

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 02-33249

KNOXVILLE ATHLETIC CORPORATION,  
f/k/a BIKE ATHLETIC COMPANY

Debtor

**MEMORANDUM ON REQUEST FOR  
PAYMENT OF ADMINISTRATIVE EXPENSE**

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**RICHARD STAIR, JR.**  
**UNITED STATES BANKRUPTCY JUDGE**

This action is before the court upon the Request for Payment of Administrative Expense for Substantial Contribution of Robert J. Corliss (Request for Payment) filed on October 29, 2002. Mr. Corliss seeks reimbursement, under 11 U.S.C.A. § 503(b)(3)(D), (4) (West 1993 & Supp. 2003), of his attorneys' fees in the sum of \$39,119.00, associated with the negotiation of DIP financing in the early stages of the Debtor's Chapter 11 bankruptcy case. The Objection of The Official Committee of Unsecured Creditors to Request for Payment of Administrative Expense for Substantial Contribution of Robert J. Corliss (Objection to Request for Payment) was filed by The Official Committee of Unsecured Creditors (the Committee) on January 22, 2003.

All facts essential to the resolution of this contested matter are before the court on the Joint Stipulation of Facts on Request for Payment of Administrative Expense for Substantial Contribution of Robert J. Corliss filed by the parties on March 26, 2003.

This is a core proceeding. 28 U.S.C.A. § 157(b)(2)(A) and (O) (West 1993).

## I

Knoxville Athletic Corporation, formerly known as Bike Athletic Company, filed a Voluntary Petition under Chapter 11 on June 20, 2002 (the Petition Date). Earlier in June 2002, Bike Acquisition LLC (Bike Acquisition), a limited liability company wholly owned by Mr. Corliss, acquired all of the common stock of the Debtor from Richard W. Kazmaier for \$10.00. Mr. Corliss had served on the Debtor's board of directors for a number of years prior to its acquisition. Additionally, Mr. Corliss received commissions from the Debtor for sales made to

Montgomery Ward which ended two years prior to his acquisition of the Debtor. After Bike Acquisition purchased the Debtor, Mr. Corliss's wife, Melanie Corliss, became an employee and officer of the Debtor, earning compensation equal to an annual salary of \$85,000.00. Bike Acquisition has been the sole shareholder of the Debtor during the course of its bankruptcy. After Bike Acquisition purchased the Debtor, the Debtor's directors were Paul Gross, and for some period of time, Mrs. Corliss. During the course of the bankruptcy, Mr. Corliss has been actively involved with the strategic decisions, planning, and negotiations.

Mr. Corliss was represented by the law firm of Arnall Golden Gregory LLP (Arnall Golden) in Atlanta, Georgia, both prior and subsequent to the Petition Date. Also, around the time that the Debtor was acquired by Bike Acquisition, Mr. Corliss retained the law firm of Gentry, Tipton, Kizer & McLemore, P.C. (Gentry Tipton) in Knoxville, Tennessee, to represent it in connection with its impending Chapter 11 bankruptcy case. Attorneys for both law firms spent substantial amounts of time dealing with various bankruptcy-related issues both prior to the Petition Date and in the early stages of the Debtor's Chapter 11 case. Arnall Golden was primarily involved in negotiating the DIP financing, while Gentry Tipton took the lead role in all other aspects of the Debtor's case.

As of the Petition Date, the Debtor was indebted to Fleet Capital Corporation (Fleet) in the approximate aggregate principal amount of \$14,000,000.00, which was secured by liens on substantially all of the Debtor's assets. Additionally, as of the Petition Date, the Debtor was indebted to Mr. Kazmaier in the aggregate principal amount of \$500,000.00, which was also secured by liens on substantially all of the Debtor's assets. At the commencement of its bankruptcy

case, an immediate and ongoing need existed for the Debtor to obtain loans and other extensions of credit in order to continue operating its business. In order to obtain postpetition financing, the Debtor sought approval to enter into a Post-Petition Loan and Security Agreement with Fleet, authorizing financing up to \$20,000,000.00 (the DIP Financing Agreement).<sup>1</sup> Junior participation by Bike Acquisition in the amount of \$500,000.00 was a condition precedent to Fleet's funding obligations under the DIP Financing Agreement, and Bike Acquisition accordingly entered into a Junior Participation Agreement with Fleet. Under the terms of the Junior Participation Agreement, Bike Acquisition's \$500,000.00 was to be the first money loaned to the Debtor and the last money to be repaid. The Debtor was not a party to the Junior Participation Agreement.

