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Proposed Counsel for Debtor
and Debtor in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII**

In re

HAWAIIAN AIRLINES, INC.,
a Hawaii corporation,

Debtor.

Case No. 03 - _____
(Chapter 11)

**MOTION FOR AN ORDER
ESTABLISHING PROCEDURES FOR
INTERIM COMPENSATION AND**

**REIMBURSEMENT OF CHAPTER 11
PROFESSIONALS AND COMMITTEE
MEMBERS**

Date: March 21, 2003

Time:

Judge: Hon. Robert J. Faris

Hawaiian Airlines, Inc., a debtor and debtor in possession (the “Debtor”), by and through its undersigned proposed co-counsel, hereby moves (the “Motion”) the Court for the entry of an order establishing procedures for interim compensation and reimbursement of chapter 11 professionals and committee members. In support of this Motion, the Debtor respectfully represents as follows:

Jurisdiction

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. The statutory predicates for the relief sought herein are sections 105(a) and 331 of the Bankruptcy Code.

Background

3. On March 21, 2003 (the “Petition Date”), the Debtor filed a petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Hawaii (the

“Bankruptcy Court”). Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor is operating its businesses and managing its properties as a debtor in possession. No trustee, examiner or committee of creditors has been appointed in the Debtor’s chapter 11 case.

4. The Debtor was incorporated in January of 1929 under the laws of the Territory of Hawaii and is currently a subsidiary of Hawaiian Holdings, Inc. (“Hawaiian Holdings”),¹ a Delaware corporation whose common stock is traded on the American Stock Exchange and Pacific Exchange under the ticker symbol “HA.” As part of the regular Securities and Exchange Commission filings of Hawaiian Holdings, Hawaiian Holdings reports its financial and operating results with those of the Debtor on a consolidated basis.

The Debtor’s Business

5. The Debtor is engaged primarily in the scheduled transportation of passengers, cargo and mail. The Debtor’s passenger airline business is its chief source of revenue. Principally all of the Debtor’s flights either originate or end in the state of Hawaii. The Debtor provides passenger and cargo service from Hawaii, predominately Honolulu, to the cities of Los Angeles, Ontario, Sacramento, San Diego and San Francisco, California; Seattle, Washington;

¹ Hawaiian Holdings holds 49.1% of the outstanding common stock of the Debtor directly. The remaining 50.9% of the outstanding common stock of the Debtor is held by AIP, Inc. (“AIP”), a wholly-owned subsidiary of Hawaiian Holdings.

Portland, Oregon; Phoenix, Arizona; and Las Vegas, Nevada (the “Transpacific Routes”). The Debtor also provides non-stop service between and among the six major islands of the state of Hawaii (the “Interisland Routes”) and weekly service to each of Pago Pago, American Samoa and Pepeeete, Tahiti in the South Pacific (the “South Pacific Routes”). Charter service is provided from Honolulu to Anchorage, Alaska (the “Charter Routes”). Based upon the Debtor’s operating revenues, the Debtor is the largest airline headquartered in Hawaii.

6. Based on its unaudited results, the Debtor had a net loss of approximately \$58 million for the twelve months ended December 31, 2002 (“Year 2002”) on operating revenue of approximately \$632 million for the same period. In comparison, for the twelve months ended December 31, 2001 (“Year 2001”), the Debtor reported net income of approximately \$5 million on operating revenue of approximately \$612 million for the same period. The Debtor’s assets and liabilities, as of December 31, 2002, were approximately \$256 million and \$399 million, respectively. The Debtor’s reported assets and liabilities, as of December 31, 2001, were approximately \$305 million and \$327 million, respectively.

7. The Debtor is party to a network of agreements among airlines. Because of the interdependent nature of airline operations, coordination among airlines, provision of airline services, and efficient service by the airline industry to the traveling public, in general, would be virtually impossible without such

agreements. Among other things, these agreements facilitate cooperation among airlines with respect to such critical activities as making reservations and transferring passengers, packages, baggage and mail among airlines.

The Debtor's Fleet

8. Beginning in the fourth quarter of 1999, the Debtor initiated a plan to replace its entire fleet of McDonnell Douglas DC-9 aircraft used to service its Interisland Routes. This effort was completed in the first quarter of 2002, with the Debtor taking delivery of thirteen Boeing 717-200 aircraft (the "717 Aircraft").

9. Similarly, in the fourth quarter of 2001, the Debtor initiated a plan to replace, by June 2003, its entire fleet of McDonnell Douglas DC-10 aircraft (the "DC-10 Aircraft") used to service the Transpacific Routes, South Pacific Routes and Charter Routes (the "Overseas Routes") with sixteen Boeing 767-300ER aircraft (the "767 Aircraft"). To date, the Debtor has taken delivery of ten new and four used Boeing 767-300ER aircraft and has returned eleven DC-10 Aircraft leased from Continental Airlines, Inc. and a subsidiary of American Airlines, Inc ("American"). The Overseas Routes are currently serviced by fourteen Boeing 767-300ER aircraft.

