

Hearing Date: August 24, 2023
Hearing Time: 11:00 a.m. (ET)

WILLIAM K. HARRINGTON
UNITED STATES TRUSTEE, REGION 2
U.S. Department of Justice
Office of the United States Trustee
Alexander Hamilton U.S. Custom House
One Bowling Green
New York, New York 10004
Telephone: (212) 510-0500
By: Annie Wells
Daniel Rudewicz
Brian Masumoto
Trial Attorneys

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re: : Chapter 11
: Case No. 23-11177 (JPM)
Voyager Aviation Holdings, LLC, et. al,¹ : Jointly Administered
: :
Debtors. : Re: Dkt. 11
-----X

**OBJECTION OF THE UNITED STATES TRUSTEE TO DEBTORS’
MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS: (I)
AUTHORIZING THEM TO (A) CONTINUE COMPENSATION AND
BENEFITS PROGRAMS, AND (B) SATISFY PREPETITION
OBLIGATIONS ON ACCOUNT OF COMPENSATION AND BENEFITS
PROGRAMS, AND (II) GRANTING RELATED RELIEF**

William K. Harrington, the United States Trustee for Region 2 (the “United States Trustee”), hereby submits his objection (the “Objection”) to the *Debtors’ Motion For Entry of Interim and Final Orders: (I) Authorizing Them to (A) Continue Compensation and Benefits*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number, are: Voyager Aviation Holdings, LLC (8601); A330 MSN 1432 Limited (N/A); A330 MSN 1579 Limited (N/A); Aetios Aviation Leasing 1 Limited (N/A); Aetios Aviation Leasing 2 Limited (N/A); Cayenne Aviation LLC (9861); Cayenne Aviation MSN 1123 Limited (N/A); Cayenne Aviation MSN 1135 Limited (N/A); DPM Investment LLC (5087); Intrepid Aviation Leasing, LLC (N/A); N116NT Trust (N/A); Panamera Aviation Leasing IV Limited (N/A); Panamera Aviation Leasing VI Limited (N/A); Panamera Aviation Leasing XI Limited (N/A); Panamera Aviation Leasing XII Designated Activity Company (N/A); Panamera Aviation Leasing XIII Designated Activity Company (N/A); Voyager Aircraft Leasing, LLC (2925); Voyager Aviation Aircraft Leasing, LLC (3865); Voyager Aviation Management Ireland Designated Activity Company (N/A); and Voyager Finance Co. (9652). The service address for each of the Debtors in these cases is 301 Tresser Boulevard, Suite 602, Stamford, CT 06901.



Programs, and (B) Satisfy Prepetition Obligations on Account of Compensation and Benefits Programs, and (II) Granting Related Relief (the “Compensation Motion”) [ECF No. 11]. In support of his Objection, the United States Trustee respectfully states:

PRELIMINARY STATEMENT

This is not the typical “first day” employee compensation motion where a debtor seeks final authority from the Bankruptcy Court to pay priority prepetition wages and other benefits subject to Section 507 of the Bankruptcy Code within the first 21 days of the filing to avoid immediate and irreparable harm. That has already been done under the Court’s interim order granting same. Contrary to its earlier claim,² the Debtors now seek, on a final basis, to elevate the wages and benefits in excess of the cap under Section 507 from general unsecured claims to priority claims, and pay them ahead of other similar claims outside of a plan. That is simply not permitted under the Bankruptcy Code. The Debtors further seek, on a final basis, to pay, in their sole discretion, incentivizing and retentive bonuses and compensation without providing further notice or seeking further approval from this Court by motion. Such payments do not comport with the requirements under Section 503(c) of the Bankruptcy Code and should not be allowed. Accordingly, the United States Trustee objects to those aspects of the Compensation Motion and respectfully requests that the Court deny the requested relief to the extent discussed below.

BACKGROUND

1. On July 27, 2023 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court (the “Chapter 11

² The Debtors previously represented that:
“For the avoidance of doubt, the Debtors are not seeking to make any payments to any individual on account of any prepetition Employee Compensation or Independent Contractor Compensation in excess of the priority wage cap of \$15,150 established under section 507(a)(4) of the Bankruptcy Code.”
Compensation Motion ¶ 20.

