

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

WESTINGHOUSE ELECTRIC
COMPANY LLC, *et al.*,

Debtors.

Chapter 11

Case No. 17-10751 (MEW)

(Jointly Administered)

MHBK (USA) LEASING & FINANCE LLC'
REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSES

1. MHBK (USA) Leasing & Finance LLC (formerly known as MHCB (USA) Leasing & Finance Corporation, "MULFC" or the "Claimant") a claimant in this proceeding, files its Request for Payment of Administrative Expenses pursuant to 11 U.S.C. § 503 (the "Request"). The basis for the claim is set forth below.

Factual Background

2. On March 31, 2014, the Debtors entered into a Master Equipment Leasing Agreement (the "Master Lease Agreement") with MHCB (USA) Leasing & Finance Corporation (as predecessor in interest to the Claimant). A copy of the Master Lease Agreement is attached as Exhibit A. The Master Lease Agreement contemplated that the Debtor would lease from the Claimant certain equipment (the "Equipment") under several equipment lease supplements (each one, an "Equipment Lease Supplement", collectively, the "Equipment Lease Supplements", and together with the Master Lease Agreement, the "Lease Agreements"). Pursuant to the Master Lease Agreement the Debtor entered into the following six Equipment Lease Supplements with the Claimant:

- (a) Equipment Lease Supplement No. 5, dated March 31, 2014, in the aggregate amount of \$31,744,784.00;
- (b) Equipment Lease Supplement No. 6, dated September 29, 2014, in the aggregate amount of \$36,200,486.00;



- (c) Equipment Lease Supplement No. 7, dated March 27, 2015, as amended by Amendment No. 1 dated June 27, 2016 and Amendment No. 2 on September 27, 2016, in the aggregate amount of \$4,051,759.16;
- (d) Equipment Lease Supplement No. 8, dated August 20, 2015, as amended by Amendment No. 1 dated November 18, 2016, in the aggregate amount of \$3,330,929.17;
- (e) Equipment Lease Supplement No. 9, dated August 20, 2015, as amended by Amendment No. 1 dated November 18, 2016, in the aggregate amount of \$3,806,400.66; and
- (f) Equipment Lease Supplement No. 10, dated August 20, 2015, as amended by Amendment No. 1 dated November 18, 2016, in the aggregate amount of \$3,594,082.04;

Copies of the Equipment Lease Supplements are attached as Exhibits B through G, respectively.

3. Section 7 of the Master Lease Agreement requires the Debtor to make periodic rent payments in arrears for each quarterly payment period (with such periods specifically delineated in the Equipment Lease Supplements), for each item of leased Equipment during the term of each Equipment Lease Supplement on designated rent payment dates.

4. Pursuant to Section 9 of the Master Least Agreement, the Debtor has granted to the Claimant a security interest in the interests of the Debtor in all the Equipment as collateral security for the payment and performance by the Debtor of its obligations as the lessee thereunder. The Claimant has filed financing statements with the Delaware Secretary of State Uniform Commercial Code filing section and the Surface Transportation Board evidencing this security.¹

5. Pursuant to Section 31 of the Master Lease Agreement, the Debtor is required to “pay (or reimburse the Claimant for the payment of) all Transaction Expenses.” “Transaction Expenses” is defined to including, among other things, “the reasonable fees, out of pocket

¹ Copies available upon request.

expenses and disbursements of any law firm or other external counsel, and (without duplication) the reasonable allocated cost of internal legal services and all disbursements of internal counsel of the [Claimant] in connection with . . . any enforcement of any rights or remedies against the [Debtor] in respect of” the Master Lease Agreement and related transaction documents.

6. Pursuant to Section 23(a) of the Master Lease Agreement, the Debtor is liable for “all costs and expenses, including attorney’s fees, incurred by the Claimant by reason of the occurrence of an Event of Default.”

7. Under section 25 of the Master Lease Agreement the Claimant is entitled to interest at the Overdue Rate (as defined in the Master Lease Agreement) on any amount payable under the Master Lease Agreement not paid when due, including, without limitation rent payments and Supplemental Payments (as defined in the Master Lease Agreement) for any period for which any of the same is overdue (without regard to any grace period). The Overdue Rate is specified in each Equipment Lease Supplement for such purpose.