10. All of the Debtor's aircraft are leased from various lessors under either financing or operating leases. Three of the Debtor's 767 Aircraft are leased under fifteen-year operating leases with a subsidiary of Ansett Worldwide Aviation

Services, Inc. (“Ansett”) and were delivered to the Debtor in the fourth quarter of 2001. Four 767 Aircraft were delivered in 2002 under seven-year operating leases with International Lease Finance Corporation. Seven of the Debtor’s 767 Aircraft are leased under eighteen-year operating leases from Ansett and a subsidiary of Boeing Capital Corporation (“Boeing”). Each of the 717 Aircraft is leased under an eighteen-year leveraged financing lease with Boeing. The Debtor’s four remaining DC-10 Aircraft are leased under operating leases with American and B.C.I. Leasing.

Employees

11. The Debtor has approximately 3,200 active employees, approximately 2,600 of which are employed on a full time basis. The majority of the Debtor’s employees are covered by labor agreements with the International Association of Machinists and Aerospace Workers (AFL-CIO) (“IAM”); the Airline Pilots Association, International (“ALPA”); the Association of Flight Attendants (“AFA”); the Transport Workers Union (“TWU”); or the Employees of the Communications Section (“Communications Section”). Each of these labor agreements, other than the contract with the seven-member Communications Section, was renegotiated in 2000 or 2001, and will be subject to renegotiation again in 2004 or 2005.

Previous Restructurings

12. On September 21, 1993, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Bankruptcy Court (the “1993 Bankruptcy”).² Following confirmation of the Debtor’s plan of reorganization in the 1993 Bankruptcy on August 30, 1994, the Debtor successfully emerged from the 1993 Bankruptcy. Thereafter, on August 29, 2002, the Debtor was restructured from a public company into a wholly-owned subsidiary of Hawaiian Holdings and AIP (the “Restructuring”). As part of the Restructuring, the stockholders of the Debtor became stockholders of Hawaiian Holdings and Hawaiian Holdings assumed sponsorship of the Debtor’s existing stock agreements. Prior to the Restructuring, the common stock of the Debtor was publicly traded on the American Stock Exchange and Pacific Exchange under Hawaiian Holdings’ ticker symbol of “HA.”

The Debtor’s Current Financial Crisis

13. The Debtor’s current financial crisis was precipitated by a confluence of factors relating, in large part, to the depressed economic conditions of both the United States and Japan. These factors include: (a) decreased fare revenue, (b) high aircraft lease costs, (c) high labor costs and (d) increased insurance, security and fuel costs. Although the terrorist attacks of September 11, 2001 are one of the

most obvious and publicized reasons for the Debtor's current financial crisis, it is the significant, though related, decline in the economies of the United States and Japan that has most contributed to the necessity of the Debtor's chapter 11 filing.

14. Following the events of September 11, 2001, the Debtor has seen a marked and dramatic reduction in the demand for travel to and within the islands of Hawaii. This reduced demand has been exacerbated by the flagging economies of the United States and Japan since that time. The demand for vacation travel, which historically has been the Debtor's greatest source of income, has been most affected by the economic decline. In order to attract passengers, airlines, including the Debtor, have been forced to lower their fares. The introduction of "low cost carriers," such as Jet Blue, has led to a further reduction in fare structure, as national airlines have been forced to reduce ticket prices to remain competitive. The combination of fewer ticket sales made at reduced fares continues to impact the Debtor's revenue and earnings negatively.

15. Beginning in late 1999, as discussed above, the Debtor began a refueling process under which its aging fleet of McDonnell Douglas DC-9 aircraft and DC-10 Aircraft would be completely replaced by the end of 2003. By July of 2001, the Debtor had entered into the last of its agreements with lessors that would provide the aircraft for this refueling. Although the terms of these agreements

² United States Bankruptcy Court, District of Hawaii, Case No. 93-01074.

were considered to be fair and at market rates when agreed to, the subsequent and unforeseen decline in economic conditions in the United States and abroad have caused the terms of such leases to be highly unfavorable. Because its aircraft lease costs are grounded in economic assumptions that have failed to materialize, the Debtor has been forced to shoulder the crippling costs of over-market leases. For the Year 2002, expenses associated with the Debtor's aircraft leases made up 12% of its total operating expenses.

16. Similarly, because the Debtor's union agreements were renegotiated in 2000 and 2001, the Debtor's labor costs have not been in line with current economic conditions. Based upon market assumptions made in 2000 and pre-September 11, 2001, the Debtor's labor costs have exceeded what the Debtor could realistically maintain based upon its revenues. This relative increase in labor costs, as compared to revenue, has negatively impacted the Debtor's ability to remain a viable enterprise. For the Year 2002, the Debtor's labor costs made up 30% of its total operating expenses.

