IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *Plaintiff,* **SIGNATURE FLIGHT SUPPORT CORPORATION** *and* **HAWKER BEECHCRAFT SERVICES, INC.** *Defendants.*	**Civil Action No. : 1:08-cv-01164** **Judge: Hon. Richard W. Roberts** **Deck Type: Antitrust** **Date Filed: December 18, 2008**

UNITED STATES' MEMORANDUM IN SUPPORT OF MOTION OF THE UNITED STATES FOR APPOINTMENT OF TRUSTEE

This Memorandum is filed in support of the Motion of the United States for Appointment of James A. Knauer as Trustee in the above captioned case. This case arises from a civil antitrust Complaint and stipulated Final Judgment that was filed by the United States on July 3, 2008 and entered by this Court on October 29, 2008.

The success of the Final Judgment in remedying the competitive problems identified in the Complaint depends upon the successful divestiture of the "Divestiture Assets" as defined in Section II. G of the Final Judgment. Defendant Signature Flight Support Corporation ("Signature") had until December 10, 2008 to complete the divestiture.[1] Court appointment of a trustee, pursuant to Section V of the Final Judgment, is warranted. James A. Knauer, the Trustee

[1] Signature filed a motion on December 2, 2008 to modify the Final Judgment to extend the divestiture period a year until December 10, 2009. The United States filed its opposition to that motion on December 15, 2008. [Docket Entries # 17 and 18]

selected by the United States, possesses the expertise, experience, and organization to accomplish the successful divestiture of the Divestiture Assets.

I.

INTRODUCTION

The Complaint alleges the proposed acquisition by Signature of Hawker Beechcraft Service Inc.'s ("Hawker") FBO assets at Indianapolis International Airport (IND) would substantially lessen competition in the provision of FBO services in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. §18. Signature and Hawker are the only providers of FBO services at IND, and the Complaint states that they compete directly on price and quality of services and that the transaction would eliminate this competition at IND, creating a monopoly.

A. Final Judgment

The Final Judgment filed with the Complaint and entered by this Court on October 29, 2008, embodies the parties' agreement to settle the case through prompt divestiture of the Divestiture Assets, either Signature's facility at IND or Hawker's existing and future facilities at IND. Signature has elected to divest the Hawker assets. In order to allow the entire Hawker acquisition to close pending entry of the proposed Final Judgment, Signature signed a Hold Separate and Preservation of Assets Stipulation and Order.

The essence of this settlement is the prompt and certain divestiture of the defined Divestiture Assets by defendant Signature to assure that competition is not substantially lessened. To accomplish this objective, Section IV.A. of the Final Judgment requires defendant Signature to "use its best efforts to complete the required divestiture as expeditiously as possible" to "an Acquirer acceptable to the United States, in its sole discretion."

B. Signature's Failure to Divest the Divestiture Assets

The Final Judgment gave Signature the later of ninety (90) calendar days after the filing of the Complaint or five (5) days after notice of entry of the Final Judgment by the Court in which to divest the divestiture assets. Final Judgment, Section IV.A. The later of those two dates is November 4, 2008 – five days after notice of the Final Judgment's entry.

Signature requested an extension from the United States on October 31, 2008, stating that the final bids of the Divestiture Assets were due on November 7, 2008. Signature represented to the United States that it could select a final bidder the following week and submit the company's name to the United States for review, and that the sale could be completed shortly after the Indianapolis Airport Authority approved the transaction at its December 5, 2008 meeting (assuming approval of the purchaser by the United States). Based on these representations, on November 3, 2008, the United States granted an extension of the period for the divestiture until December 10, 2008.

Signature has not submitted the name of a prospective purchaser to the United States for evaluation pursuant to Section IV .H. of the Final Judgment and did not ask the Indianapolis Airport Authority to approve the proposed sale at its December 5 meeting. Section V.A. of the Final Judgment states that "if defendants have not divested the Divestiture Assets within the time period specified in Section IV (A) of this Final Judgment, defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the

Divestiture Assets."[2]

C. Purpose of the Trust and Appointment of the Trustee

The purpose of the Trustee under the Final Judgment is to achieve the goal of the Final Judgment, i.e., a prompt and certain divestiture to a purchaser demonstrated to the United States' satisfaction as having the intent and capability, including the necessary managerial, operational, and financial capability, of competing effectively in the FBO services market at IND. After the appointment of a Trustee becomes effective, only the Trustee shall have the right to sell Divestiture Assets. The Trustee shall have the power and authority to accomplish the divestitures at the best price then obtainable upon a reasonable effort. Further, to assist in the divestitures, the Trustee shall have the power and authority to hire, at the cost and expense of Signature, any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee. Final Judgment Section V.B. Thus, the Trustee will have the power and authority to take whatever actions are required to remove any impediments to successful divestiture of the Divestiture Assets.

II.

TRUSTEE PROPOSED BY THE UNITED STATES

The United States urges this Court to appoint James A. Knauer. Mr. Knauer is a partner in the law firm Kroger, Gardis & Regas, LLP in Indianapolis, Indiana. He has been appointed a federal receiver in several cases brought by the Securities and Exchange Commission and has been responsible for selling assets in situations analogous to the one here. Mr. Knauer's previous

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[2] While Signature has not provided the United States a formal notification pursuant to this Section, it has stated in two recent motions filed with the Court that it has not divested the assets. [Docket Entries # 17 and 18]

experience makes him well-suited to take on the responsibilities of Trustee under the Final Judgment. His resume is attached to this memorandum.

III.

Conclusion

For all of the foregoing reasons, the United States respectfully requests this Court to appoint James A. Knauer Trustee pursuant to Section V of the Final Judgment.

Dated: December 18, 2008

Respectfully submitted,

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