

assert a claim for substantial contribution pursuant to Bankruptcy Code sections 503(b)(3)(D) and 503(b)(4). Further, the Application is an improper end-run around the requirements of Bankruptcy Code sections 1103, 330 and 503(b)(2) as it relates to payment of professional fees.

JURISDICTION AND STANDING

2. This Court has jurisdiction to hear the Application and this Objection.

3. Pursuant to 28 U.S.C. § 586, the U.S. Trustee is charged with the administrative oversight of cases commenced pursuant to chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). This duty is part of the U.S. Trustee’s overarching responsibility to enforce the bankruptcy laws as written by Congress and interpreted by the courts. *See United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.)*, 33 F.3d 294, 295-96 (3d Cir. 1994) (noting that U.S. Trustee has “public interest standing” under 11 U.S.C. § 307, which goes beyond mere pecuniary interest); *Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500 (6th Cir. 1990) (describing the U.S. Trustee as a “watchdog”).

4. Pursuant to 11 U.S.C. § 307, the U.S. Trustee has standing to be heard with regard to the Application and this Objection.

BACKGROUND

General Background

5. On January 21, 2024, and July 1, 2024, respectively, the above-captioned cases were commenced by the filing of voluntary petitions in this Court.

6. On February 29, 2024, the U.S. Trustee appointed a statutory committee of unsecured creditors (the “Committee”) in this case.

7. On September 18, 2024, the Debtors filed the *Second Amended Chapter 11 Plan of Liquidation of Terraform Labs Pte. Ltd. and Terraform Labs Limited* [D.I. 717] (the “Plan”).

8. On September 20, 2024, the Court entered *the Findings of Fact, Conclusions of*

Law, and Order Confirming Second Amended Chapter 11 Plan of Liquidation of Terraform Labs Pte. Ltd. and Terraform Labs Limited [D.I. 734].

9. On October 1, 2024, the Plan became effective [D.I. 765].

The Committee's Legal Professionals

10. On March 1, 2024, White & Case and McDermott Will & Emery LLP (“MWE”) filed, on behalf of the Committee, a *Notice of Appearance and Request for Service of All Notices and Documents* [D.I. 108].

11. On March 8, 2024, MWE filed, on behalf of White & Case, the *Notice of Withdrawal of Appearance of White & Case LLP* [D.I. 159].

12. On March 28, 2024, the Committee filed the *Application of the Official Committee of Unsecured Creditors of Terraform Labs Pte. Ltd. to Retain and Employ McDermott Will & Emery LLP as Counsel, Effective February 29, 2024* [D.I. 189] (the “MWE Application”).

13. On April 19, 2024, the Court entered an order [D.I. 240] authorizing the retention of MWE as counsel to the Committee.

The Application

14. On December 2, 2024, White & Case filed the Application, seeking allowance of a substantial contribution claim of \$430,973.52 for services rendered to the Committee for a 12-day period from February 29, 2024- March 12, 2024.

ARGUMENT

A. The Legal Standard for a Substantial Contribution Claim

15. Bankruptcy Code Section 503(b) provides in pertinent part:

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

[. . .]

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

(A) a creditor that files a petition under section 303 of this title;

(B) a creditor that recovers, after the court's approval, for the benefit of the estate any property transferred or concealed by the debtor;

(C) a creditor in connection with the prosecution of a criminal offense relating to the case or to the business or property of the debtor;

(D) a creditor, an indenture trustee, an equity security holder, or a committee representing creditors or equity security holders ***other than a committee appointed under section 1102 of this title***, in making a substantial contribution in a case under chapter 9 or 11 of this title;

(E) a custodian superseded under section 543 of this title, and compensation for the services of such custodian; or

(F) a member of a committee appointed under section 1102 of this title, if such expenses are incurred in the performance of the duties of such committee;

(4) reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense ***is allowable under subparagraph (A), (B), (C), (D), or (E)*** of 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 or accountant.

(emphasis added).

16. Section 503(b)(3)(D) thus provides administrative expense status for the actual, necessary expenses of a creditor or equity security holder that makes a substantial contribution in a chapter 9 or 11 case. Section 503(b)(4) provides administrative-expense status for the reasonable fees and actual, necessary expenses of such entity's attorneys and accountants.

Section 503(b)(3)(D) must be narrowly construed so that administrative expenses will be held to

a minimum. See *In re Worldwide Direct, Inc.*, 334 B.R. 112, 122 (Bankr. D. Del. 2005) (*quoting In re Granite Partners*, 213 B.R. 440, 445 (Bankr. S.D.N.Y. 1997)).