17. As a direct result of the events of September 11, 2001 and the long-standing international crises in the Middle East, the Debtor has seen increases in several of its cost centers. For instance, insurance rates associated with airline operations have increased substantially as compared to pre-September 11, 2001 rates. Because of increased airline security requirements, the Debtor also has been

faced with increased security expenditures. Moreover, fuel costs, which made up approximately 14% of the Debtor's operating expenses for Year 2002, also have steadily increased during this period. These increased costs, in the face of declining revenues, have further weakened the Debtor's ability to succeed as a going-concern.

Prepetition Activities

18. The two largest controllable components of the Debtor's cost structure are labor and aircraft costs. These are, therefore, the two areas upon which the Debtor had focused prior to the Petition Date in trying to accomplish a successful out-of-court financial and operational restructuring. To that end, the Debtor has, particularly within the past year, been actively negotiating with both its aircraft lessors and labor unions to reduce its aircraft and labor costs, respectively. These negotiations have continued up until the Debtor's bankruptcy filing. On February 20, 2003, the Debtor's employees represented by IAM agreed to \$3.8 million in concessions. On March 6, 2003, the Debtor's employees represented by ALPA reached an agreement with the Debtor with respect to approximately \$8 million in concessions. Similarly, on March 11, 2003, the Debtor's employees represented by AFA agreed to approximately \$3.5 million in concessions. Although the Debtor and its labor unions have made great progress in these negotiations, it now appears that the only practicable way for the Debtor to reorganize is under the

protection afforded to it under the Bankruptcy Code, as the Debtor has not been successful in its attempts to negotiate significant concessions from its aircraft lessors.

Relief Requested

19. The Debtor seeks entry of an order, pursuant to sections 105(a) and 331 of the Bankruptcy Code, establishing an orderly and regular process for the allowance and payment of compensation and expense reimbursement for attorneys and other professionals whose services are authorized by this Court pursuant to sections 327 or 1103 of the Bankruptcy Code, and who will be required to file applications for allowance of compensation and reimbursement of expenses pursuant to sections 330 and 331 of the Bankruptcy Code. In addition, the Debtor seeks entry of an order establishing a procedure for reimbursement of reasonable out-of-pocket expenses incurred by members of any committee of creditors appointed pursuant to section 1102 of the Bankruptcy Code.

Retention of Professionals

20. Contemporaneously herewith, the Debtor is filing applications seeking approval of its employment of (i) Akin Gump Strauss Hauer & Feld LLP (“Akin Gump”), as general restructuring counsel, (ii) Cades Schutte, a Limited Liability Law Company (“Cades Schutte”), as legal counsel and local restructuring counsel, (iii) Paul, Weiss, Rifkind, Wharton & Garrison, LLP, as special corporate counsel,

(iv) Ernst & Young LLP, as its accountants and auditors, (v) Marr, Hipp, Jones & Pepper, a Limited Liability Law Partnership, as labor and employment counsel (vi) Dow, Lohnes & Albertson, LLP, as legislative advocacy counsel, (vii) Thompson & Chan, as employee benefits and ERISA counsel, (viii) Watson Wyatt & Company, as actuarial consultants, and (ix) AVITAS, as aircraft financing consultants. In addition, the Debtor anticipates that it may need to retain other professionals in connection with this chapter 11 case.

21. The Debtor also is filing, contemporaneously herewith, a Motion for an Order Authorizing Retention and Employment of Professionals Utilized in the Ordinary Course of Business (the “Ordinary Course Professional Motion”). The intent behind the Ordinary Course Professional Motion is as follows: (i) to seek authority for the Debtor to continue to retain certain professionals in the ordinary course of business on terms substantially similar to those in effect prior to the Petition Date, without the need to file individual retention applications for each of these professionals; and (ii) to seek authority to pay ordinary course professionals in full, without interim or final fee applications, in accordance with their prepetition arrangements, but subject to monthly caps as provided therein (the “Monthly Cap”). Any ordinary course professional seeking payment of fees and disbursements exceeding the Monthly Cap would be required to file interim and final fee applications for the full amount of such fees and disbursements.

22. The Debtor, moreover, anticipates that a statutory committee of unsecured creditors will likely be appointed in this chapter 11 case pursuant to section 1102 of the Bankruptcy Code. The creditors' committee, in turn, would retain counsel, and possibly other professionals, to represent it.

23. Thus, the Debtor anticipates two categories of professionals required to submit interim and final applications: (1) separately retained chapter 11 professionals and (2) those ordinary course professionals whose fees and expenses exceed the limitations set forth in the Ordinary Course Professional Motion (collectively, the "Professionals," or each a "Professional").