Cases”). *See* ECF No. 1. The Chapter 11 Cases are jointly administered for procedural purposes only. *See* ECF No. 26.

2. The Debtors continue to operate their businesses and manage their assets as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. As of the date hereof, the United States Trustee has been unable to form an official committee of unsecured creditors in these cases. *See* ECF No. 67.

4. The Debtors, together with their non-debtor affiliates (collectively, the “Company”) are a privately owned aviation investor and full-service global aircraft leasing platform operating in the highly competitive multinational aircraft leasing industry. The Company’s main leasing operations are led out of Dublin, Ireland, and the Company has its corporate office in Stamford, CT. *See* Compensation Motion ¶ 3.

5. The Debtors currently maintain 13 full-time, salaried Employees,³ of which, four are in Ireland, eight in the United States, and one in Spain. All Employees are employed either by Debtor VAH or VAMI. Additionally, the Debtors also supplement their workforce with Independent Contractors and/or consultants on an as needed basis. As of the Petition Date, the Debtors had utilized the services of six Independent Contractors, five of whom are in Ireland. *See id.* ¶¶ 12-13.

6. On July 27, 2023, the Debtors filed the Compensation Motion as part of the “First Day” motions for relief. In the Compensation Motion, the Debtors describe and define their “Compensation and Benefit Programs” as comprising Employee Compensation, Independent Contractor Compensation, Payroll Service Fees, Deductions, Payroll Taxes, Reimbursable Expenses, Manager and Director Compensation, Bonus Programs, and the Employee Benefits Programs, including, without limitation, health insurance, workers compensation, paid leave and

³ Capitalized terms used but not defined herein shall have the meanings set forth in the Compensation Motion.

holiday, retirement benefits, paid severance, and other miscellaneous benefits. *See id.* ¶¶ 38-62.

7. Following a hearing, the Court granted the Compensation Motion on an interim basis by Order dated July 28, 2023 (the “Interim Order”). *See* ECF No. 33. The Debtors now seek relief under the Compensation Motion on a final basis.

OBJECTION

I. Debtors Cannot Justify the Improper Re-Characterization of Employees’ General Unsecured Claims as Priority Claims and Pay Such Amounts in Advance Outside of a Plan

By the Compensation Motion, the Debtors originally sought to pay prepetition obligations on account of the Compensation and Benefits Programs, *provided* that any amount to any individual Employee or Independent Contract *did not exceed \$15,150*. *See* Interim Order ¶ 3. The Debtors now seek authority to not only continue its Compensation and Benefits Programs (which includes Directors fees and incentive bonuses and severance) on an ongoing, post-petition basis in the ordinary course, but also to pay all pre-petition obligations, even in excess of the statutory cap under Section 507(a)(4) and (a)(5). The Debtors did not disclose what amounts are in excess of such caps, for which Employees or Independent Contractors such payments would be made, and what category of compensation such payments fall into.⁴ Essentially, the Debtors want blanket authority to pay undisclosed personnel (which may include Insiders) any amounts they deem fit in their sole discretion, without disclosing any information to the Court, the United States Trustee or other parties in interest, and without providing any evidentiary support to justify such payments. Thus, the United States Trustee objects to the Compensation

⁴ In an effort to reach a consensual resolution of the objections herein, the United States Trustee requested information as to the compensation already paid to Employees and Independent Contractors, what additional amounts still to be paid, and the extent of any amounts over the statutory caps. However, as of this time, the Debtors were unable to confirm such information.

Motion insofar as it seeks relief that does not comply with the limitations set forth in 11 U.S.C. § 507(a)(4) and (a)(5), and cannot be justified by the doctrine of necessity.

Section 507(a) of the Bankruptcy Code sets forth categories of expenses and claims entitled to priority, including amounts for wages and employee benefit plan contributions, as follows:

- (4) Fourth, allowed unsecured claims, but only to the extent of \$[15,150⁵] for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for—
 - (A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or
 - (B) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services for the debtor in the ordinary course of the debtor's business if, and only if, during the 12 months preceding that date, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor.
- (5) Fifth, allowed unsecured claims for contributions to an employee benefit plan—
 - (A) arising from services rendered within 180 days before the date of the filing of the petition or the date of cessation of the debtor's business, whichever occurs first; but only
 - (B) for each such plan, to the extent of—
 - (i) the number of employees covered by each such plan multiplied by \$15,150; less
 - (ii) the aggregate amount paid to such employees under paragraph (4) of this subsection, plus the aggregate amount paid by the estate on behalf of such employees to such other employee benefit plan.