17. Section 503(b)(3)(D) has two purposes: (1) to encourage creditors to participate meaningfully in the reorganization process; and (2) to minimize fees and administrative expenses and thereby maximize creditor recoveries. *Lebron v. Mechem Financial Inc.*, 27 F.3d 937, 944 (3d Cir. 1994). A creditor makes a substantial contribution if its efforts provide an “actual and demonstrable benefit to the debtor’s estate and the creditors.” *Lebron v. Mechem Financial Inc.*, 927 F.3d at 943-44 (citation omitted) (*quoting In re Lister*, 846 F.2d 55, 57 (10th Cir. 1988)). See also *In re Worldwide Direct, Inc.*, 334 B.R. at 121.

18. While the term “substantial contribution” is not defined in the Bankruptcy Code, and the phrase “does not lend itself to a set of exacting criteria, ‘a well developed body of case law teaches that the sort of contribution that reaches the substantial threshold is exceedingly narrow.’” *In re KiOR, Inc.*, 567 B.R. 451, 459 (D. Del. 2017), *citing In re RS Legacy Corp.*, 2016 WL 1084400 at *4 (Bankr. D. Del. Mar. 17, 2016). A benefit that the estate receives as an incident to a creditor’s protecting its own interests is not a substantial contribution. See *Lebron*, 27 F.3d at 944 (“‘substantial contribution’ should be applied in a manner that excludes reimbursement in connection with activities of creditors and other interested parties which were designed primarily to serve their own interests and which, accordingly, would have been undertaken absent an expectation of reimbursement from the estate”).

19. Creditors are presumed to act in their own interest “until they satisfy the court that their efforts have transcended self-protection.” *Lebron*, 27 F.3d at 944 (citations omitted). The activities that a Section 503(b)(3)(D) applicant has engaged in are “presumed to be incurred for the benefit of the engaging party and are reimbursable if, but only if, the services ‘directly and materially contributed’ to the reorganization.” *Lebron*, 27 F.3d at 943-44 (citation omitted).

20. When determining if a claimant has met its burden, courts consider whether the services provided (a) were only for the benefit of the claimant or were for the benefit of all parties in the case; (b) directly, significantly and demonstrably benefited the estate; and (c) were duplicative of the services provided by professionals for the creditors' committee, the committee itself, debtor and its attorneys, or other fiduciaries and their professionals. *See In re Worldwide Direct, Inc.*, 334 B.R. at 122 (citing *In re Buckhead America Corp.*, 161 B.R. at 15).

B. White & Case Rendered Services to an Entity That is Not Entitled to Seek a Substantial Contribution Claim Pursuant to Bankruptcy Code Sections 503(b)(3)(D) and 503(b)(4).

21. The Application should be denied because White & Case is seeking compensation for services rendered to an entity that is not entitled to seek a substantial contribution claim pursuant to Bankruptcy Code section 503(b)(3)(D). White & Case states in the application that although it was “directed by the Committee to take actions. . . it was never formally retained by the Committee through a Court-approved retention application. White & Case withdrew as counsel to the Committee shortly after it was directed to take actions that would eventually facilitate a value settlement for the benefit of all creditors” [Appl., fn. 2]. White & Case incorrectly asserts that, because it was never formally retained by the Committee, it can still seek payment of a substantial contribution claim, notwithstanding that that the services for which it seeks compensation were rendered on behalf of an official committee, an entity that is not eligible to receive administrative claim treatment for a substantial contribution pursuant to Bankruptcy Code section 503(b)(3)(D).

22. Section 503(b)(3)(D) of the Bankruptcy Code provides for the allowance of administrative expenses of the estate for the “actual, necessary expenses” incurred by “a creditor, an indenture trustee, an equity security holder, or a committee representing creditors or equity security holders *other than a committee appointed under section 1102 of this title*” ... “in making

a substantial contribution in a case.” Section 503(b)(4) provides for the allowance of “reasonable compensation for *professional services rendered by an attorney or an accountant of an entity whose expense is allowable under*” section 503(b)(3). (emphasis added). In these cases, White & Case was not acting as an attorney on behalf of one of the entities specified in section 503(b)(3)(D). Rather, the firm rendered services on behalf of the Committee and, therefore, is not entitled to a substantial contribution claim under section 503(b). Instead, reimbursement for the types of services rendered by White & Case is governed by Bankruptcy Code section 503(b)(2) (“compensation and reimbursement awarded under section 330(a) of this title”).