Procedure Requested

24. Pursuant to section 331 of the Bankruptcy Code, all professionals are entitled to submit applications for interim compensation and reimbursement every one hundred twenty (120) days, or more often, if the Court permits. In addition, section 105(a) of the Bankruptcy Code authorizes the Court to issue any order "that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]," thereby codifying the bankruptcy court's inherent equitable powers.

25. The Debtor seeks the establishment of a procedure for compensating and reimbursing the Professionals pursuant to monthly interim fee statements. No earlier than the 25th day of each calendar month, each Professional may file an interim fee statement (an "Interim Fee Statement") with the Debtor, counsel to the

Debtor, the Office of the United States Trustee and counsel to any committee appointed pursuant to section 1102 of the Bankruptcy Code. After 20 days, if there is no objection to an Interim Fee Statement, the Professional filing and serving such Interim Fee Statement may file a certificate of no objection with the Court, after which the Debtor shall be directed to pay such Professional an amount equal to 80 percent of the fees and 100 percent of the expenses listed in the Interim Fee Statement. The remaining 20 percent of the fees shall be escrowed by the Debtor until distributed pursuant to an order of this Court. Every four months, each Professional must file with the Court an interim fee application requesting compensation for fees and reimbursement of expenses sought in the Interim Fee Statements during the applicable period.

26. Similar procedures have been recently approved in other large chapter 11 cases. *See, e.g., In re Liberty House, Inc.*, Case No. 98-01039 (Bankr. D. Haw. Aug. 14, 1998); *In re UAL Corporation*, Case No. 02-B-48191 (ERW) (Bankr. N.D. Ill. Dec. 11, 2002); *In re Fountain View Inc.*, Case No. 01-39678 (SB) (Bankr. C.D. Cal. Oct. 10, 2001); *In re CareMatrix*, Case No. 00-04159 (JCA) (Bankr. D. Del. Nov. 9, 2000); *In re Genesis Health Ventures, Inc.*, Case No. 00-02692 (JHW) (Bankr. D. Del. June 22, 2000); *In re Vencor, Inc.*, Case No. 99-03199 (MFW) (Bankr. D. Del. Sept. 14, 1999).

27. **Interim Fee Statements:** The Debtor proposes that, except as otherwise provided in an order of the Court authorizing the retention of a particular Professional, the Professionals be permitted to seek interim payment of compensation and reimbursement of expenses in accordance with the following procedures (the “Compensation Procedures”):

a. No earlier than the 25th day of each calendar month, each Professional seeking monthly interim compensation must file a fee statement (a “Fee Statement”) summarizing interim compensation sought for services rendered and reimbursement of expenses incurred during the immediately preceding month and any previous month for which compensation and/or reimbursement has not yet been sought (the “Compensation Period”) and serve a copy of such Fee Statement on: (i) the Debtor; (ii) Akin Gump and Cades Schutte, counsel to the Debtor; (iii) the Office of the United States Trustee; and (iv) counsel to any committee appointed in this chapter 11 case pursuant to section 1102 of the Bankruptcy Code (collectively, the “Notice Parties”).

b. All Fee Statements must provide information in the format required by Local Bankruptcy Rule 2016-1 and the Guidelines for Compensation and Expense Reimbursement of Professionals and Trustees promulgated by the Court pursuant to Local Bankruptcy Rule 2016-1. With

respect to time entries, all Fee Statements must contain (i) a detailed description, organized in chronological order by subject matter of the task, of the specific tasks performed, (ii) the length of time it took to perform such task, expressed in tenths (1/10ths) of hours – also, the Fee Statement must detail each task or contemporaneously related tasks performed and indicate the length of time it took to perform each such task or contemporaneously related tasks, except where contemporaneously related tasks are related to each of the specific tasks performed, clumping/aggregating of all daily time entries is not permitted, (iii) an identification of who performed the work, (iv) the identity of the participants and the primary subject of conferences and telephone calls, (v) a description of the research topic for legal research and (vi) the identity of the document, by title or subject, for time entries for drafting and reviewing documents; provided, however, Fee Statements may be redacted to protect privileged material so long as the Professional retains an unredacted version for in camera review by the Court, in its discretion.

c. Each Notice Party will have twenty (20) days after service of a Fee Statement (the “Objection Deadline”) to object (an “Objection”) to any Professional’s Fee Statement. If, upon the expiration of the Objection Deadline, no Objection has been filed pursuant to subsection (d) below, the Professional may file a certificate of no objection with the