11 U.S.C. § 507(a)(4) & (a)(5).

Under this statutory framework, expenses for wages and commissions earned within 180 days of the filing of the petition up to the cap of \$15,150 is granted priority status, with such claims to be paid pursuant to the terms of a confirmed plan. *See In re Windstream Holdings Inc.*,

⁵ As adjusted on April 1, 2022.

614 B.R. 441, 451 (S.D.N.Y. 2020) (“[D]ebtors who file for Chapter 11 bankruptcy generally cannot pay prepetition debts post petition until a plan governed by priority is confirmed.”) However, bankruptcy courts have carved a narrow exception for payment of a debtor’s prepetition debts outside of a plan under the “doctrine of necessity” and Section 105(a) of the Bankruptcy Code. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989); *Cf. In re University General Hospital System, Inc.*, Case No. 15-31086, 2015 WL 1542646, at *2 (Bankr. S.D. Tex. Mar. 31, 2015) (“It may be proper to pay prepetition wages entitled to priority under Section 507(a)(4) of the Bankruptcy Code, based on ‘the presence of a legal or factual inevitability of payment.’” (quoting *In re Equalnet Commc ’ns Corp.*, 258 B.R. 368 (Bankr. S.D. Tex. 2000)). “The doctrine [of necessity], however, receives limited application,” and “mere convenience, without necessity, is insufficient.” *Windstream*, 614 B.R. at 457 (quoting *In re C.A.F. Bindery, Inc.*, 199 B.R. 828, 835-36 (Bankr. S.D.N.Y. 1996); *see also In re CoServ, L.L.C.*, 273 B.R. 487, 493 (Bankr. N.D. Tex. 2002) (“And the equitable power that the Court may exercise under Section 105(a) is severely circumscribed.”) (citations omitted). Further Section 105(a) cannot be used to “contravene specific statutory provisions.” *Law v. Siegel*, 571 U.S. 415, 421, 134 S. Ct. 1188, 1194, 188 L. Ed. 2d 146 (2014).

But contravening the priority scheme under Section 507 is what the Debtors are proposing. They are not seeking authority to simply pay the wages and commissions of Employees and Independent Contractors as priority claims under Section 507(a)(4); they have already done so pursuant to this Court’s Interim Order. Instead, the Debtors seek authority to pay all compensation and benefits, including prepetition amounts owed *in excess of the priority cap*. Such amounts are general unsecured claims, “which should share payment pro-rata with other general unsecured claims.” *In re University General Hospital System, Inc.*, 2015 WL

1542646, at *2.

As support for paying these general unsecured claims outside of a plan and ahead of other general unsecured claims, the Debtors also rely on section 363(b) of the Bankruptcy Code. While section 363 may be used to justify payment of pre-petition obligations such as critical vendors—*see, e.g., In re Ionosphere Clubs*, 98 B.R. at 175—it is not meant to be invoked as a panacea to justify any and all actions by a debtor. Instead, the burden is on the Debtors to demonstrate a sound business reason for such payment *beyond the mere appeasement of creditors. See id.*

The Debtors do not meet this standard. Under the Interim Order, any prepetition obligations on account of Compensation and Benefit Programs as of the Petition Date were already authorized to be paid (up to the statutory cap) during the interim period. The Debtors have not explained what other additional amounts remain outstanding since the interim period, to whom such amounts are owed, and what category of obligation such amounts are attributable to. *See In re Pers. Commc'ns Devices, LLC*, 588 B.R. 661, 666 (Bankr. E.D.N.Y. 2018) (“However, what is crucial to a doctrine of necessity request is to spell out who will be paid on a pre-petition claim, how much they will be paid, and why that payment is essential to the debtor's ongoing operations and its efforts to reorganize; to require less would be to convert a doctrine born of necessity into a license to do what may be convenient for a debtor to avoid deterioration in its relations with its vendors or suppliers.”). Other than stock assertions as to the importance of the Employees and Independent Contractors generally—*see Compensation Motion* ¶ 66 (“The Debtors’ business cannot function without the Employees and Independent Contractors.”)—the Debtors have not provided any evidence in the record that the failure to pay the amounts in excess of what has already been paid would result in irreparable harm to the estates. And while

employees are always crucial to any operating debtor in bankruptcy, the Debtors here do not allege that any of the Employees and Independent Contractors would seek employment elsewhere unless they were paid all their prepetition compensation above the statutory caps now.

