Frank Lorenzo, these losses have wiped out the parent Texas Air's equity.

Eastern has also come to a number of agreements with the Committee concerning potential plans of reorganization, but Eastern has been unable to meet the terms of such agreements. From the July 1989 plan which provided for the unsecured creditors to receive 100% of their claims plus post-petition interest, Eastern's most recent proposal now provides that unsecured creditors will receive only approximately 25% of their claims with most of the payments being spread over a number of years. An interim "Fifty-Cent" plan was considered. Thus each succeeding offer was one-half of the previous one.

The Debtors' inability to make reliable operating estimates,

even over the shortest of time periods may be illustrated by the Debtors present quest to use \$80 million of escrowed cash. For purposes of scheduling, on Friday April 6th, the Debtors contacted this Court and indicated the need for an emergency hearing for the transfusion of cash to be heard no later than April 12th. At the hearing on April 13th, the Debtors indicated in court that they could get by until sometime early this week. The Debtors now indicate that its cash needs are such that it can continue through the rest of the month without additional cash. At no time has it indicated what interim emergency amounts, if any, were necessary. During the hearing it developed that the emergency need was \$14 million dollars for pension fund payments, but that due to Texas Air's payment of that sum the immediate crisis had passed.

A debtor-in-possession must act as a "fiduciary of his creditors" to "protect and to conserve property in his possession for the benefit of creditors", and to "refrain [] from acting in a manner which could damage the estate, or hinder a successful reorganization of the business." In re Sharon Steel Corp., 86 Bankr. 455, 457 (Bankr. W.D. Pa. 1988). As the court in Sharon Steel observed, "the most common basis for appointing a trustee under § 1104(a)(1) is for gross mismanagement and incompetence." Id. at 458.

A debtor-in-possession has all the duties of a trustee in a Chapter 11 case, including the duty to protect and conserve property in its possession for the benefit of creditors. In re Devers, 759 F.2d 751, 754 (9th Cir. 1985); In re Four Score

Broadcasting, Inc., 77 Bankr. 404, 407 (Bankr. W.D.N.Y. 1987). "The job of a debtor-in possession remains under the Code as that described by Judge Friendly -- to get the creditors paid. In re Pied Piper Casuals, Inc., 40 Bankr. at 727 (citing In re Grayson Robinson Stores, Inc., 320 F.2d 940 (2d Cir. 1963)). A debtor-in-possession's fiduciary obligation to its creditors includes refraining from acting in a manner which could damage the estate, or hinder a successful reorganization of the business. In re Thurmond, 41 Bankr. 464, 465 (Bankr. D.Or. 1963). When a debtor-in-possession is incapable of performing these duties, a chapter 11 trustee may be appointed. In re McCorhill Publishing, Inc., 73 Bankr. 1013, 1017 (Bankr. S.D.N.Y. 1987).

In In re Pied Piper Casuals, Inc., 40 Bankr. 723 (Bankr. S.D.N.Y. 1984), the court appointed a Chapter 7 trustee after making the following finding:

That is not to say that the debtor may never right its ship. But it is to say on the evidence presented such a possibility is not reasonably likely and, accordingly, the creditors should not be asked to bear the risk that the debtor's projections, already destroyed in March, April and May, will somehow occur

Id. at 727.

In In re Cardinal Industries, Inc., 109 Bankr. 755 (Bankr. S.D. Ohio 1990), the creditors committee, in moving for the appointment of a trustee, cited the debtor's inaccurate financial forecasts, failure to stem cash losses of \$1.6 million since the bankruptcy filing, conflicts of interest and improper prepetition transfers. Noting that "unsecured creditors are being asked to

wait five to ten years" for the debtors to generate income for distribution, and that creditors had "lost faith in the Debtors' intentions and abilities to reorganize their affairs," the court held that the failure to appoint a trustee would "jeopardize whatever chance exists to realize the potential value of these estates." The court went on to hold that "since the [unsecured creditors] are willing to risk the costs, uncertainties and dislocations, occasioned by the appointment of a trustee, the Court will exercise its equitable powers to order that appointment." In re Cardinal Industries, Inc., 109 Bankr. at 767.

Similarly in this case, based upon the papers filed, the testimony adduced over the last four days and all the exhibits admitted into evidence, this Court finds by clear and convincing evidence that the appointment of an operating trustee is warranted under these circumstances pursuant to both § 1104(a)(1) and especially (a)(2) of the Code. The Debtors' inability to formulate a business plan and make operating projections which have a longevity of more than several months, along with the continuing enormous operating losses being sustained by the estate, mandate that this Court order the appointment of a trustee "for cause, including . . . incompetence" under Code § 1104(a)(1). Moreover, pursuant to § 1104(a)(2) of the Code, the appointment of a trustee "is in the interest of creditors, . . . [and] other interests of the estate." It is undisputed that Texas Air no longer has any equity interest in Eastern. Consequently, the airline, in a sense, is now owned by its creditors who cannot be forced to subsidize a

debtor-in-possession forever. In this instance, with Mr. Lorenzo at the throttle, or hovering over it, Eastern has used \$1.2 billion to "fuel" this reorganization trip. The time has come to replace the pilot to captain Eastern's crew.

