

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

IN RE:)
) Chapter 11
H & W MOTOR EXPRESS COMPANY,)
) Bankruptcy No. 02-02017
Debtor.)

ORDER RE EXPEDITED HEARING

On September 3, 2002, the above-captioned matter came on for hearing on an expedited basis on the U.S. Trustee's Motion for Orders Re: Debtor's Transactions with Trans Tech Solutions, Inc. Hearing was held by telephone conference call. Debtor appeared through its representative Bob Moore and its attorney, Frank Baron. The U.S. Trustee's Office appeared by Assistant U.S. Trustee John Schmillen. Trans Tech Solutions, Inc. appeared by its representative Elmer Twilley, Sr. and its attorney, William Jones. Others appearing were John Franczyk, Mark Floyd, Joe Peiffer, R.D. Ward, Steven Beyer, and Fred Perillo.

H & W Motor Express filed its Chapter 11 petition on June 12, 2002. Debtor has been acting as Debtor-in-Possession since that time. The U.S. Trustee's office filed the present motion on August 28, 2002 seeking an expedited hearing based upon allegations that Debtor-in-Possession entered into a contract with Trans Tech Solutions, Inc. without Court approval as required by 11 U.S.C. § 327(a). It is further alleged that Trans Tech Solutions has been in the process of collecting freight charges owed to Debtor since the contract was entered into between Debtor and Trans Tech on July 30, 2002.

At the hearing, Debtor acknowledged that it has no defense to the allegations made by the U.S. Trustee. It acknowledged that Court approval was not obtained prior to the execution of the contract involving Debtor and Trans Tech on July 30, 2002. The record reflects that Trans Tech Solutions, Inc. is a business located in Tennessee. It was hired by Debtor for the purposes of auditing and then trying to collect outstanding charges. It appears, based upon comments made, that Trans Tech has, in fact, collected \$33,599.08 as of the close of business on Friday, August 30, 2002. This amount reflects compromised payments from various parties on outstanding accounts of approximately \$55,000. Trans Tech indicates that it has sent

notices to approximately 5,000 parties representing outstanding accounts of nearly \$6 million.

Of the \$33,599.08 collected by Trans Tech, Trans Tech has awarded itself fees in the amount of \$16,799.94. This is based upon a contractual arrangement with Debtors in which Trans Tech would be compensated with 50% of all accounts collected. Trans Tech has remitted to Debtor the sum of \$10,500 with the approximate sum of \$6,200 remaining to be remitted. The Court is advised that Trans Tech is holding its fees in a separate account. The Court is advised that Debtor placed its funds in a Debtor-in-Possession account and has commingled the funds and used them to pay various business expenses.

As indicated, H & W, as Debtor-in-Possession, entered into the contract with Trans Tech on July 30, 2002 without prior motion or Court approval. Since there was no prior Court approval, Trans Tech has no legal authority to collect obligations on behalf of Debtor. This unauthorized contract raises numerous issues involving Debtor and Trans Tech, as well as the various parties from which Trans Tech has collected or attempted to collect freight charges. This hearing is not intended to resolve all issues which may arise from this series of transactions. On an expedited basis, the Court intends merely to achieve an interim solution pending a full and final hearing.

What is readily apparent is that Trans Tech has no legal authority to collect these debts. Nevertheless, the Court is requested, by Trans Tech, to be allowed to continue to do so. They assert that to terminate its efforts, at this time, would be costly and would ultimately hurt subsequent collection efforts.

This position has some initial appeal. However, this Court must conclude that such an interim resolution is inappropriate for several reasons. First, Trans Tech is operating without authority. Debtor has not filed a Motion for authority to employ Trans Tech. There has been no notice to interested parties, hearing or Court approval. If this Court were to allow collections to continue, even on a limited basis, it could be construed as tacit approval of part or all of the conduct which has occurred up to this point. The parties from whom Trans Tech is collecting have rights under the Bankruptcy Code. To allow Trans Tech to continue collecting under the existing agreement would be unfair. These parties have a right to know whether or not Trans Tech is proceeding with Bankruptcy Court approval. Until the time of hearing, they have been under the assumption

that these collection efforts have been authorized. They must be informed as to their correct status.

It may ultimately be established that Trans Tech entered into these contractual arrangements in good faith without intent to bypass the provisions of § 327. Nevertheless, at this time, the Court must weigh the relative rights of all parties involved. The Court is not prepared to compromise the rights of these parties in favor of Debtor or Trans Tech, both of whom failed to comply with the Bankruptcy Code and Rules. To do otherwise, would be to allow Trans Tech to continue to collect accounts under incorrect or false premises. This Court is not prepared to take such action based upon expediency or alleged costs to the parties who created these circumstances.

ORDER

Based upon the record made, on an interim basis pending full and final hearing, the Court enters the following orders:

1. Trans Tech Solutions, Inc. is ordered to retain, in a segregated interest bearing account, all funds received by it, up to the time of hearing, pursuant to the purported contract between Trans Tech Solutions, Inc. and H & W Motor Express Co. until further order of this Court.

2. Further, Trans Tech Solutions, Inc. is ordered to retain all funds which it may receive in the future in the same segregated account until further order of this Court.

3. Trans Tech Solutions, Inc. is ordered to submit to the U.S. Trustee's Office in Cedar Rapids, Iowa, within 7 days of the date of this order, a complete accounting of all funds which it has received.

4. Trans Tech Solutions, Inc. shall, within 7 days of the date of this order, notify all H & W Motor Express Co. account holders, who have been the subject of collection efforts by Trans Tech, by ordinary mail the following information in a form substantially as follows:

Trans Tech Solutions, Inc. has been ordered by the Bankruptcy Court for the Northern District of Iowa to send you this letter. This letter is intended to notify you that Trans Tech Solutions, Inc. has been collecting accounts owed to H & W Motor Express, pursuant to a contract dated July 30, 2002. H & W Motor Express Co. is under the protection of the

Bankruptcy Court in the Northern District of Iowa. The collection of these accounts by Trans Tech Solutions, Inc. has been accomplished without prior Court approval or authorization. You are notified that, pending further order of the Bankruptcy Court, you are not to submit further payments on these accounts to Trans Tech Solutions, Inc.

4. Trans Tech Solutions, Inc. is ordered to forthwith refrain from all collection efforts as it relates to the contract of July 30, 2002 and the accounts involving H & W Motor Express Co. pending further order of Court.

5. The Court will reserve ruling on allocation of costs associated with this notification pending full hearing in this matter.

6. A full hearing on all of the issues raised in this motion shall be heard on the most expedited basis possible. Hearing shall be set by separate order.

7. A copy of this order shall be sent by ordinary mail and by fax to Attorney William P. Jones, P.O. Box 738, Hendersonville, Tennessee, 37077. The fax number is 615-264-2720. Further, a copy of this order shall be sent by the most expeditious manner to the U.S. Trustee's office in Cedar Rapids, Iowa and Attorney Frank Baron in Sioux City, Iowa. Notice shall be sent to all other appearing parties by ordinary mail.

SO ORDERED this 4th day of September, 2002.



PAUL J. KILBURG
CHIEF BANKRUPTCY JUDGE