

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)	
UNITED STATES OF AMERICA, et. al.,)	
)	
<i>Plaintiffs,</i>)	
)	
v.)	
)	Civil Action No. 1:13-cv-01236 (CKK)
US AIRWAYS GROUP, INC.)	Judge Colleen Kollar-Kotelly
)	
and)	
)	
AMR CORPORATION,)	
)	
<i>Defendants.</i>)	
_____)	

**MOTION OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS
FOR LEAVE TO FILE *AMICUS CURIAE*
MERITS BRIEF IN SUPPORT OF DEFENDANTS**

I.
PRELIMINARY STATEMENT

The Official Committee of Unsecured Creditors (the “Statutory Committee”) of AMR Corporation (“AMR”) respectfully moves this Court for leave to file an *amicus curiae* brief that addresses certain merits of this dispute from the unique perspective of the Statutory Committee and the numerous and diverse stakeholders it represents. In a minute order entered on August 29, 2013, this Court granted the Statutory Committee’s Motion for Leave to File *Amicus Curiae* Brief in Support of Defendants’ Motion to Set Trial Date, ECF. No. 46, Ex. 1. In light of its continued interests in the resolution of this litigation, as well as its unique perspective as to how the proceedings in bankruptcy court relate to the merits of this case, the Statutory Committee requests permission to file a further *amicus* brief addressing, *inter alia*, the appropriate analytical framework under Section 7 of the Clayton Act for evaluating mergers in the bankruptcy context as well as the relative merits of the merger in comparison to starting over in the bankruptcy process.

The Statutory Committee has consulted with the Department of Justice (“DOJ”), Plaintiff States and Defendants regarding the filing of the *amicus* brief. The Defendants have consented to the filing, the Plaintiff States have no objection to the filing, and the DOJ objects to the filing.

II.
THE INTEREST OF THE STATUTORY COMMITTEE

The Statutory Committee is a statutory fiduciary created by Congress to represent the stakeholders, including organized labor, that will own the majority interest of the airline that will exist following the proposed merger of AMR and US Airways.¹ Consistent with its statutory

¹ The Statutory Committee consists of nine members: three indenture trustees (the Bank of New York Mellon, Manufacturers and Traders Trust Company and Wilmington Trust Company); three labor organizations (the Allied Pilots Association, the Association of Professional Flight
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oversight role in AMR's business reorganization, the Statutory Committee has carried out its statutory responsibilities in AMR's Chapter 11 reorganization cases. Among other matters, the Statutory Committee has worked collaboratively with AMR to fairly and systematically evaluate restructuring alternatives. The Statutory Committee provided extensive input to AMR and US Airways throughout their merger negotiations. In addition, the Statutory Committee was actively involved throughout the DOJ investigation of the proposed transaction and attended and participated in all meetings between the DOJ and the merging parties.

III. **ARGUMENT**

This Court previously recognized the interest of the Statutory Committee in the expeditious resolution of this litigation in granting its motion for leave to file an *amicus* brief in support of the Defendants' proposed trial schedule. Minute Order, *United States v. US Airways Group, Inc.*, No. 1:13-cv-01236-CKK (D.D.C. Aug. 29, 2013). The Statutory Committee's brief, if permitted, will not evaluate or summarize evidence expected to be presented at trial, but will aim to provide the Court with, *inter alia*, views concerning the appropriate analytical framework for evaluating a merger in the bankruptcy context as well as the relative merits of the merger in

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Attendants and the Transport Workers Union of America); two trade creditors (Boeing Capital Corporation and Hewlett-Packard Enterprise Services, LLC) and the Pension Benefit Guaranty Corporation. This Court has already granted *amicus* status to one of the three labor organizations acting in its individual capacity. *See* Order Granting in Part and Denying in Part Amended Motion of Transport Workers Union to Intervene as of Right or, Alternatively, to Appear as *Amicus Curiae*, *United States v. US Airways Group, Inc.*, No. 1:13-cv-01236-CKK (D.D.C. Oct. 9, 2013), ECF No. 103. The other two labor organizations, also acting in their individual capacities, as well as two other interested unions have moved for leave to file a brief *amici curiae* supporting the Defendants. *See* Motion for Leave to File Merits Brief *Amici Curiae* of Allied Pilots Association, Association of Professional Flight Attendants, Association of Flight Attendants-CWA and the Communications Workers of America, AFL-CIO (CWA) in Support of Defendants, *United States v. US Airways Group, Inc.*, No. 1:13-cv-01236-CKK (D.D.C. Oct. 21, 2013), ECF No. 109.

relation to the alternative in bankruptcy—issues with which the Statutory Committee and its advisors are intimately and uniquely familiar.

“An amicus curiae, defined as ‘friend of the court,’ . . . does not represent the parties but participates only for the benefit of the Court.” *Jin v. Ministry of State Sec.*, 557 F.Supp.2d 131, 136 (D.D.C. 2008) (quoting *United States v. Microsoft Corp.*, No. Civ. A. 98-1232 (CKK), 2002 WL 319366, at *2 (D.D.C. Feb. 28, 2002)). “District courts have inherent authority to appoint or deny *amici* which is derived from Rule 29 of the Federal Rules of Appellate Procedure.” *Id.* (citation omitted). “It is solely within the court’s discretion to determine ‘the fact, extent, and manner’ of the participation.” *Id.* (citation omitted). Among other reasons, an *amicus* brief normally should be permitted when “the *amicus* has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *Id.* at 137 (citation omitted).

Here, given that the Statutory Committee represents the diverse interests of AMR’s numerous unsecured creditors and has a unique perspective concerning the bankruptcy proceedings and the merger, the Statutory Committee has a substantial interest in the outcome of this litigation and believes that its viewpoint will assist the Court in assessing the merits of the case. The Statutory Committee’s *amicus* brief will explain in detail how Section 7 case law is appropriately applied in the context of a proposed transaction where one of the entities is in bankruptcy, including complexities that will result if the merger is enjoined. AMR’s current plan of reorganization, predicated on its proposed merger with US Airways, is the only plan proposed to and voted on by creditors and stakeholders and confirmed by the United States Bankruptcy Court for the Southern District of New York presiding over AMR’s pending Chapter 11 cases. *See* Findings of Fact, Conclusions of Law, and Order Pursuant to Sections 1129(a) and (b) of the

Bankruptcy Code and Rule 3020 of the Federal Rules of Bankruptcy Procedure Confirming Debtors' Fourth Amended Joint Chapter 11 Plan, *In re AMR Corp.*, Case No. 11-15463 (SHL) (Bankr. S.D.N.Y. Oct. 22, 2013), ECF No. 10367. As the Statutory Committee has informed the DOJ in several submissions and direct communications, an injunction here would return the AMR bankruptcy to square one with likely disruption and disarray among numerous, financially unaligned stakeholders.

None of the parties to this litigation represent the same, diverse interests as the Statutory Committee or share the Statutory Committee's unique role and responsibilities in the bankruptcy process. As a result, the Statutory Committee is able to provide unique information and perspective that can assist the Court, *inter alia*, in determining the appropriate analytical framework to apply in resolving this litigation in this unique context.

IV. **CONCLUSION**

For the foregoing reasons, the Statutory Committee respectfully requests that this Court grant its motion for leave to file an *amicus* brief.

Dated: October 28, 2013

Respectfully submitted,

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