In opposition to the Committee's motion to appoint a trustee, the Debtors argue that the huge losses and missed projections were caused not by management errors, but because of unexpected cost increases and a general downturn in the airline industry. The Debtors also assert that even experts in the airline industry missed their projections during this time period. The Debtors' contentions, however, are unpersuasive. Irrespective of fault, the magnitude of the Debtors' losses together with the Debtors' inability to make reliable forecasts, even over a short period of time, supports a finding that Eastern's owner manager, as personified by the Chairman of the Board of both the parent and the Debtor, is not competent to reorganize this estate.

In addition, a substantial part of the Debtors' defense has revolved around its assertions that this is an extraordinary bankruptcy case and that Eastern's management has had to rebuild operations in the most adverse of circumstances in the context of an intense labor conflict. Indeed, this has been an extraordinary bankruptcy case in that the Committee has supported these Debtors for 13 months in hopes that they would be able to turn things around. However, \$1.2 billion later, this has not occurred. Although it is undisputed that Texas Air's interest as equity holder has been wiped out, Texas Air as Eastern's parent has been

unwilling or perhaps unable to adequately support these struggling Debtors through their stormy course in chapter 11. This is suggestive of parental neglect. Texas Air is now risking unsecured creditors' funds. Thus, in light of the history of this case in which Eastern and Texas Air have again demonstrated insufficient stability and resolve in keeping to its promises and "agreements" with the Committee, the Committee's resolution that "it has no more to give" is fully justified. If Texas Air is no longer willing or cannot put up adequate risk money to support Eastern, it cannot expect the unsecured creditors to continually fund and endure the perpetually mounting losses.

Additionally, Eastern contends that its ability to rebuild operations and attract passengers has been adversely affected by the negative publicity from "leaks" coming from the Committee and from the Preferred Shareholders Committee "liquidation" analysis in response to one of Eastern's 1990 requests for use of unencumbered cash collateral. The evidence does suggest that there is a correlation between the negative publicity and the ability of the Debtors to attract additional passengers. However, the Debtors cannot shift the blame for these huge losses which have been generated over the past 13 months. Indeed, these losses standing alone are a source of negative publicity. As stated by Eastern's own counsel, "the ultimate responsibility lies with management."

The Debtors also argue that the Committee's motion is actually a disguised attempt to have the Eastern estate liquidated, or in the alternative, that the appointment of a trustee would

effectively lead to the liquidation of the debtor. However, the motivation of the Committee in bringing on its motion is not relevant to a determination pursuant to § 1104(a) of the Code. Furthermore, as has been reiterated several times throughout this hearing, this Court has always considered that a trustee, if appointed, would be empowered, and indeed mandated, to operate and manage the airline as a going concern. The same mandate is strongly urged by the Committee. Likewise, the Debtors have not convinced this Court that a highly qualified airline executive with the authority to continue employment of a hands on management team would not be able to operate this airline more effectively and avoid liquidation than the current discretionally involved Chairman of the Board.

Further, the Debtors attempt to show that the appointment of a trustee would derail, or at least delay, the Department of Transportation's (the "DOT") approval of the Debtors' sale of Latin American routes to American Airlines is not compelling. Comments on the record by the United States Attorney's office, speaking for the Department of Transportation, indicate that the appointment of a trustee, per se, will have no effect on their deliberations or on the expedited approval schedule which has been previously announced.

Another basis for change at this time can be found the DOT's finding in a 1988 report that the labor management discord, if not abated, could ultimately affect safety. It is clear that over the 13 month course of these proceedings that the labor strife or lack

of labor accord exists and confrontation remains. While it is gratifying that the FAA has investigated and given assurances as to the continued safety of the airline, the 1988 DOT investigation conclusions with respect to the effects of unabated hostility should not be ignored. Under these circumstances, it would be inappropriate not to allow another manager to responsively address this problem.

If this Court were to deny the Committee's motion, the Committee has filed papers indicating that it will not support further use of cash collateral. Moreover, no other interest group will support the continued use of cash collateral without the appointment of a trustee. It is undisputed that without the further use of cash collateral, the estate will run short of operating funds. For this need alone, the interests of creditors, preferred shareholders, employees, and the flying public are better served by an order appointing an operating trustee.

This Court also finds in light of the statements made in open court and the exhibits entered into the record, that under the Employee Retirement Income Security Act of 1974, the appointment of a trustee does not effectuate a change in the continued existence of Eastern's controlled group which includes Texas Air and other of its subsidiaries, and therefore does not alter the liability of any member of the controlled group for contributions to, and employer liability arising from any termination of, Eastern's underfunded pension plans while a member of the controlled group.