An additional provision in the DIP Financing Agreement and related documents provided that a Success Fee would be paid to Fleet and Mr. Corliss upon the occurrence of certain events. Specifically, the provisions contemplated that if substantially all of the Debtor's assets were sold pursuant to a sale under 11 U.S.C.A. § 363 (West 1993 & Supp. 2003), Fleet and Mr. Corliss would receive a Success Fee of (a) \$250,000.00 if the general unsecured creditors of the Debtor received a distribution of at least 10% of their allowed claims, and (b) \$350,000.00 if the general unsecured creditors received a distribution of at least 20% of their allowed claims.

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<sup>1</sup> This initial DIP Financing Agreement was filed as an exhibit to the Debtor's Motion for Order (1) Authorizing Debtor-In-Possession to Obtain Financing, Grant Security Interests, Accord Priority Status Pursuant to 11 U.S.C. § 364(c)(1) and (d), and Afford Adequate Protection (2) Giving Notice of Final Hearing Pursuant to Bankruptcy Rule 4001(c)(2), and (3) Modifying Automatic Stay, and for Immediate Hearing filed on June 20, 2002.

Following a preliminary hearing on June 21, 2002, the court approved the DIP Financing Agreement on an interim basis.<sup>2</sup> Once approved, the Debtor began borrowing funds pursuant to the DIP Financing Agreement.

On July 5, 2002, the United States Trustee appointed the members of the Committee. Shortly thereafter, the Committee circulated an objection to the proposed DIP financing to interested parties. Among other things, the Committee objected to the terms of the agreement providing a Success Fee from which Mr. Corliss stood to be a primary beneficiary. Following extensive negotiations, the parties reached an agreement regarding amendments to the DIP Financing Agreement, and the objection was not filed. One specific amendment of particular concern to the Committee involved revisions to the Success Fee provisions. As revised, Fleet waived its rights to a Success Fee, and Bike Acquisition would receive a Success Fee of (a) \$50,000.00 if the general unsecured creditors received a recovery of 50% of their allowed claims; (b) \$100,000.00 if recovery reached 60%, and (c) \$200,000.00 if the unsecured creditors recovered 75% of their claims, if substantially all of the Debtor's assets were sold.

On July 25, 2002, the court held a final hearing regarding approval of post-petition DIP financing, at which the various parties in interest, including the Committee, expressed their support for the terms of the DIP Financing Agreement, as amended (the Amended DIP Financing Agreement). On August 2, 2002, the court entered the Final Order (1) Authorizing

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<sup>2</sup> The court entered the Interim Order (1) Authorizing Debtor-In-Possession to Obtain Financing, Grant Security Interests and Accord Priority Status Pursuant to 11 U.S.C. § 364(c)(1) and (d) of the Bankruptcy Code, (2) Affording Adequate Protection, (3) Giving Notice of Final Hearing Pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2), and (4) Modifying Automatic Stay on June 21, 2002, setting a final hearing for July 12, 2002. This hearing was continued by Agreed Order entered on July 11, 2002, and rescheduled for July 25, 2002.

Debtor-In-Possession to Obtain Financing, Grant Security Interests and Accord Priority Status Pursuant to Section 364(c)(1) and (d) of the Bankruptcy Code, (2) Affording Adequate Protection, and (3) Modifying Automatic Stay (the Final Order), which was approved by the Debtor, Fleet, the Committee, and the United States Trustee. Additionally, the Amended DIP Financing Agreement provided for payment of all costs and expenses incurred by Fleet, including attorneys' fees.<sup>3</sup> The Amended DIP Financing Agreement also contained a provision whereby Fleet consented to the priority payment of up to \$400,000.00 in approved fees and expenses for all professionals retained by the Debtor and the Committee.