Procedural Background

8. On March 29, 2017 (the “Petition Date”), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the Southern District of New York. The Debtors’ Chapter 11 cases were subsequently administratively consolidated.

9. On August 1, 2018, the Debtor filed that certain *Notice of Occurrence of Effective Date of Debtors’ Modified Second Amended Joint Chapter 11 Plan of Reorganization* (the “Plan Effective Notice”). The Plan Effective Notice established August 31, 2018 as the last date to file and serve requests for payment of administrative expense claims.

10. Request for Payment of Administrative Expense

Request for Payment of Administrative Expense

11. In accordance with 11 U.S.C. §§ 503(a) and (b), Claimant requests payment administrative expenses in an amount no less than \$155,598.34, comprised of, but not limited to, outstanding obligations arising in connection with missed rent payments for equipment used by the Debtor after the Petition Date as set forth in paragraph 12 below, and outstanding legal fees and expenses related thereto as set forth in paragraph 13 below.

12. The Debtor is obligated to pay the Claimant \$143,856.34 in interest due under Section 25 of the Master Lease Agreement (the "MLA Expenses") as a result of charges that accrued in relation to pre-petition rent obligations owed by the Debtor that were outstanding on a post-petition basis through August 1, 2018 in relation to Lease Supplements No. 5, No.6, No. 7, No. 8, No. 9 and No. 10 in the aggregate amounts of \$2,113,424.26. These missed rent payments were outstanding rent amounts were outstanding from the Petition Date through August 6, 2018, when they were paid by the Debtor as cure amounts in connection with the Debtor's assumption of Lease Supplements No. 5 through No. 10. As such, during this period, the MLA Expenses relate to the use of the leased equipment, from which the estate benefitted but for which the Claimant has not yet been compensated as provided under the Master Lease Agreement.

13. The Debtors further owe legal and professional fees and costs to the Claimant, including, without limitation, fees owed under Sections 31 and 23(a) of the Master Lease Agreement incurred prior to the Petition Date in an amount of not less than \$11,742.00.

14. All notices and distributions in respect of this claim should be forwarded to:

MHBK (USA) Leasing & Finance LLC
1251 Avenue of the Americas
New York, NY 10020
Attention: Lease Operation
Phone No.: (212) 282-3121

Fax No.: (212) 282-4417
Email: lease.admin@mizuhocbus.com

With a copy of all notices to:

Mayer Brown LLP
1221 Avenue of the Americas
New York, New York 10020-1001
(212) 506-2500
Attn: Frederick D. Hyman, Esq.
Joaquin M. C de Baca, Esq.

15. Nothing contained in this Request shall be construed as limiting any of the Claimant's rights, remedies, and interests, including, without limitation, rights, remedies, and interests under the Lease Documents. The Claimant reserves the right to (i) amend, update and/or supplement this Request at any time and in any respect.

16. This Request is filed under the compulsion of the Plan Effective Notice and is filed to protect Claimant from forfeiture of its claim by reason of said bar date. The filing of this Request is not a waiver or release of: (i) Claimant's rights against any person or entity who may be liable for all or part of the claims set forth herein, whether an affiliate of the Debtors, an assignee, guarantor or otherwise, (ii) any obligation owed to Claimant or any right to any security that may be determined to be held by a third party for the benefit of Claimant, (iii) any past, present or future defaults (or events of default) by or others in connection with the Lease Documents or otherwise.

17. The filing of this Request is not (i) an election of remedies; (ii) a waiver or limitation of any procedural or substantive rights or any procedural or substantive defenses to any claim that may be asserted against Claimant; or (iii) consent to jurisdiction regarding any issues other than those necessary to adjudication of Claimant's Request. In addition, Claimant

reserves the right to withdraw this Request with respect to the amounts sought herein, or any portion thereof, for any reason whatsoever.

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18. The Claimant reserves the right to amend this request as necessary.

Dated: August 31, 2018

MHBK (USA) LEASING & FINANCE LLC
(formerly known as MHCB (USA) Leasing &
Finance Corporation)

By:



Name: Teruo Isshiki
Title: Vice President