Court, after which the Debtor shall be authorized and directed to pay such Professional an amount (the “Actual Monthly Payment”) equal to the lesser of (i) 80 percent of the fees and 100 percent of the expenses requested in the Fee Statement (the “Maximum Monthly Payment”) and (ii) 80 percent of the fees and 100 percent of the expenses not subject to an Objection pursuant to subparagraph (d) below.

d. Objections must be written and filed with the Court and received by the affected Professional (the “Affected Professional”) and the Notice Parties on or before the Objection Deadline. Thereafter, the Debtor, the objecting party and the Affected Professional may attempt to resolve the Objection on a consensual basis. If the parties are unable to reach a resolution of the Objection within twenty (20) days after service of the Objection, the Affected Professional may either: (i) file a response to the Objection with the Court, together with a request for payment of the difference, if any, between the Maximum Monthly Payment and the Actual Monthly Payment made to the Affected Professional (the “Incremental Amount”); or (ii) forego payment of the Incremental Amount until the next interim or final fee application hearing, at which time the Court will consider and dispose of the Objection if requested by the parties.

e. In four-month intervals, or at such other intervals convenient to the Court, each of the Professionals must file with the Court and serve on the Notice Parties a request (an “Interim Fee Application”) for interim Court approval and allowance, pursuant to section 331 of the Bankruptcy Code, of the compensation and reimbursement of expenses sought in the Fee Statements filed during such period (the “Interim Fee Period”). The Interim Fee Application must include a summary of the Fee Statements that are the subject of the request and any other information requested by the Court or required by the rules of bankruptcy procedure (the “Bankruptcy Rules”) or the local bankruptcy rules (the “Local Rules”). Each Professional must file its Interim Fee Application within twenty-five (25) days after the end of the Interim Fee Period for which the request seeks allowance of fees and reimbursement of expenses. Any Professional that fails to file an Interim Fee Application when due will be ineligible to receive further interim payments of fees or expenses under the Compensation Procedures until such time as a further Interim Fee Application is submitted by such Professional.

f. The Debtor shall request that the Court schedule a hearing on the Interim Fee Applications at least once every four (4) months, or at such other intervals as the Court deems appropriate.

g. The pendency of an Objection to payment of compensation or reimbursement of expenses will not disqualify a professional from the future payment of compensation or reimbursement of expenses under the Compensation Procedures.

h. Neither (i) payment of or failure to pay, in whole or in part, monthly interim compensation and reimbursement of expenses under the Compensation Procedures nor (ii) the filing of or failure to file an Objection will bind any party in interest or the Court with respect to the allowance of interim or final applications for compensation and reimbursement of expenses of professionals. All fees and expenses paid to Professionals under the Compensation Procedures are subject to disgorgement until final allowance by the Court.

28. **Final Applications:** The Debtor proposes that the Professionals file final applications for compensation and reimbursement in accordance with the provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules, and orders of this Court, or in accordance with such other procedures as this Court may authorize by separate order, and by such deadline as may be established in a confirmed chapter 11 plan or in an order of this Court.

29. **Committee Member Expenses:** Each member of any committee appointed pursuant to section 1102 of the Bankruptcy Code may obtain

reimbursement for reasonable out-of-pocket expenses in connection with committee membership in accordance with the following procedures:

a. Each committee member may submit a statement of expenses and supporting vouchers and receipts to committee counsel, who will collect and based thereon submit a comprehensive request for reimbursement to the Debtor. The committee counsel will not be permitted to submit a request for reimbursement more frequently than once every thirty (30) days.

b. The Debtor will issue reimbursement checks within twenty (20) days after receipt of a request from committee counsel, except with respect to any expense to which the Debtor objects. The Debtor will provide notification of any objection within the same twenty (20) day period.

c. The Debtor, the committee member to whose expense an objection is made and committee counsel will attempt to resolve any such objection, but in the absence of a resolution, the Debtor will issue a reimbursement check with respect to any expense subject to objection only pursuant to an order of this Court, which order shall be obtained by the applicable committee member only upon motion and notice to the Debtor and its counsel.

d. Committee member expenses need not be approved pursuant to any interim or final application process, unless necessary to resolve any pending objection to a reimbursement request.

e. Notwithstanding the failure to object to any reimbursement request, and notwithstanding payment pursuant to any reimbursement request, the Debtor and other parties in interest will have the right, at any time during the chapter 11 case, upon motion and following notice and a hearing, to seek disgorgement of any amounts paid to any committee member.

Authority for Relief

30. In enacting the provisions of the Bankruptcy Code that relate to compensation of professionals, Congress adopted the principle that “[professionals in bankruptcy cases are entitled to be paid on a comparable basis to other privately retained counsel, both in terms of timeliness and amount of payment.” *In re Commercial Consortium of California*, 135 B.R. 120, 123 (Bankr. C.D. Cal. 1991) (citing *Burgess v. Klenske (In re Manoa Finance Co., Inc.)*, 853 F.2d 687, 690 (9th Cir. 1988); *In re Nucorp Energy, Inc.*, 764 F.2d 655, 658-59 (9th Cir. 1985); *First National Bank of Chicago v. Committee of Creditors Holding Unsecured Claims (In re Powerine Oil Co.)*, 71 B.R. 767, 770 (B.A.P. 9th Cir. 1986).