CONCLUSION

This Court finds that clear and convincing evidence has been presented which mandates ordering the appointment of a trustee under both Code §§ 1104(a)(1) and 1104(a)(2). Because the main concern of the trustee is to operate the airline, and since many of the functions of the trustee under Code § 1106 have already been performed, or are being performed currently, until a further order fully specifying the particular duties and responsibilities of all retained professionals is entered, each entity retained to perform services for the benefit of the estate should be authorized to continue supplying such professional services. Therefore it is

ORDERED that The United States Trustee is directed to appoint an eminently qualified person, with the ability to continue to operate the airline, as quickly as is practical and such person is charged with operating Eastern Airlines as a going concern and exploring a viable business plan; and it is further

ORDERED that to minimize disruption, dislocation, and an irreversible dip into chaos, all professionals previously retained pursuant to Code § 327(a)-(d) shall remain retained by the estate subject to further order of this Court, and to the extent special authorization is required, it is accomplished pursuant to Code § 327(e), with the mandate to such professionals to continue providing all services including legal services as such are necessary and essential to the estate; and it is further

ORDERED that because the Examiner's duties as specified in the

order appointing him have not yet been concluded, except for the filing of his report, his continued service as Special Advisor to perform the other functions as detailed in the order appointing him pursuant to Code § 1106 shall continue until further order of this Court; and it is further

ORDERED that the trustee is hereby authorized to use up to \$80 million of the escrowed unencumbered cash.

The foregoing ruling is subject to modification in accordance with the needs of the estate.

Dated: New York, New York
April 19, 1990


United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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 In the Matter :
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 -of- :
 :
 IONOSPHERE CLUBS, INC., :
 EASTERN AIR LINES, INC., :
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 Debtor. :
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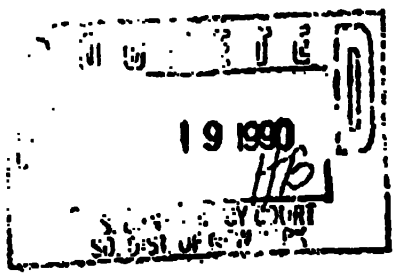
Case No. 89 B 10448 BL
 89 B 10449 BL
 (Chapter 11)

ORDER APPROVING SELECTION OF TRUSTEE

Based upon the oral application of the United States Trustee and it appearing that Martin Roger Shugrue, Jr., has been selected for appointment by the United States Trustee as trustee in the above-captioned Chapter 11 cases, it is hereby

ORDERED, that, pursuant to 11 U.S.C. 1104(c), the appointment of Martin Roger Shugrue, Jr. as trustee is approved,

Dated: New York, New York
April 19, 1990



Burton R. Lifland
 BURTON R. LIFLAND
 BANKRUPTCY JUDGE

Press Intelligence, Inc.
 WASHINGTON, D.C. 20005

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NEW YORK, NY
 TIMES
 M - 1,022,899
 S - 1,589,290 88

JUN 7 1990

Name Change Set For Texas Air

HOUSTON, June 6 (Reuters) — The Texas Air Corporation announced it would change its name to Continental Airlines Holdings Inc. The Houston-based concern, once the nation's largest airline company, owns Eastern Airlines, which is currently in bankruptcy proceedings, as well as Continental Airlines.

"The name change was made to reflect the fact that the principal business of the company is Continental," Frank Lorenzo, Texas Air's chairman and chief executive, said at the annual stockholders meeting. The change will take effect on Monday. The company's shares will continue to trade on the American Stock Exchange.

Press Intelligence, Inc.

WASHINGTON, D.C. 20005

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**WALL STREET JOURNAL
-EASTERN EDITION-**

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JUN 7 1990

Texas Air Corp.

Texas Air Corp. said it would change its name to Continental Air Holdings Inc.

The move reflects the company's consolidation of its holdings chiefly to its Continental Airlines unit. Texas Air, Houston, owned Eastern Airlines until a bankruptcy judge in April appointed a trustee to run the unit.

The name change, announced at the company's annual meeting, will take effect Monday.

Shareholders also approved the addition of three new directors to the Texas Air board to represent preferred shareholders. Texas Air was forced to add the new board members because its loan covenants called for them if the company failed to pay dividends on its preferred stock for six consecutive quarters. Texas Air stopped paying dividends in the fourth quarter of 1988.

Press Intelligence, Inc.

WASHINGTON, D. C. 20005

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WASHINGTON, DC

POST

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JUN 7 1990

THE WASHINGTON POST

Lorenzo, Name-Dropper

Texas Air Renamed Continental Holdings

Frank Lorenzo knows the value of a name. That's probably why he's changing his corporate moniker from Texas Air to Continental Airlines.

After a bruising two-year battle, first with his unions and then with his creditors at Eastern Air Lines, the name Texas Air Corp. came to be identified in the public mind with much of what's wrong with American business. Even some of his close associates admitted that the fight over Eastern had made the names Lorenzo and Texas Air somewhat infamous.

So yesterday, Lorenzo told

shareholders at the company's annual meeting that Texas Air was officially Continental Airlines Holdings Inc. Starting Monday, the new symbol on the American Stock Exchange will be CTA.

"The name change," he said "was to reflect the fact that the principal business of the company is Continental."

Continental is just about all that Lorenzo has left out an empire that once included People Express, New York Air, Republic—and Eastern, which is now under the control of a court-appointed trustee.

— Frank Swoboda