In the summer of 2002, the Debtor determined that it needed an additional term loan, above and beyond the financing provided under the Amended DIP Financing Agreement, in an amount up to \$500,000.00. Fleet agreed to make this loan (the DIP Term Loan) on the condition that Mr. Corliss would personally guarantee repayment of all but \$50,000.00 of the DIP Term Loan, to which he agreed. Ultimately, the amount needed was \$335,000.00, and Mr. Corliss entered into a guaranty agreement in which he personally guaranteed repayment of \$285,000.00 of the DIP Term Loan. The Amended DIP Financing Agreement was again amended to reflect the DIP Term Loan and guaranty. Mr. Corliss did not receive any fee or other compensation for providing this guaranty.

The Debtor defaulted on the repayment terms for the DIP Term Loan by failing to pay the second term loan when due on September 30, 2002. Mr. Corliss did not make any payments pursuant to his guaranty, but instead, the DIP Term Loan was paid by the Debtor out of funds that

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<sup>3</sup> To date, Fleet has been reimbursed over \$125,000.00 for costs and expenses related to the DIP financing.

would otherwise have been available under the DIP financing. Also, in September 2002, the Debtor defaulted on the financial covenants in the Amended DIP Financing Agreement. As a result, from September 21, 2002, until the date of payment in full of all amounts due to Fleet and to Corliss pursuant to the Junior Participation Agreement, the Debtor was forced to pay interest at a default rate, which was 2% greater than the non-default rate.

On September 12, 2002, the Committee held a meeting in which Mr. Corliss participated. At the meeting, the Committee asked the Debtor to consent to the retention of an investment banker to try and find a buyer for the Debtor's assets. The Debtor opposed the action and, subsequently, the Committee filed the Application to Employ Trenwith Securities, LLC, on October 11, 2002. Fleet filed an objection to the application on October 23, 2002, and the Debtor filed an objection on October 28, 2002.

The Debtor filed a proposed plan of reorganization (the Plan) on October 18, 2002, which would have provided for Mr. Corliss to receive all of the equity in the reorganized Debtor in exchange for his waiver of the \$500,000.00 due to him pursuant to the Junior Participation Agreement. The Plan was filed within the Debtor's 120-day exclusivity period under 11 U.S.C.A. § 1121(b) (West 1993). Throughout the time that the Committee sought approval to employ an investment banker, the Debtor and Mr. Corliss shopped for financing for the Plan. Because the Debtor was unable to obtain adequate financing to support the Plan, it was officially withdrawn on February 21, 2003.

On December 10, 2002, the Debtor filed a Motion to Approve Sale of Assets Free and Clear of Liens and for Order: (A) Approving Bidding Procedures and Bidding Protections in Connection with the Sale of Assets; (B) Establishing Procedures with Respect to the Consensual Assumption and Assignment of Related Executory Contracts and Unexpired Leases; (C) Approving the Form and Manner of Notice of Sale and Related Relief; (D) Setting Hearing; and (E) Other Relief. The court entered the Order Approving Bidding Procedures and Bidding Protections in Connection with the Sale of Assets, Establishing Procedures with Respect to the Consensual Assumption and Assignment of Related Executory Contracts and Unexpired Leases, Approving the Form and Manner of Notice of Sale and Related Relief, Setting Hearing, and Other Relief on December 19, 2002. Pursuant to the motion and order, the Debtor conducted a sale of its assets by auction on January 29, 2003, at which Russell Corporation was the high bidder. On January 30, 2003, the court entered the Order Approving Sale of Assets Pursuant to Sections 105, 362 and 363 of the Bankruptcy Code and Approving Assumption and Assignment of Certain Executory Contracts Pursuant to Section 365 of the Bankruptcy Code, and the Debtor and Russell Corporation entered into an Asset Purchase Agreement on January 30, 2003, whereby the Debtor's assets were sold to Russell Corporation at the aggregate purchase price of \$16,250,000.00. The sale closed on February 5, 2003. All loans made pursuant to the Amended DIP Financing Agreement were fully satisfied from the proceeds of the sale of assets to Russell Corporation. Bike Acquisition was accordingly reimbursed its \$500,000.00 junior participation, plus interest and other charges in the amount of \$24,517.48. Additionally, because the DIP Term Loan was paid in full, Mr. Corliss was released from any remaining contingent liability to Fleet on the Debtor's behalf. After payment of these obligations, the payout to general unsecured

creditors is projected to be less than 20% of their allowed claims, excluding any potential litigation recoveries.