In sum, the Debtors fall short of establishing that elevating and paying the Employees' and Independent Contractors' claims ahead of other general unsecured claims is necessary to preserve the value of the estates.

II. The Debtors Should Not be Allowed to Pay Postpetition Director Fees and Bonuses to Without a Determination that Section 503(c) Does Not Apply

As currently drafted, the Compensation Motion seeks authority to continue and pay obligations under the Compensation and Benefit Programs, including payment of amounts accrued pre- and post-petition for the Debtors' Bonus Programs and Severance Programs. Under the Bonus Program, Employees receive a quarterly bonus, "meant to *incentivize* Employees to perform at a high level, based upon a fixed percentage of their base salary." Compensation Motion ¶ 34 (emphasis added). The Debtors pay approximately \$420,000 each quarter on account of the Quarterly Bonus Program, with the next payment due in or around October 2023.

Id. The Debtors also have a discretionary retention pool to make retention payments to non-Insider Employees without seeking approval from the required board committee(s); provided that the aggregate amount paid from the Discretionary Retention Pool cannot exceed \$300,000 by December 31, 2023. *See id.* ¶ 35. Under the Severance Program, those Irish Employees employed for two or more years with the Debtors are entitled to redundancy/severance pay, and two weeks' pay for every year of service, and one additional week of pay, with a cap of up to €600 per week. *See id.* ¶ 60.

Section 503 of the bankruptcy Code governs the allowance of administrative expenses of

the estate, including the “actual, necessary costs and expenses of preserving the estate including—wages, salaries and commissions[.]” 11 U.S.C. § 503(b)(1). Notwithstanding subsection (b), there shall neither be allowed, *nor paid*—(1) a transfer made to, or an obligation incurred for the benefit of, an insider of the debtor for the purpose of inducing such person to remain with the debtor’s business[]; (2) a severance payment to an insider of the debtor, unless...” 11 U.S.C. § 503(c). The Debtors do not dispute that Sections 503(b) and (c) apply to the designation and payment of employee compensation as post-petition administrative expenses. But they take the position that approval of such payments does not require further notice or the filing of a separate motion pursuant to Section 503(c) of the Bankruptcy Code, because neither program purports to make either bonuses or severance to “Insiders” (as defined in the Bankruptcy Code). *See id.* ¶ 75. However, the Debtors did not provide any evidence in the record as to who the Debtors’ 13 Employees are, what their compensation and titles are, their job functions, nor which of the 13 “non-insiders” would receive the incentivizing bonuses. Similarly, the Debtors failed to disclose which Employees have since been separated and are entitled to severance payments. Without such details on the amounts at issue and the Employees to whom payments would be made, the Debtors cannot demonstrate that the strictures of Section 503 do not apply to these payments.

As such, to the extent that the Debtors seek to pay any amounts on account the Bonus Program and Severance Program as administrative expenses pursuant to Section 503 of the Bankruptcy Code, Section 503(c) of the Bankruptcy Code is implicated, and the Debtors must file a separate motion and meet the statutory requirements.

CONCLUSION

WHEREFORE, the United States Trustee respectfully requests that the Court sustain his objection and grant such other relief as is just and proper.

Dated: New York, New York
August 21, 2023

Respectfully submitted,

WILLIAM K. HARRINGTON
UNITED STATES TRUSTEE, Region 2
By: *Annie Wells*

Annie Wells
Trial Attorney
U.S. Department of Justice
Office of the United States Trustee
Alexander Hamilton Custom House
One Bowling Green
New York, New York 10004
Telephone: (212) 510-0500