23. White & Case cites to multiple cases as providing support for approval of its substantial contribution request. *See e.g., In re Bayou Group, LLC*, 431 B.R. 549, 562 (Bankr. S.D. N.Y. 2010) (*citing In re Granite Partners*, 213 B.R. 440, 446-47 (Bankr. S.D.N.Y. 1997); *In re General Electrodynamics Corp.*, 368 B.R. 543, 554-56 (Bankr. N.D. Tex. 2007). However, none of the cases cited by White & Case authorized payment where services were rendered on behalf of an official committee. Rather, the cases authorized substantial contribution claims for services rendered to an *unofficial* committee as well as to creditors *prior* to the formation of an official committee. None of these circumstances are present here.

C. The Application is an Improper Attempt to Circumvent the Retention Requirements of Bankruptcy Code Section 1103

24. White & Case’s request to permit allowance of a substantial contribution claim for services rendered to the Committee is an improper attempt to circumvent the requirements of section 1103 of the Bankruptcy Code. Section 1103(a) of the Bankruptcy Code permits a committee appointed under section 1102 to retain one or more attorneys, accountants or other agents “with the court’s approval.”³ White & Case would only be entitled to an administrative

³ Bankruptcy Code section 1103(a) provides, “[a]t a scheduled meeting of a committee appointed under section 1102 of this title, at which a majority of the members of such committee are present, and with the

claim pursuant to section 503(b)(2) if it was an approved section 1103(a) professional and a fee application was filed by the firm and approved by the Court pursuant to section 330.⁴ *See In re Villa Luisa, LLC*, 354 B.R. 345, 348-349 (Bankr.S.D.N.Y. 2006); *In re Keren Ltd. P'ship*, 189 F.3d 86, 88 (2d Cir. 1999) (holding that compensation for any professional services is only an administrative expense when approved by the Court). Because the Committee did not seek to retain White & Case, White & Case is not a section 1103(a) retained professional and is therefore ineligible to seek an administrative claim pursuant to sections 330 and 503(b)(2).

25. Similar attempts to seek administrative expense status for unpaid fees where the professional failed to obtain approval of its retention pursuant to section 327(a) have been rejected by other courts. In *In re Villa Luisa, LLC*, 354 B.R. at 348, a creditor sought reimbursement of fees advanced to a law firm that had rendered services on behalf of the debtor, but that had not been formally retained. The bankruptcy court denied the request for a substantial contribution claim, finding that the request was an attempt “to circumvent the attorney retention provisions under the Code. Generally, attorneys who represent fiduciaries must be retained by court order before they seek compensation. *See* Code § 327. Attorneys retained by the court may be awarded compensation under Code § 330 and such award is entitled to administrative expense priority under Code § 503(b).” *Id.* at 348-349.

26. In *In re F/S Airlease II, Inc.*, 844 F.2d 99 (3d Cir.1988), the Third Circuit denied a broker’s application for a section 503 administrative claim, stating that “[b]ecause Simon is a professional person who was hired to ‘assist the [debtor-in-possession] in carrying out the

court’s approval, such committee may select and authorize the employment by such committee of one or more attorneys, accountants, or other agents, to represent or perform services for such committee.”

⁴ Bankruptcy Code section 330(a)(1) provides in pertinent part that the court may award to “a professional person employed under section 327 or 1103- (A) reasonable compensation for actual, necessary services rendered....”

[debtor-in-possession's] duties,' *see* 11 U.S.C. § 327(a), and he failed to comply with that section's requirement to obtain prior approval of his appointment, he cannot rely on section 503(b)(1)(A) as a way of circumventing section 327(a). If Simon were able to be compensated under section 503(b)(1)(A), it would render section 327(a) nugatory and would contravene Congress' intent in providing for prior approval." *Id.* at 108-109. (citations omitted).

27. Because the Committee did not obtain Court approval to retain White & Case, the firm is not eligible for compensation under Bankruptcy Code section 330. The Application is an improper attempt to avoid the requirements of Bankruptcy Code sections 1103(a), 330 and 503(b)(2) regarding the retention and payment of professionals rendering services to an official committee.

WHEREFORE, the U.S. Trustee requests that this Court issue an order denying the Application and/or granting such other relief as this Court deems appropriate, fair and just.

Respectfully submitted,

ANDREW R. VARA
UNITED STATES TRUSTEE
REGIONS 3 AND 9

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Dated: January 31, 2025

CERTIFICATE OF SERVICE

I, Jane M. Leamy, hereby certify that on January 31, 2025, a copy of this Objection was caused to be served *via* electronic service on the parties registered with the Court's CM/ECF system with courtesy copies sent via email to other parties in interest.

Dated: January 31, 2025

/s/ Jane M. Leamy

Jane M. Leamy