Throughout the course of the Chapter 11 bankruptcy case, the Debtor experienced operating losses, totaling \$6,376,840.00 as of February 28, 2003. Of this amount, approximately \$3,400,000.00 was incurred between September 2002, when the Committee first proposed a sale of the Debtor's assets, and January 30, 2003, the date upon which the sale took place.

As a participant in the DIP financing, Mr. Corliss, through Bike Acquisition, became a lender to the Debtor. The terms governing the Debtor's obligations to repay both Fleet and Bike Acquisition as the junior participant were set forth in the Amended DIP Financing Agreement. Neither Bike Acquisition nor Mr. Corliss received any fees or payments in exchange for his purchase of the Junior Participation in the DIP financing. Mr. Corliss was entitled to, and did receive, the amount of the Junior Participation plus interest pursuant to the terms of the Amended DIP Financing Agreement.<sup>4</sup> The parties agreed that from the time that Bike Acquisition acquired all of the Debtor's stock until December 10, 2002, the date that the Debtor filed its motion for sale of its assets pursuant to § 363 of the Bankruptcy Code, Mr. Corliss made no effort to locate a purchaser for the Debtor's assets. During this period, Mr. Corliss and officers of the Debtor pursued efforts to confirm a plan of reorganization that would allow Mr. Corliss to retain all of the equity in the Debtor.

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<sup>4</sup> Because the expected payout to general unsecured creditors does not meet the 50% threshold set forth in the DIP Financing Agreement, Mr. Corliss is not entitled to a Success Fee.

Presently before the court is the Request for Payment filed by Mr. Corliss and Bike Acquisition, pursuant to the Final Order entered by the court on August 2, 2002, which provides, in part:

15. . . . Nothing herein shall be deemed to preclude or prohibit Junior Participant [Bike Acquisition] or Guarantor [Mr. Corliss] from filing with the Court an application for reimbursement, as an administrative expense, of any or all legal fees and expenses incurred by Junior Participant or Guarantor in connection with the review of the DIP Financing Documents, the review and negotiation of the Junior Participation Agreement and the Junior Participation Amendment, and the review and negotiation of any subsequent amendments to the DIP Financing Documents (including the Guaranty) or the Junior Participation Agreement; provided that the relief requested in any such application shall be subject to notice and a hearing and the right or [sic] any interested party (including DIP Lender, the Committee and the U.S. Trustee) to object to such relief.

*In re Bike Athletic Co.*, No. 02-33249, Final Order at 11 (Bankr. E.D. Tenn. Aug. 2, 2002). Mr. Corliss seeks reimbursement of \$39,119.00 in attorneys' fees and \$948.30 in costs that he states were incurred in connection with the DIP financing, including time spent negotiating the Junior Participation Agreement and the Success Fee.<sup>5</sup> The Committee filed its Objection to Request for Payment on January 22, 2003. The court heard oral argument on March 27, 2003.

## II

Mr. Corliss seeks reimbursement of his attorneys' fees and expenses pursuant to 11 U.S.C.A. § 503(b)(3)(D) and (4), which provides:

(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including—

. . . .

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<sup>5</sup> Mr. Corliss maintains that he has incurred in excess of \$80,000.00 in attorneys' fees and expenses in connection with the Debtor's bankruptcy case as a whole.

(3) the actual, necessary expenses, other than compensation and reimbursement specified in paragraph (4) of this subsection, incurred by —

. . . .

(D) a creditor . . . in making a substantial contribution in a case under chapter . . . 11 of this title;

(4) reasonable compensation for professional services rendered by an attorney . . . of an entity whose expense is allowable under paragraph (3) of this subsection, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title, and reimbursement for actual, necessary expenses incurred by such attorney[.]

11 U.S.C.A. § 503(b)(3)(D), (4). The party seeking payment of an administrative expense under § 503(b)(3)(D) and (4) must prove by a preponderance of the evidence that it is entitled to such priority treatment. *In re Gurley*, 235 B.R. 626, 631 (Bankr. W.D. Tenn. 1999). Courts have discretion in determining whether to allow administrative expenses under § 503(b). *In re Alumni Hotel Corp.*, 203 B.R. 624, 630 (Bankr. E.D. Mich. 1996).