31. As a result, section 331 of the Bankruptcy Code provides for the payment of interim compensation for professionals, including the Debtor's counsel, retained by debtors in possession and creditors' committees:

A trustee, an examiner, a debtor's attorney, or any professional person employed under section 327 or 1103 of this title may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title. After notice and a hearing, the court may allow and disburse to such applicant such compensation or reimbursement.

11 U.S.C. § 331 (*emphasis added*). The legislative history of the Bankruptcy Code illustrates the intent of Congress that interim compensation be provided on a sufficiently regular basis to ensure the adequacy of such compensation:

The court may permit more frequent applications if the circumstances warrant, such as in very large cases where the legal work is extensive and merits more frequent payments. The court is authorized to allow and order disbursement to the applicant of compensation and reimbursement that is otherwise allowable under section 330.

H.R. Rep. No. 595, 95th Cong., 1st Sess. 330 (1977) (*emphasis added*).

32. The Bankruptcy Appellate Panel for the Ninth Circuit (the "BAP") has made clear that monthly interim payments to professionals employed in large chapter 11 cases (such as this case) are reasonable and appropriate. *See United*

States Trustee v. Knudsen Corp. (In re Knudsen Corp.), 84 B.R. 668 (B.A.P. 9th Cir. 1988) (“*Knudsen*”). As the BAP observed in the seminal *Knudsen* case:

[T]he problem, arising especially in large cases, [is] that when counsel must wait an extended period for payment, counsel is essentially compelled to finance the reorganization. This result is improper and may discourage qualified practitioners from participating in bankruptcy cases; a result that is clearly contrary to Congressional intent.

Id. at 672 (footnote omitted); *see, e.g., In re Heritage Mall Assocs.*, 184 B.R. 128, 134 (Bankr. D. Ore. 1995) (noting the same problem); *In re County of Orange*, 179 B.R. 195, 198 n.5 (Bankr. C.D. Cal. 1995) (same). The BAP, therefore, held that, at least in large chapter 11 cases such as this case, monthly payments to professionals are appropriate, even without prior approval of the Court, if such payments are made pursuant to a procedure that provides the opportunity for subsequent review. *See Knudsen*, 84 B.R. at 671-72.

33. A bankruptcy court in the Central District of California addressed the issue of monthly compensation of professionals in *In re Commercial Consortium of California*. In analyzing section 331, the court noted that, although “[t]he essential purpose of this section is to relieve counsel and other professionals of the burden of financing lengthy bankruptcy proceedings,” payments every 120 days may not now be sufficient to fulfill that purpose:

In 1978, when the Code was enacted, attorneys customarily billed their clients on a quarterly basis. Times have changed. Lawyers now run their practices in a more business-like fashion. Computerization has simplified and speeded the billing process. As widely documented in the legal press, the billing cycle has shifted to monthly statements. The 120-day provision of Section 331, intended to be a help to lawyers in 1978, has become a straight-jacket for the lawyers of the 1990's. Thus, even payments every 120 days no longer compensate bankruptcy attorneys on a fully equivalent basis with their non-bankruptcy colleagues.

Id. 135 B.R. at 123-24. The court, therefore, recognized that more frequent payments are “commonly authorized in large cases involving extensive legal work” in order “to help avoid undue delays in payment.” *Id.* at 124 and 127 (*citing Knudsen*, 84 B.R. at 672).

34. Section 102(l) of the Bankruptcy Code provides that “after notice and a hearing”:

- (A) means after such notice as appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances; but
- (B) authorizes an act without an actual hearing if such notice is given properly and if--
 - (i) such a hearing is not requested timely by a party in interest

11 U.S.C. § 102 (1).

35. As discussed above, the proposed interim fee procedure allows monthly payments only after notice is given to the Notice Parties. If any such parties object to all or part of the fees or costs set forth in a Monthly Application, the disputed portion shall not be paid without prior Court approval.

36. The procedures suggested herein will enable the Debtor to monitor the costs of administration closely, maintain a level cash flow and implement efficient cash management procedures. Moreover, these procedures also will allow this Court and the key parties in interest in this chapter 11 case to ensure the reasonableness and necessity of the compensation and reimbursement sought pursuant to such procedures. Further, the Compensation Procedures requested in this Motion will substantially reduce the burden imposed on the Court by avoiding the need for the Court to review monthly fee applications before payments can be made to Professionals.

37. No previous request for the relief sought in this Motion has been made to this Court or any other court.

WHEREFORE, the Debtors respectfully request that this Court enter an order substantially in the form of the proposed order annexed hereto as Exhibit A, and grant such other and further relief as is just and proper.

Dated: Honolulu, Hawaii, March 21, 2003

By: Nicholas C. Dreher
NICHOLAS C. DREHER, ESQ.
THEODORE D.C. YOUNG, ESQ.
CADES SCHUTTE LLC

and

LISA G. BECKERMAN, ESQ.
DAVID SIMONDS, ESQ.
AKIN GUMP STRAUSS HAUER & FELD LLP

Proposed Counsel for Debtor and Debtor in
Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII**

In re

HAWAIIAN AIRLINES, INC.,
a Hawaii corporation,

Debtor.

Case No. 03 -
(Chapter 11)

**ORDER ESTABLISHING PROCEDURES
FOR INTERIM COMPENSATION AND
REIMBURSEMENT OF CHAPTER 11
PROFESSIONALS AND COMMITTEE
MEMBERS**

Date: March __, 2003

Time:

Judge: Hon. Robert J. Faris

This matter coming on to be heard on the Motion for an Order Establishing Procedures for Interim Compensation and Reimbursement of Chapter 11 Professionals and Committee Members (the "Motion") filed by the above-captioned debtor and debtor in possession (the "Debtor"); the Court having reviewed the Motion and papers submitted in support thereof and having heard the statements of counsel in support of the relief requested therein at a hearing thereon (the "Hearing"); the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); the Court finding that notice of the Motion and the Hearing given by the Debtors was sufficient under the circumstances and that no further notice need be given except as herein provided; and the Court being

fully advised in the premises and having determined that the legal and factual bases set forth in the Motion and at the Hearing on the Motion establish just cause for the relief herein granted;

IT IS HEREBY ORDERED THAT:

1. Except as provided in an Order Authorizing Retention and Employment of Professionals Utilized in the Ordinary Course of Business (the “Ordinary Course Professional Order”) entered in the above-captioned case, and except as may be otherwise provided in separate orders authorizing the retention of specific professionals, all Professionals³ in this case, including chapter 11 professionals retained by the Debtor, any professionals retained by any committees appointed in this chapter 11 case pursuant to section 1102 of the Bankruptcy Code (a “Committee”) and those ordinary course professionals whose fees and expenses exceed the limitations set forth in the Ordinary Course Professional Order, shall seek compensation and reimbursement in accordance with the procedures set forth below.

2. The Professionals desiring to obtain interim compensation and reimbursement shall seek compensation and reimbursement in accordance with the following procedures:

³ All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

a. No earlier than the 25th day of each calendar month, each Professional seeking monthly interim compensation must file a fee statement (a “Fee Statement”) summarizing interim compensation sought for services rendered and reimbursement of expenses incurred during the immediately preceding month and any previous month for which compensation and/or reimbursement has not yet been sought (the “Compensation Period”) and serve a copy of such Fee Statement on: (i) the Debtor; (ii) Akin Gump and Cades Schutte, counsel to the Debtor; (iii) the Office of the United States Trustee; and (iv) counsel to any Committee (collectively, the “Notice Parties”).

b. All Fee Statements must provide information in the format required by Local Bankruptcy Rule 2016-1 and the Guidelines for Compensation and Expense Reimbursement of Professionals and Trustees promulgated by the Court pursuant to Local Bankruptcy Rule 2016-1. With respect to time entries, all Fee Statements must contain (i) a detailed description, organized in chronological order by subject matter of the task, of the specific tasks performed, (ii) the length of time it took to perform such task, expressed in tenths (1/10ths) of hours – also, the Fee Statement must detail each task or contemporaneously related tasks performed and indicate the length of time it took to perform each such task or contemporaneously

related tasks, except where contemporaneously related tasks are related to each of the specific tasks performed, bunching/aggregating of all daily time entries is not permitted, (iii) an identification of who performed the work, (iv) the identity of the participants and the primary subject of conferences and telephone calls, (v) a description of the research topic for legal research and (vi) the identity of the document, by title or subject, for time entries for drafting and reviewing documents; provided, however, Fee Statements may be redacted to protect privileged material so long as the Professional retains an unredacted version for in camera review by the Court, in its discretion.

c. Each Notice Party will have twenty (20) days after service of a Fee Statement (the “Objection Deadline”) to object (an “Objection”) to any Professional’s Fee Statement. If, upon the expiration of the Objection Deadline, no Objection has been filed pursuant to subsection (d) below, the Professional may file a certificate of no objection with the Court, after which the Debtor shall pay such Professional an amount (the “Actual Monthly Payment”) equal to the lesser of (i) 80 percent of the fees and 100 percent of the expenses requested in the Fee Statement (the “Maximum Monthly Payment”) and (ii) 80 percent of the fees and 100 percent of the expenses not subject to an Objection pursuant to subparagraph (d) below.