The term “substantial contribution” is not defined in the Bankruptcy Code; however, it has been judicially interpreted as meaning contributions that “foster and enhance, rather than retard or interrupt the progress of reorganization” in a bankruptcy case. *In re Serv. Merch. Co., Inc.*, 256 B.R. 738, 741 (Bankr. M.D. Tenn. 1999) (quoting *Pacificorp Ky. Energy Corp. v. Big Rivers Elec. Corp. (In re Big Rivers Elec. Corp.)*, 233 B.R. 739, 746 (W.D. Ky. 1998) (quoting *Hall Fin. Group, Inc. v. DP Partners, Ltd. P’ship (In re DP Partners Ltd. P’ship)*, 106 F.3d 667, 672 (5<sup>th</sup> Cir. 1997))). The party seeking expenses under § 503(b)(3)(D) and (4) must show that through its actions, the debtor’s estate and the creditors obtained an actual, demonstrable, and material benefit. *Serv. Merch. Co., Inc.*, 256 B.R. at 742; *Alumni Hotel Corp.*, 203 B.R. at 632

(citing *Lebron v. Mechem Fin. Inc.*, 27 F.3d 937, 944 (3d Cir. 1994) (“Inherent in the term ‘substantial’ is the concept that the benefit received by the estate must be more than an incidental one arising from activities the applicant has pursued in protecting his or her own interests.”)).

Factors to be considered by courts making a determination of substantial contribution include: (1) whether the party’s actions conferred a direct or meaningful benefit to the bankruptcy estate; (2) whether the services provided benefitted the entire estate; (3) whether the benefit was rendered entirely for the petitioning party’s self-interest; and (4) whether the services in question were duplicative of those performed by others. *Big Rivers Elec. Corp.*, 233 B.R. at 746; *Alumni Hotel Corp.*, 203 B.R. at 632; *In re Best Prods. Co., Inc.*, 173 B.R. 862, 865 (Bankr. S.D.N.Y. 1994).

Services “merely deplet[ing] the assets of an estate without providing a corresponding greater benefit” do not provide a substantial contribution. *Alumni Hotel Corp.*, 203 B.R. at 632 (quoting *In re United States Lines, Inc.*, 103 B.R. 427, 429 (Bankr. S.D.N.Y. 1989)). While “services that confer a significant and demonstrable benefit upon the reorganization process which have not been rendered solely on behalf of a creditor’s own interest should be compensated, extensive participation in a case, without more, is insufficient to compel compensation[, and] efforts undertaken by creditors solely to further their own self-interest are not compensable under [§] 503(b).” *Best Prods. Co., Inc.*, 173 B.R. at 866 (internal citations omitted).

On the other hand, a creditor’s self-interest is not a complete bar to reimbursement under § 503(b)(3)(D) and (4), as long as the “actions taken to protect [its] self-interest . . . do more than

incidentally benefit the bankruptcy estate.” *Big Rivers Elec. Corp.*, 233 B.R. at 747. “[S]ubstantial contribution should be applied in a manner that excludes reimbursement in connection with activities of creditors and other interested parties which are designed primarily to serve their own interests and which, accordingly, would have been undertaken absent an expectation of reimbursement from the estate.” *Lebron*, 27 F.3d at 944. The court agrees with other courts within the Sixth Circuit that “[c]ompensation must be preserved for those rare[, extraordinary] occasions when the creditor’s involvement truly fosters and enhances administration of the estate.” *Alumni Hotel Corp.*, 203 B.R. at 631 (quoting *In re D.W.G.K. Restaurants, Inc.*, 84 B.R. 684, 690 (Bankr. S.D. Cal. 1988)); see also *Big Rivers Elec. Corp.*, 233 B.R. at 748-49; *Best Prods. Co., Inc.*, 173 B.R. at 866. “Thus, the general rule remains that attorneys must look to their own clients for payment.” *Best Prods. Co., Inc.*, 173 B.R. at 866.