d. Objections must be written and filed with the Court and received by the affected Professional (the “Affected Professional”) and the Notice Parties on or before the Objection Deadline. Thereafter, the Debtor, the objecting party and the Affected Professional may attempt to resolve the Objection on a consensual basis. If the parties are unable to reach a resolution of the Objection within twenty (20) days after service of the Objection, the Affected Professional may either: (i) file a response to the Objection with the Court, together with a request for payment of the difference, if any, between the Maximum Monthly Payment and the Actual Monthly Payment made to the Affected Professional (the “Incremental Amount”); or (ii) forego payment of the Incremental Amount until the next interim or final fee application hearing, at which time the Court will consider and dispose of the Objection, if requested by the parties.

e. In four-month intervals, or at such other intervals convenient to the Court, each of the Professionals must file with the Court and serve on the Notice Parties a request (an “Interim Fee Application”) for interim Court approval and allowance, pursuant to section 331 of the Bankruptcy Code, of the compensation and reimbursement of expenses sought in the Fee Statements filed during such period (the “Interim Fee Period”). The Interim Fee Application must include a summary of the Fee Statements that are the

subject of the request and any other information requested by the Court or required by the rules of bankruptcy procedure (the “Bankruptcy Rules”) or the local bankruptcy rules (the “Local Rules”). Each Professional must file its Interim Fee Application within twenty-five (25) days after the end of the Interim Fee Period for which the request seeks allowance of fees and reimbursement of expenses. Any Professional that fails to file an Interim Fee Application when due will be ineligible to receive further interim payments of fees or expenses under the Compensation Procedures until such time as a further Interim Fee Application is submitted by the Professional.

f. The Debtor shall request that the Court schedule a hearing on the Interim Fee Applications at least once every four (4) months, or at such other intervals as the Court deems appropriate.

g. The pendency of an Objection to payment of compensation or reimbursement of expenses will not disqualify a professional from the future payment of compensation or reimbursement of expenses under the Compensation Procedures.

h. Neither (i) payment of or failure to pay, in whole or in part, monthly interim compensation and reimbursement of expenses under the Compensation Procedures nor (ii) the filing of or failure to file an Objection will bind any party in interest or the Court with respect to the allowance of

interim or final applications for compensation and reimbursement of expenses of professionals. All fees and expenses paid to Professionals under the Compensation Procedures are subject to disgorgement until final allowance by the Court.

3. The Professionals shall submit final applications to the Court for final approval and allowance of their compensation and reimbursement in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules, and orders of this Court, or in accordance with such other procedures as this Court may authorize by separate order, and by such deadline as may be established in a confirmed chapter 11 plan or in an order of this Court.

4. Each member of any Committee may obtain reimbursement for reasonable out-of-pocket expenses incurred in connection with Committee membership in accordance with the following procedures:

a. Each Committee member may submit a statement of expenses and supporting vouchers and receipts to Committee counsel, who will collect and based thereon, submit a comprehensive request for reimbursement to the Debtor with copies to Akin Gump and Cades Schutte. The Committee's counsel will not be permitted to submit a request for reimbursement more frequently than once every thirty (30) days.

b. The Debtor will issue reimbursement checks within twenty (20) days after receipt of a request from Committee counsel, except with respect to any expense to which the Debtor objects. The Debtor will provide notification of any objection within the same twenty (20) day period.

c. The Debtor, the Committee member to whose expense an objection is made and Committee counsel will attempt to resolve any such objection, but in the absence of a resolution, the Debtor will issue a reimbursement check with respect to any expense subject to objection only pursuant to an order of this Court, which order shall be obtained by the applicable Committee member only upon motion and notice to the Debtor and its counsel.

d. Committee member expenses need not be approved pursuant to any interim or final application process, unless necessary to resolve any pending objection to a reimbursement request.

e. Notwithstanding the failure to object to any reimbursement request, and notwithstanding payment pursuant to any reimbursement request, the Debtor and other parties in interest will have the right, at any time during the chapter 11 case, upon motion and following

notice and a hearing, to seek disgorgement of any amounts paid to any
Committee member

5. The Court shall retain jurisdiction over any matter or dispute arising
from or relating to the implementation of this Order.

Dated: Honolulu, Hawaii,

_____, 2003

UNITED STATES BANKRUPTCY JUDGE

APPROVED AS TO FORM

Office of the United States Trustee

In re Hawaiian Airlines, Inc., Chapter 11, Case No. 03-_____;

ORDER ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION
AND REIMBURSEMENT OF CHAPTER 11 PROFESSIONALS AND
COMMITTEE MEMBERS