### III

Mr. Corliss seeks his expenses based upon his role in the Debtor’s obtaining of post-petition DIP financing. The court acknowledges that Mr. Corliss did assist in the post-petition financing, by providing a guaranty and pledging funds from Bike Acquisition. Additionally, the Debtor’s estate did receive a benefit from the post-petition DIP financing, made possible, in part, by Mr. Corliss and Bike Acquisition. However, the court is not convinced that the actions of Mr. Corliss and/or Bike Acquisition are so extraordinary as to compel payment by the Debtor of their attorneys’ fees as an administrative expense under § 503(b). The court agrees with the reasoning of the United States Bankruptcy Court for the Northern District of Illinois:

The principal contribution alleged here is the lending of money to the Debtor. There is no doubt that the loan benefitted the estate. Presumably every business transaction entered into by a debtor-in-possession is for the benefit of the estate. It does not follow, however, that every entity that enters into such a transaction with a Chapter 11 debtor is entitled to have its legal fees paid by the estate, in addition to whatever consideration it bargained for. TCLP, Inc. has cited no case, and this Court has found none, that has awarded fees under § 503(b)(3) and (4) incurred by entities in the course of loan or other business transaction with the Debtor. Nor is there any reason for a special rule simply because the lender here is the general partner of the Debtor.

*In re Traverse City Ltd. P'ship*, 108 B.R. 648, 650 (Bankr. N.D. Ill. 1989) (footnote omitted).

For the same reasons, the court finds in this case that Mr. Corliss simply entered into a general loan agreement, whereby the Debtor received financing. Even though the Debtor and its creditors received a benefit from Mr. Corliss's actions, his participation did not represent a rare and extraordinary event.

Moreover, the court is convinced that Mr. Corliss was acting with his own self-interest in mind from the beginning. All of Mr. Corliss's participation centered around his desire to keep the Debtor and its operations under his control. Mr. Corliss was fully protected by the terms of the Amended DIP Financing Agreement whether he retained control of the Debtor or whether the assets were sold. In fact, all of his claims pursuant to the Amended DIP Financing Agreement were repaid in full from the sale proceeds of the Debtor's assets. Likewise, all of his liability on the guaranty for the DIP Term Loan has been extinguished, as Fleet was also repaid for the Debtor's post-petition financing obligations from the sale proceeds. Additionally, the court believes

that any benefit to the estate and/or the Debtor's creditors was purely incidental, as the expected payout to general unsecured creditors is less than 20% of their allowed claims.<sup>6</sup>

#### IV

In summary, fees incurred by Mr. Corliss and Bike Acquisition L.L.C. are not entitled to priority payment. The Committee's Objection to Request for Payment will be sustained and Mr. Corliss's Request for Payment will be denied.

An order consistent with this Memorandum will be entered.

FILED: April 9, 2003

BY THE COURT

/s/ RICHARD STAIR, JR.

RICHARD STAIR, JR.  
UNITED STATES BANKRUPTCY JUDGE

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<sup>6</sup> The court also questions the necessity of some of the entries submitted by Mr. Corliss's attorneys, as they seem duplicative with actions taken and already reimbursed by attorneys for the Debtor. Similarly, some of the entries evidence work performed on behalf of Mr. Corliss and Bike Acquisition that falls outside the scope of the post-petition DIP financing. For example, more than one entry denotes telephone conferences with the Debtor's attorney regarding the preparation for and filing of the bankruptcy petition. Another entry discusses "conferences regarding open issues, strategy for filing; press release; Foremost issues; engagement package for UCC Capital, etc."

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 02-33249

KNOXVILLE ATHLETIC CORPORATION,  
f/k/a BIKE ATHLETIC COMPANY

Debtor

**ORDER**

For the reasons stated in the Memorandum on Request for Payment of Administrative Expense filed this date, the court directs that the Objection of The Official Committee of Unsecured Creditors to Request for Payment of Administrative Expense for Substantial Contribution of Robert J. Corliss filed January 22, 2003, is SUSTAINED. The Request for Payment of Administrative Expense for Substantial Contribution of Robert J. Corliss filed October 29, 2002, is DENIED.

SO ORDERED.

ENTER: April 9, 2003

BY THE COURT

/s/ RICHARD STAIR, JR.

RICHARD STAIR, JR.  
UNITED STATES BANKRUPTCY JUDGE